

Environmental Impact Statement

Ocean View Recycling Point and Convenience Center

**Ka'u District, Hawai'i Island, State of Hawai'i
TMK (3rd): 9-2-150:060**

County of Hawai'i Department of Environmental Management

Appendix 8

Deed Covenants for TMK 9-2-150:60

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
LIBER 14023 PG 462

79 SEP 27 A 8: 46

RECORDATION REQUESTED BY: 79-112246
STERRY, MAH & GALLUP
AFTER RECORDATION RETURN TO:
STERRY, MAH & GALLUP
POST OFFICE BOX 1837
KAILUA-KONA, HAWAII 96740
RETURN BY: MAIL (X) PICKUP ()

Signature

KAILUA

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

PIONEER PROPERTIES, INC., whose principal place of business and mailing address is 5025 East Washington Street, Poenix, Arizona, 85034, hereinafter called the "Declarant", the owner in fee simple of those certain parcels of land situate in the District of Ka'u, County and State of Hawaii, described as follows:

All of that real property more fully described in Exhibit "A" attached hereto and by reference incorporated herein, and also referred to and described in that certain Deed dated the 7th day of November, 1977 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12648 at Page 266 et seq., excepting the property referred to in that Deed as parcel "SECOND" and the roadway lots referred to under parcels "FIRST".

And Whereas, owner desires to establish covenants, conditions and restrictions relative to the use of said land which shall henceforth run with and attach to the land;

Now, Therefore, Declarant for himself, his successors and assigns, hereby certifies, declares and establishes that all of the lots included in the real property described in Exhibit "A" hereto shall hereafter be held, used, leased,

sold and conveyed, subject to the burden and with the benefit and protection of the following covenants, conditions, restrictions, provisions and architectural and building standards during the period hereinafter set forth:

1. EXCAVATION. No lot or any part thereof shall be excavated, filled, graded or otherwise altered as to natural grade in such a manner as to affect the drainage onto or off of any other lot of the subdivision.

2. TRASH AND DUMPING. No lot shall be used or maintained as a dumping ground for trash, rubbish, garbage, discarded vehicles, animal or fish carcasses. No garbage or other waste shall be kept on any lot except in sanitary containers. All incinerators or other equipment for the storage or disposal of trash, rubbish, garbage and the like shall be kept in a clean and sanitary condition.

3. NOISE. No loud or unusual noises shall be permitted on the lots. Machinery or tools causing loud or disturbing noises shall not be operated or used except between the hours of 7:00 a.m. to 6:00 p.m.

4. HEIGHT LIMITATION, VIEW AND AIR. No dwelling house, appurtenance or other structure shall be of a height, size or location such that it would unreasonably interfere with the view corridor, sunlight and natural flow of air of other lot owners.

5. CONSTRUCTION MATERIALS.

(a) No building, or part thereof, shall be placed or re-erected upon any of said lots which has been moved from another location and no "quonset" type of building shall be erected, placed or maintained upon said premises.

(b) All exterior roofing material shall be of a non-reflecting and non-glaring nature.

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6. PROPERTY LINE. No hedge, building or structure, or any part thereof, except a boundary hedge, fence or wall not more than six (6) feet above the ground line, shall be grown, erected or placed or allowed to remain upon the lots within twenty-five (25) feet from any boundary of any lot. All new trees planted on the premises from date of purchase shall not unreasonably obstruct or interfere with the view corridors of other lot owners and their reasonable flow of sunlight and air.

7. MINIMUM BUILDING SIZE AND COST.

(a) No dwelling house shall be erected, altered, placed or permitted to remain upon any of said lots which shall contain less than NINE HUNDRED (900) square feet of enclosed floor area, exclusive of garages, carports and lanais.

(b) No dwelling house shall be erected, placed or permitted upon any of said lots having an appraised value when completed of less than THIRTY-FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.00), excluding land cost, garage, carport, lanais, out buildings, etc., it being the intention and purpose of this covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are first recorded at the minimum cost stated herein for the minimum permitted dwelling house size.

8. PROHIBITED STRUCTURES. No structure of a temporary character, trailer or mobile home (or part thereof), tent, shack or outdoor privy shall be constructed, reconstructed, placed or maintained upon any lot at any time, except during periods of construction of a principal dwelling

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on the lot and then for a period not to exceed ONE HUNDRED TWENTY (120) days.

9. BUSINESS OR OFFENSIVE USES. No retail or wholesale shop or store shall be erected and no building erected on any of said lots shall be used or occupied for any merchantile, manufacturing or commercial purposes; no business or industry, nor any obnoxious or offensive activity shall be carried on upon any lot which may be or become an annoyance or nuisance to any of the other lots of the sub-division.

10. ROADWAY MAINTENANCE. Each lot owner, who owns a lot subject to this Declaration of Covenants, Conditions and Restrictions, shall along with all other such lot owners, equally share on a per lot basis all costs of maintenance, repairs and improvement of any road accesses and easements or roadway lots available for use by all such lot owners. A decision ^{of} ~~of~~ two-thirds (2/3) of such lot owners shall be required to initiate any such maintenance, repair or improvement.

11. DEED, MORTGAGES, ETC. No agreement of sale, deed, assignment, mortgage or lease affecting any of said lots shall be made or delivered, conveying, mortgaging or leasing any of said lots or any part thereof at any time during the said period, unless such agreement of sale, deed, assignment, mortgage or lease shall contain or be subject to the same restrictive terms, covenants and conditions as are in this indenture set forth.

12. DURATION OF PROVISIONS. All restrictions, covenants, conditions and provisions contained in or established by this declaration shall run with the land, and shall continue in full force and effect for a period of ten (10) years from the date of execution hereof, after which time they shall be automatically extended for successive periods

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of ten (10) years unless an instrument signed by owners of record of at least sixty-seven percent (67%) of the lots of the subdivision has been recorded with the Bureau of Conveyances of the State of Hawaii prior to the date of the commencement of the next ensuing extended period, agreeing to terminate or change the covenants in whole or in part.

13. BINDING EFFECT. All restrictions, covenants, conditions and provisions contained in or established by this declaration or any instrument changing these covenants in whole or part as provided for in Paragraph 11 hereof shall constitute easements and servitudes running with all of the lots in the aforescribed property, and shall bind and inure to the benefit of declarant and all persons who now or hereafter own or lease any of said lots. Every person acquiring any estate, right, title or interest in or to any of said subdivision shall be deemed conclusively to have accepted the same upon and subject to all said restrictions, covenants, conditions and provisions and agreed to be bound thereby, whether or not set forth or referred to in the instrument by which the same was acquired. Said restrictions, covenants, conditions and provisions are in addition to and supplement any other requirements of law.

14. SEVERABILITY. Invalidation of any restrictions, covenants, conditions or provisions contained in or established by this declaration or any allowed modification thereto by judgment or order of any Court having jurisdiction thereof shall in no way affect any others of said restrictions, covenants, conditions and provisions, which shall remain in full force and effect according to their terms.

15. ENFORCEMENT. All of the foregoing restrictions, covenants, conditions and provisions shall run with the land, as aforesaid, and jurisdiction may be taken in equity at the

suit of declarant or any of its successors or assigns or of any other person having any right, title or interest in any lot in said subdivision, to restrict or prevent by injunction, mandatory or restraining, any violation or threatened violation of any covenant above set forth to be observed and performed by persons who now or hereafter own or lease any of said lots, without prejudice to the right of the person bringing suit to adopt or pursue suitable process to recover damages for such breach or failure, or to lien the property of any covenant above set forth. Those persons who are found to be in violation of or to have breached any of the above covenants shall in addition be liable for attorneys fees incurred in enforcing these covenants or in curing the breaches of the same.

IN WITNESS WHEREOF, declarant has executed these presents on the 17th day of September, 19 79.

PIONEER PROPERTIES, INC.

BY *James P. Howell*
Its President

BY *Harriet R. Jones*
Its Vice President & Secretary

EXHIBIT "A"

All of those certain parcels of land situate at Kahuku, District of Kau, Island and County of Hawaii, State of Hawaii, of the "Kona-South Estates, Unit I," as shown on File Plan No. 953, filed in the Bureau of Conveyances of the State of Hawaii, described as follows:

<u>LOTS</u>	<u>AREAS</u>
1	21.6397 Acres
2	21.6401 Acres
3	21.000 Acres
4	21.000 Acres
5	21.000 Acres
6	21.000 Acres
7	21.000 Acres
8	21.000 Acres
9	21.000 Acres
10	21.000 Acres
11	21.000 Acres
12	21.000 Acres
13	21.000 Acres
14	21.000 Acres
15	21.000 Acres
16	21.000 Acres
17	21.000 Acres
18	21.000 Acres
19	21.000 Acres
20	21.000 Acres
21	21.002 Acres
22	21.002 Acres

END OF EXHIBIT "A"



KNOW ALL MEN BY THESE PRESENTS:

That JOHN E. RUSSELL, HERMAN V. von HOLT, D. HEEDEN PORTEUS and D. C. LEWIS, as Trustees Under the Will and of the Estate of Samuel M. Damon, Deceased, hereinafter called the "GRANTORS", in consideration of the sum of TWO HUNDRED THIRTY FIVE AND NO/100 DOLLARS (\$235.00), paid by the STATE OF HAWAII, hereinafter called the "GRANTEE", the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the GRANTEE, its successors and assigns, forever:

ALL of that certain parcel of land situated at Kahuku, Kau, Hawaii, State of Hawaii, being a portion of Grant 2791 to C. C. Harris, designated as "PARCEL 35", as shown on the Right-of-Way Map of the Hawaii Belt Road, Federal Aid Project No. BF-011-1 (3), filed in the Office of the Superintendent of Public Works of the State of Hawaii, and more particularly described as follows:

PARCEL 35

Beginning at the Northwest corner of this parcel of land, on the boundary between the lands of Manuka and Kahuku, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puu-O-Kamooa" being 7,104.67 feet North and 16,696.27 feet West thence running by azimuths measured clockwise from true South:

- 1. 295° 42' 52" 65.14 feet along the remainder of Grant 2791 to C. C. Harris, being the North side of Hawaii Belt Road, Federal Aid Project No. BF-011-1 (3);

2. 25° 42' 52" 10.00 feet along the remainder of Grant 2791 to C. C. Harris, being a jog on the North side of Hawaii Belt Road, Federal Aid Project No. BF-011-1 (3);
3. 295° 42' 52" 655.00 feet along the remainder of Grant 2791 to C. C. Harris, being the North side of Hawaii Belt Road, Federal Aid Project No. BF-011-1 (3);
4. 295° 42' 52" 40.00 feet along same;
5. 295° 42' 52" 1210.00 feet along same;
6. 295° 42' 52" 40.00 feet along same;
7. 295° 42' 52" 1380.00 feet along same;
8. 25° 42' 52" 80.00 feet crossing Hawaii Belt Road at the end of Federal Aid Project No. BF-011-1 (3);
9. 115° 42' 52" 1380.00 feet along the remainder of Grant 2791 to C. C. Harris, being the South side of Hawaii Belt Road, Federal Aid Project No. BF-011-1 (3);
10. 115° 42' 52" 40.00 feet along same;
11. 115° 42' 52" 1210.00 feet along same;
12. 115° 42' 52" 40.00 feet along same;
13. 115° 42' 52" 705.00 feet along same;
14. 25° 42' 52" 10.00 feet along the remainder of Grant 2791 to C. C. Harris, being a jog on the South side of Hawaii Belt Road, Federal Aid Project No. BF-011-1 (3);
15. 115° 42' 52" 37.87 feet along the remainder of Grant 2791 to C. C. Harris, being the South side of Hawaii Belt Road, Federal Aid Project No. BF-011-1 (3);
16. 165° 03' 32" 4.47 feet along the Government land of Manuka;

17. 220° 34' 32" 99.96 feet along same to the point of beginning and containing an area of 6.275 Acres, which includes a portion of Mamalahoa Highway, area 2.20 Acres more or less.

Together with any abutter's rights of vehicle access, appurtenant to the remainder of the land of which Parcel 35 is a part, into and from Hawaii Belt Road, Federal Aid Project No. BF-011-1 (3), over and across Courses 1, 2, 3, 5, 7, 9, 11, 13, 14 and 15 of the above described Parcel 35.

RESERVING, HOWEVER, to the Grantors, their successors and assigns:

- (1) The right at any time in the future and from time to time to change and/or widen any or all points of vehicle access appurtenant to the remainder of the land of which Parcel 35 is a part, as provided for and as shown on the map filed with the Superintendent of Public Works, to such points or locations and/or widths upon the remainder of the grantors' land as they shall consider necessary under the following terms and conditions:
 - (a) A change and/or widening of any or all points of vehicle access is subject to the prior written consent by the Commissioner of Public Lands and the Superintendent of Public Works of the State of Hawaii, their successors and assigns. This consent is not to be unreasonably or arbitrarily withheld, and any denial thereof shall be based upon good and substantial reasons, such as, but not limited to, considerations of public safety, traffic regulations or such other factors which are considered to be adequate reasons for denial of such consent to a proposed change in location and/or widening of these points of vehicle access.
 - (b) The number of points of vehicle access to the remaining land of the Grantors abutting said highway shall not be increased beyond the number and width as shown on said map filed in the office of the Superintendent of Public Works, being four (4) points of vehicle access.

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- (c) All expenses of construction and/or reconstruction including points of abandoned access, shall be borne and paid for by said Grantors, their successors and assigns, requesting said relocation and/or widening. These expenses shall include, but are not limited to, filling in access openings which are abandoned, tearing down curbing at new access opening or necessary filling and grading, erection of fences, barriers and any other construction and/or relocation of any nature necessitated by and/or arising out of said relocation and/or widening of any access opening as herein provided for.
- (d) The Commissioner of Public Lands and Superintendent of Public Works may, as a condition to granting any such consent, require the grantors, their successors or assigns to furnish a good and sufficient bond, satisfactory to the Commissioner of Public Lands and/or Superintendent of Public Works, for the payment of all expenses of the construction or reconstruction caused by the relocation and widening of said access rights.
- (e) The above reservations pertaining to vehicle access are in no way to be construed as limiting or waiving the State's rights to exercise its powers of eminent domain.

BEING a portion of the premises conveyed to the GRANTORS by Deed of HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii corporation, Executor Under the Will and of the Estate of James Wilson Glover, Deceased, and Barbara Cox Glover, widow of said James Wilson Glover, who released her dower, dated October 29, 1958, and recorded in the Bureau of Conveyances at Honolulu, in Liber 3514, on Pages 383 - 390.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title and interest of the GRANTORS, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, tenements, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the GRANTEE, its successors and assigns, forever.

AND the GRANTORS do hereby covenant with the GRANTEE that the above-described premises are free and clear of all encumbrances made or suffered by them or anyone claiming through or under them, except as aforesaid; and that they will, as said Trustees, WARRANT AND DEFEND the same unto the GRANTEE, its successors and assigns, against the lawful claims and demands of all persons claiming by, through or under them.

IN WITNESS WHEREOF, the GRANTORS have caused this Instrument to be executed this 1st day of October, 1959.

Hermon V. Van Hook

D. Hobbs Perkins

D. Lewis

TRUSTEES UNDER THE WILL AND OF THE ESTATE OF SAMUEL M. DAMON, DECEASED

APPROVED AS TO FORM:

None A. Clati
Deputy Attorney General

STATE OF Arizona)
COUNTY OF Maricopa)

On this 17th day of September, 1979,
before me appeared Gerald C. Heetland and
Norbert R. James, who, being by me duly sworn,
did say that they are the President and Vice President
& Secretary, respectively, of PIONEER PROPERTIES, INC., a
Colorado
Arizona corporation; and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation; that said
instrument was signed and sealed on behalf of said corporation
by authority of its Board of Directors; and said Gerald C. Heetland
and Norbert R. James acknowledged said
instrument to be the free act and deed of said corporation.

Handwritten initials

Regina P. Jacobs
Notary Public in and for the above
named State and County.

My Commission Expires: My Commission Expires Jan. 29, 1982