

in zoning from R-6 Residential, AG-1 Restricted Agricultural, P-1 Preservation, A-1 Low-Density Apartment and H-1 Resort Hotel Districts to P-1 Preservation, H-1 Resort Hotel and B-1 Neighborhood Business Districts. The subject lands are shown on the map marked Exhibit II, attached hereto and incorporated herein, and are described as Tax Map Keys 5-6-03: 37, Por. 40, Por. 41, Por. 42, 43, Por. 44; 5-7-01: 1, Por. 13, Por. 16, Por. 17, 20, Por. 22, 30, Por. 31, Por. 33; 5-7-03: 1-25, Por. 26, 27-35, 66, Por. 72, 73-75; 5-7-06: 1-17, 19, 21, as those lands are more particularly described in said Exhibit I; and

WHEREAS, a public hearing regarding the change in zoning was held by the Council on July 9, 1986; and

WHEREAS, Declarant has willingly, independently and concurrently agreed to the following conditions; and

WHEREAS, the Council recommended by its Planning and Zoning Committee Report that the said change in zoning be approved, subject to the following conditions:

1. The Declarant shall submit a plan for phasing the development of the water system for the resort to the Manager of the Board of Water Supply and the Director of the Department of Land Utilization for their approvals and shall receive those approvals prior to the issuance of subdivision approvals and building permits. Subject to the approval of the Board of Water Supply, this plan may be modified as necessary. The necessary water source, reservoir and distribution facilities shall be installed in conformance with the plan that has been approved by the Board of Water Supply, at the Declarant's cost.

2. Declarant shall submit a plan for phasing the development of the wastewater system for the resort to the Department of Public Works for its approval and receive its approval prior to the issuance of subdivision approvals and building permits. This plant shall be built to a capacity of a minimum of 1.3 million gallons per day and shall include any improvements that may be required to cause full compliance with all Federal, State and City and County of Honolulu laws, including any rules and regulations. Subject to the approval of the Department of Public Works, this plan may be modified as necessary. The wastewater system shall be installed pursuant to this plan, at Declarant's cost.

3. Development of the project shall generally be based on the submitted schedule, identified as Exhibit III, attached hereto and incorporated herein. Development may deviate from this schedule due to the occurrence of changed economic conditions, lawsuits, strikes or other unforeseen circumstances. A minimum of fifty-one percent (51%) of the 4,000 resort units shall be operated as full service hotel units. The existing Turtle Bay Hilton containing 487 units is to be included in the 4,000 resort unit count.

4. The Declarant shall provide low-moderate income housing opportunities within or outside of the project site for residents living in the Koolauloa and North Shore region by constructing and offering for sale, in cooperation with the city Department of Housing and Community Development, a number of dwelling units equal to ten percent (10%) of the number of dwelling units not a

part of a full service hotel operation to be constructed on the property as a result of this zoning action. The sales units must be available to buyers earning less than eighty percent (80%) of the current median household income, adjusted for family size, for the City and County of Honolulu. The Declarant may work with the Department of Housing and Community Development in the expedited governmental approval process and planning waivers which may be permitted under City and State ordinances, laws and rules and regulations.

5. Declarant shall provide the following public amenities:

a. Four parks shall be provided - a four and eight-tenths (4.8) acre park fronting Kawela Bay (Park P-1 on Declarant's master plan); a thirty-seven (37) acre park located from Kahuku Point to the eastern boundary of Hanaka'ilo Beach (Park P-2 on Declarant's master plan); a six (6) acre park abutting Punahoolapa Marsh (Park P-3 on Declarant's master plan); and a two (2) acre park located in the area surrounding the outlet for East Main Drain (Park P-4 on Declarant's master plan). The shoreline park areas shall be linked, with the exception of the shoreline by the existing Turtle Bay Hilton, by a continuous shoreline easement, which will be linked to the five pedestrianway easements and the easement to Kalokoiki beach (Kuilima Cove), as set forth herein;

b. Public park sites shall be dedicated to the city in compliance with park dedication requirements. The park to be located at Kawela Bay shall be graded, grassed, and provided with a sprinkler system and all related off-site improvements. In addition to the minimum park dedication requirements, Declarant,

at its cost, shall also provide public parking facilities and a comfort station containing restrooms and showers, at the Kawela Bay park site, in coordination with the Department of Parks and Recreation. - Access was closed to Public.

Upon Declarant's receipt of its first building permit for development of the first hotel to be built at the resort, Declarant shall record a document with the Bureau of Conveyances of the State of Hawaii which dedicates the Kawela Bay park site to the City and County of Honolulu. The document dedicating the park site shall provide that public use of the park area shall become effective, and improvement of the park, shall be completed, upon the issuance of a certificate of occupancy by the Building Department of the City and County of Honolulu for the first hotel to be constructed at the resort as a result of this zoning action; and shall reserve Declarant's right to manage and control the park site in the time period prior to issuance of the certificate of occupancy.

c. Upon Declarant's receipt of its first building permit for development of the first hotel to be built at the resort, Declarant shall record a document with the Bureau of Conveyances of the State of Hawaii which dedicates park P-2, said park being located at Kahuku Point as designated on Declarant's master plan, to the City and County of Honolulu. The document dedicating the park site shall provide that: (1) offsite improvements leading to the park will not be improved or provided until final subdivision approval for the condominiums to be built in Phase III is granted; (2) public use of this park site shall become effective

upon said subdivision approval; and (3) Declarant reserves the right to control and manage the park site prior to said subdivision approval.

Prior to said subdivision approval Declarant shall also: (1) record a document with the Bureau of Conveyances of the State of Hawaii which provides permanent access for the public to park P-2. Declarant shall obtain and provide this access at its own cost; and (2) provide the following improvements for the park site - one full comfort station with shower facilities; full improvements up to the boundary of the park; a coral surface parking lot providing parking for a minimum of thirty automobiles.

d. The parks to be located adjacent to Punahoolapa Marsh and the East Main Drain outlet shall be privately-owned and maintained. These parks shall be open for use by the general public. Declarant will work with the U.S. Fish and Wildlife Service to implement improvements to the marsh that will enhance the marsh ecosystem. Improvements shall be made pursuant to a plan that has been approved by the U.S. Fish and Wildlife Service;

e. A series of publicly-owned and privately-maintained easements encompassing a minimum of twenty-six (26) acres of land shall be provided along and to the shoreline and shall be open to use by the general public. These easements shall be established in the public's favor, in perpetuity, in the following manner:

(1) Upon Declarant's receipt of its first building permit for development of the first hotel to be built at the resort, Declarant shall record a document with the Bureau of Conveyances

of the State of Hawaii which establishes easements in the public's favor, running with the land, covering: the land area extending one hundred (100) feet inland from the certified shoreline (hereinafter "shoreline easement area"), in the general areas designated on the map identified as Exhibit IV, attached hereto and incorporated herein; the right of way connecting a parking lot that will be located adjacent to the existing parking lot at the Turtle Bay Hilton to Kalokoiki beach (hereinafter "Kalokoiki easement"); and the right of way connecting Turtle Bay and Kaihalulu beach through the existing Turtle Bay Hilton site (hereinafter "Turtle Bay Hilton easement");

(2) Upon Declarant's receipt of its first building permit for major building development on a parcel that is adjacent to or that contains the following easements, Declarant shall record a document with the Bureau of Conveyances of the State of Hawaii which establishes easements in the public's favor, running with the land, covering: the five rights of way that extend from adjacent parking areas to the shoreline easement area, in the general locations designated on Exhibit IV, attached hereto, providing one pedestrianway to Kawela Bay, two pedestrianways to Turtle Bay, and two pedestrianways to Kaihalulu beach (Kuulima Bay) (hereinafter "pedestrianway easements");

(3) The document establishing the the shoreline easement area shall contain the following provision - "The one hundred (100) foot wide shoreline easement area is to maintain open space along the shoreline for the use and enjoyment of the general

public, guests at the resort and resort condominium owners. Management of the use of this area will make no distinctions between resort guests and resort condominium owners, and the general public, and shall at a minimum, allow sunbathing, picnicking, swimming and walking in this area, except where not permitted for safety purposes";

(4) The documents establishing the shoreline easement area and the pedestrianway easements shall provide that public use of each easement shall become effective, and improvement of each easement area shall be completed, upon the issuance of a certificate of occupancy by the Building Department of the City and County of Honolulu for a parcel that is adjacent to or that contains one of these easements;

(5) The documents establishing the Kalokoiki easement and the Turtle Bay Hilton easement shall provide that public use of these easement areas shall become effective, and improvement of these easement areas shall be completed, upon development of the portion of the resort's major internal roadway that fronts the Turtle Bay Hilton area;

(6) The documents establishing the easements referred to herein, shall also establish a means for Declarant, its successors and assigns, and subsequent grantees to maintain the easement areas encumbered therein, with said maintenance to be required at the time that public use of each of the easement areas becomes effective;

(7) The five pedestrianway easements shall be fifteen feet wide, and shall contain restroom and shower facilities. Each pedestrianway easement shall be located adjacent to a public

parking area containing eighteen (18) parking stalls, which shall provide parking free of charge to the public;

(8) Improvements in the easement areas shall accommodate public access, and signage shall be installed to facilitate such access.

f. Public parking at each of the parking areas for the public pedestrianway easements shall be free of charge. Employees shall be prohibited from parking in these public parking areas. Each of the hotel/condominium areas shall contain parking areas for its employees.

6. Historic and archaeological sites located within the subject property which are identified by the State and/or subsequent archaeological assessment shall be treated in accordance with recommendations made by the State Historic Preservation Officer of the Department of Land and Natural Resources.

Prior to the issuance of grading permits, the Declarant shall submit a Data Recovery Plan to the State Historic Preservation Officer, and shall obtain approval of the plan. The State Historic Preservation Officer shall also be made aware of sites not yet identified on the property, which may be discovered during grading and construction. The Officer shall determine whether these sites require preservation, relocation, mitigation, or further study.

Declarant shall submit its completed archaeological findings to the State Historic Preservation Officer for review and comment before commencing with the proposed development of the property.

Declarant shall comply with the State Historic Preservation Officer's recommendations in implementing Declarant's archaeological plan.

Above-ground archaeological features present within the project area will be relocated by the applicant to site(s) within the resort. Human remains that have been uncovered or that may be uncovered during the course of this project shall be disinterred, relocated to an alternative site(s) within the resort, and reinterred in accordance with the relevant provisions of Chapter 338, Hawaii Revised Statutes, as amended, and in compliance with requirements of the State Department of Health.

7. A development implementation plan related to the proposed roadway modifications, shall be approved by the Director of the Department of Land Utilization in consultation with the City Department of Transportation and the State Department of Transportation, prior to tentative subdivision approval. Improvements which will be phased throughout the development of the entire project, and which will be implemented at the Declarant's cost, include the following items:

- a) Channelizing the intersection of West Kuilima Drive and Kamehameha Highway;
- b) Constructing left-turn storage and deceleration lanes on Kamehameha Highway at Kuilima and West Kuilima Drives;
- c) Upgrading the intersection of Kamehameha Highway and Kahuku Airport Road (Marconi Road) with left-turn storage and deceleration lanes on Kamehameha Highway;
- d) Signalizing Kamehameha Highway at Kahuku Airport Road and at West Kuilima Drive.

e) Providing a total of six bus turnouts along the portion of Kamehameha Highway fronting the resort. The bus turnouts shall be located near each of the entrances to the resort, on both sides of Kamehameha Highway.

All roadways and intersections within the Turtle Bay Resort expansion project to be dedicated to the City and County shall be designed in accordance with City and Federal standards for City roadways and State and Federal standards for improvements along Kamehameha Highway. All major roadways to be constructed by the Declarant, as reflected on Exhibit IV, whether private or public, shall be open to the public. Kahuku Airport Road (Marconi Road) shall be open to the public.

Declarant shall minimize the use of automobiles by visitors at the resort by implementing alternative transportation modes which may include the following: shuttle service between Honolulu International Airport and Waikiki to the resort area; shuttle service or expanded MTL operations to accommodate resort visitor trips to and from the Polynesian Cultural Center and Haleiwa; jitney service within the resort.

The Declarant and its successors or assigns, shall provide transportation services, at a reasonable cost to employees, for employees commuting to and from the resort. The employee transportation service shall pick up and drop off employees at specified points in the areas from Haleiwa to Kaaawa. This area of service may be modified by, and with the approval of, the State Department of Transportation, upon the request of Declarant, its successors or assigns. The employee

transportation service shall be established at the completion of Phase II of the resort, set forth in Exhibit III attached hereto.

The resort association shall work, in conjunction with the State Department of Transportation, to coordinate the transportation needs of the guests and employees of the resort.

8. An overall urban design plan and landscape plan for the resort shall be submitted to and approved by the Department of Land Utilization prior to tentative subdivision approval or issuance of building permits. In addition, at each phase of development, the Declarant shall submit site plans and preliminary architectural drawings for the development to the Department of Land Utilization for review and approval to insure that the urban design objectives set forth herein, are adhered to.

Specific design standards that shall be complied with, but which shall not be applied to the existing Turtle Bay Hilton and the Kuilima East and West condominiums, include the following:

a. General height limits shall be as provided in Section 1.c. of the Koolauloa Development Plan, as amended (Ordinance 85-50).

b. All structures shall generally be set back a minimum distance of three hundred (300) feet inland from the certified shoreline. Structures located between one hundred (100) feet and three hundred (300) feet inland from the certified shoreline will be subject to design review and approval by the Department of Land Utilization.

c. No structure shall be located between the certified shoreline and one hundred (100) feet inland of the certified

shoreline, with the following exceptions: pedestrian bridges, pedestrian walkways, or other access improvements; drainage-related improvements; park benches, showers or other structures that may be required by State or Federal agencies. In no event shall any concession or comfort station be located between the certified shoreline and one hundred (100) feet inland of the certified shoreline.

d. Structures in the parcels fronting Kawela Bay and Kawela Point fronting Turtle Bay over fifty (50) feet in height shall be set back a minimum distance of three hundred (300) feet inland from the certified shoreline.

e. For each increment fronting Kawela Bay and Kawela Point fronting Turtle Bay that is located between one hundred (100) feet and three hundred (300) feet from the shoreline, there shall be a maximum building to land coverage ratio of ten percent (10%) of the land area makai of the three hundred (300) foot line to the property line and buildings shall have staggered heights with a maximum height of fifty (50) feet. The percentage of any given section shall not be clustered.

9. General architectural and design goals that the resort will strive to achieve include following:

a. The general architectural character of the resort will be similar to that of a "kamaaina estate" - displaying hospitality and elegance, overlaid with fundamental simplicity and timelessness.

b. The resort will strive to implement extensive, lush landscaping to enhance the estate-like quality of the low density

buildings, and to provide a sense of visual continuity throughout the resort. Existing ironwood trees, and other existing vegetation will be preserved and incorporated into the landscaping scheme where possible.

c. The public walkway that provides access throughout the shoreline easement area will be configured in an undulating line throughout the easement area.

d. Each of the public pedestrianways to the shoreline, with the exception of the pedestrianway to Kalokoiki beach, will be approximately fifteen (15) feet wide, and will contain a slightly undulating walkway to allow for plantings of coconut trees.

10. Declarant shall comply with all of the conditions set forth in the Findings of Fact, Conclusions of Law and Decision and Order of the State Land Use Commission, dated March 27, 1986, in relation to the approval of the district boundary amendment for Kuilima Development Company, as the same may be amended from time to time.

11. Declarant shall establish a child care center with applicable resources and/or service providers within the region, and shall dedicate approximately one-half acre of land within or outside of the project site to the North Shore Career Training Corporation for the purpose of establishing a child care center to service children of employees of the resort. Declarant's proposal for the child care center shall be reviewed and approved by the Kuilima North Shore Strategy Planning Committee and the City and County of Honolulu's Office of Human Resources prior to completion of the first hotel.

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Resort Planning Inc

12. Declarant shall establish an employment program for residents of surrounding communities in coordination with applicable resources and/or service providers in the region. Declarant's proposed employment program shall be reviewed and approved by the Kuilima North Shore Strategy Planning Committee.

Declarant shall contribute a minimum of Five Hundred Thousand Dollars (\$500,000.00) towards the establishment and implementation of the employment program that has been approved.

Payments shall be made to a community-based non-profit, charitable corporation or association, or governmental body, as determined by Declarant and the Office of Human Resources. Payments shall be made in the following manner:

Annual payments in the amount of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00), payable in increments over the course of one year, for four (4) years, with the first payment to be made upon the granting of Declarant's requested zone change, and with subsequent payments payable on the first day of each successive year thereafter.

13. Declarant shall use its best efforts to perpetuate, work with, and obtain input from the Kuilima North Shore Strategy Planning Committee, throughout the development of the resort.

14. Declarant shall use its best efforts to promote the creation of a Marine Life Conservation District at Kawela Bay.

NOW, THEREFORE, Declarant hereby makes the following Declaration:

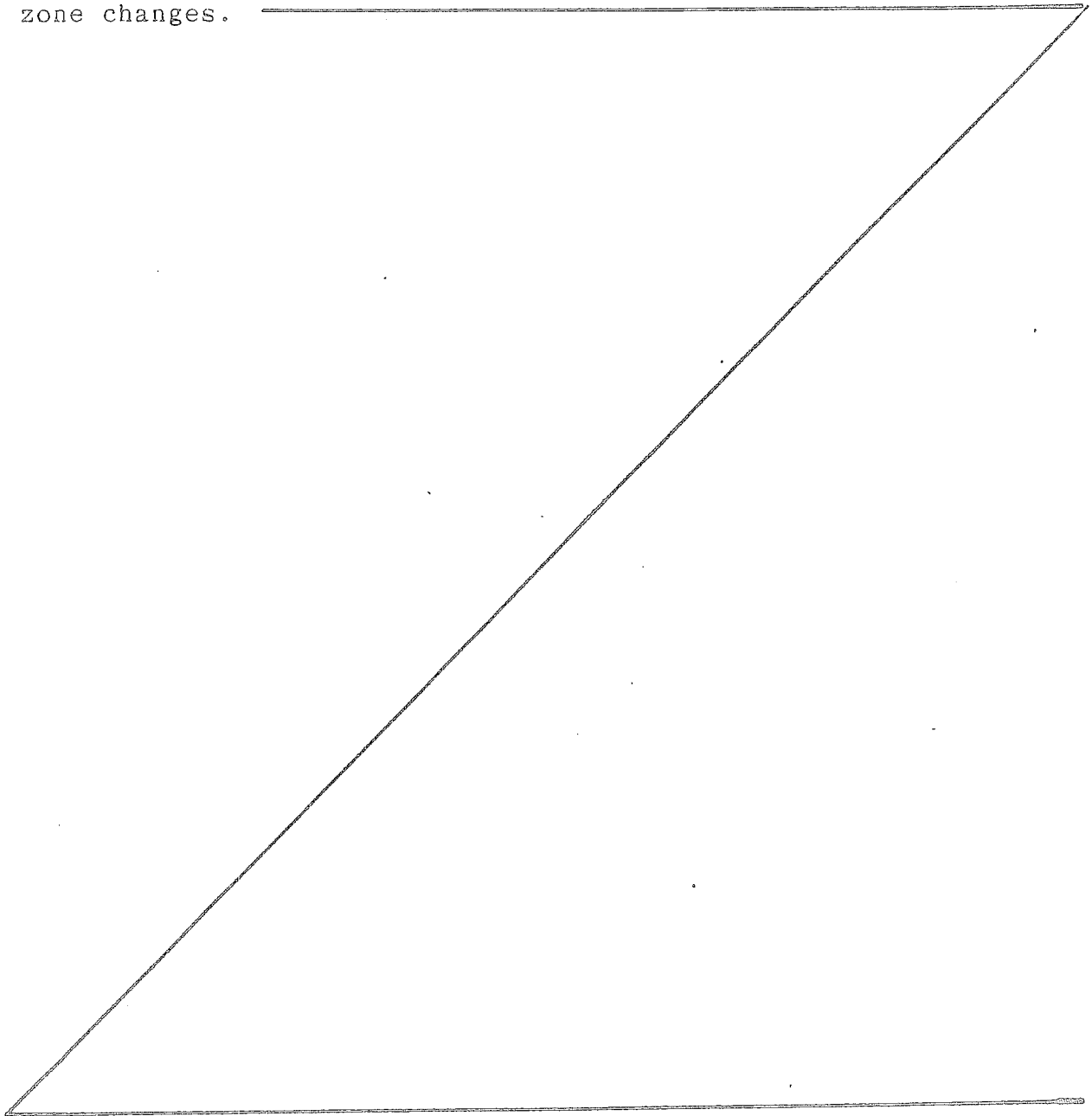
A. This Declaration is made pursuant to the provisions of Ordinance No. 4300, Bill No. 167 (1973), relating to conditional zoning. This Declaration shall become fully effective on the effective date of the zoning ordinance approving the change of zoning from R-6 Residential, AG-1 Restricted Agricultural, P-1 Preservation, ~~A-1~~ Low-Density Apartment and H-1 Resort Hotel Districts to P-1 Preservation, H-1 Resort Hotel and B-1 Neighborhood Business Districts for the land described in said Exhibit I; and

B. Development of said parcels by Declarant shall conform to the aforesaid conditions with the understanding that, at the request of Declarant, and upon the satisfaction of the condition(s) set forth in this Unilateral Agreement, the Department of Land Utilization may fully or partially release any of the foregoing conditions that have been fulfilled; and

C. That the conditions imposed are reasonably conceived to fulfill public service demands created by the requested zoning and rationally relate to the objective of preserving the public health, safety and general welfare and the further imposition of the General Plan of the City and County of Honolulu.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the land and shall bind and constitute notice to all subsequent lessees, grantees, mortgagees, lienors, successors and assigns, and any other persons who claim an interest in the land, and the City and

County of Honolulu of the State of Hawaii shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons. Changes or alterations of conditions shall be processed in the same manner as petitions for zone changes.



UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING
for Kuilima Development Company

IN WITNESS WHEREOF, the parties hereto have executed this
agreement on the day and year first above written.

KUILIMA DEVELOPMENT COMPANY
a Hawaii general partnership
by: PIC Realty Corporation

For Profit

*RT I
non-profit*

By *[Signature]*
Its: *VP*

By *Norman A Chernin*
Its: NORMAN A. CHERNIN
ASSISTANT SECRETARY

UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING
for Kuilima Development Company

Trustees Under the Will and
the Estate of James Campbell,
deceased, acting in their
fiduciary and not their
individual corporate capacities

P.R. CASSIDAY, INC.

By *P. Cassidy*
Its: President

H.C. CORNUELLE, INC.

By *H. Cornuelle*
Its: President

W.H. McVAY, INC.

By *W.H. McVay*
Its: President

F.E. TROTTER, INC.

By *Fred E. Trotter*
Its:

W.P.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

)
) SS.
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On SEPTEMBER 19, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared H. C. CONNOR, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the VICE PRESIDENT, and NORMAN CHERNIN, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the ASSISTANT SECRETARY of PIC Realty Corporation, the corporation that executed the within instrument on behalf of KUILIMA DEVELOPMENT COMPANY, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

NOTARY PUBLIC
STATE OF CALIFORNIA
LOS ANGELES COUNTY
EXPIRES MAR. 2, 1990

Evelyn MacLeod Arnold
Notary Public,
State of California
My commission expires: March 2, 1990

STATE OF HAWAII)
)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 23rd day of September, 1986, before me appeared ~~Fred E. Trotter~~, W. H. McVay, P. R. Cassidy and H. C. Cornuelle, to me personally known, who, being by me duly sworn did say that ~~Fred E. Trotter~~, W. H. McVay, P. R. Cassidy and H. C. Cornuelle are President, sole shareholder and sole director of ~~F. E. TROTTER, INC.~~, W. H. McVAY, INC., P. R. CASSIDAY, INC. and H. C. CORNUELLE, INC., respectively, Hawaii professional corporations and Trustees under the Will and of the Estate of James Campbell, Deceased; that the foregoing instrument was signed by each of the persons listed as appearing before me in the respective capacity above indicated (that is, as President of a Hawaii professional corporation which is a Trustee); that said corporations are corporations without seals; that the President of each and every corporation which is a signatory hereto acknowledged that the aforesaid instrument was signed on behalf of said corporation with the authority of the sole shareholder and director and as the free act and deed of said corporation as such Trustee. W.P.
W.P.
W.P.

Lydia J. Hannemann
Notary Public, State of Hawaii

My Commission expires: Feb. 11, 1988

PROJECT: TURTLE BAY RESORT DEVELOPMENT SCHEDULE

ON A 100-100-100-11 AS 200-100-100-11

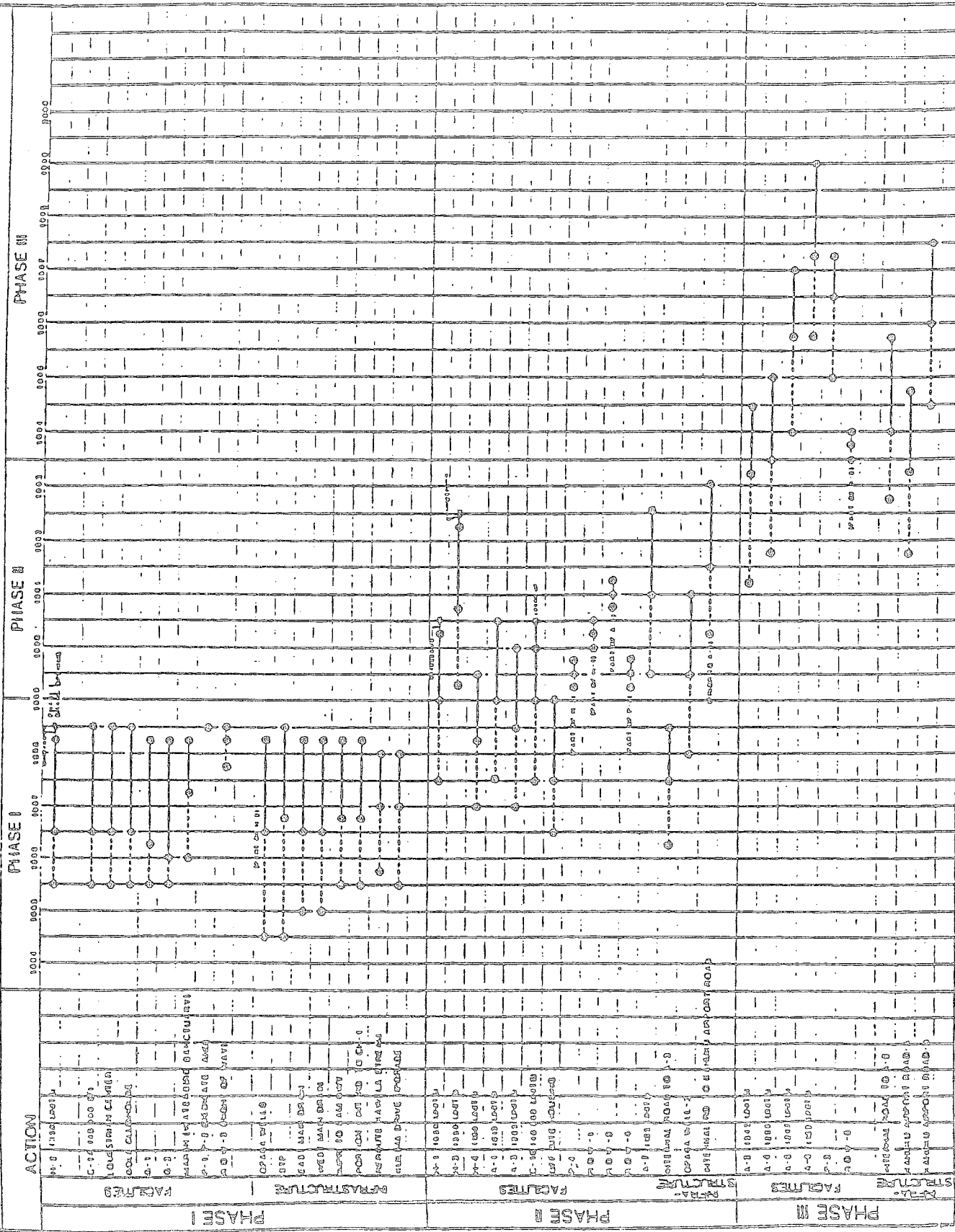


EXHIBIT III