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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MALUHIA COUNTRY RANCHES SUBDIVISION**

THIS DECLARATION, made this date: December 3, 1998 by
KAHAKULOA MAUI ASSOCIATES LLC, a Hawaii limited liability company, whose place
of business and post office address is c/o The CMI Group, 3620 Baldwin Avenue, Suite 107,
Makawao, Hawaii 96768.

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain property at Kahakuloa, County of
Maui, State of Hawaii, which is more particularly described in Exhibit "A" attached hereto
and made a part hereof (hereinafter called the "Property"); and

WHEREAS, Declarant has subdivided the Property into 48 agricultural lots
(hereinafter called "Lots" or "Lot") and other lots for use for roadway, utility and other
purposes (hereinafter called the "Subdivision"); and

WHEREAS, Declarant intends to organize a Hawaii nonprofit corporation to be known
as Maluhia Country Ranches Homeowners Association, Inc. (hereinafter called the
"Association"), to operate, manage, administer, maintain, repair, replace, landscape and
improve Common Areas, Designated Areas, Improvements and Facilities (as those terms are
hereinafter defined) for the use and benefit of some or all of the owners and occupants of the
Lots, to perform and provide for services necessary or desirable for the benefit of the
Subdivision and the owners and occupants of the Lots, and to perform all of the obligations of
the Association described in this Declaration;

NOW, THEREFORE, Declarant, in order to establish a plan for the operation, use and
maintenance of the Subdivision, the Common Areas, the Designated Areas and the
Improvements and Facilities, as provided herein, hereby declares that the Subdivision, each
and every Lot thereof, and each and every interest therein, shall hereafter be held, leased,
mortgaged, conveyed, used, occupied and improved subject to and with the benefit and
protection of the following terms, restrictions, covenants, conditions and provisions, which
terms, restrictions, covenants, conditions and provisions shall be deemed covenants running
with the land.

1. DEFINITIONS.

- 1.1 "Association": MALUHIA COUNTRY RANCHES Homeowners Association, Inc., a
Hawaii nonprofit corporation, and its successors and assigns, the membership by which
shall be comprised solely of Owners of Lots in the Subdivision.
- 1.2 "Board" or "Board of Directors": The Board of Directors of the Association.

2. PROPERTY SUBJECT TO DECLARATION.

2.1 Property Subject to Declaration. The property subject to this Declaration shall be all of the property described in Exhibit "A" (and all subdivided portions thereof, together with all improvements and structures now or hereafter located thereon).

2.2 No Other Property Subject to this Declaration. Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that Declarant will commit, or subject to this Declaration, any property it may now own or hereafter acquire other than that property described in Exhibit "A" and the property of the Subdivision.

3. ADMINISTRATION OF COMMON AREAS, DESIGNATED AREAS, IMPROVEMENTS AND FACILITIES AND WATER COMPANY.

3.1 Common Areas. "Common Areas" shall mean all property, real and personal, in which the Association owns or holds an interest or which the Association is obligated to maintain or elects to maintain for the use and/or enjoyment of all or some of the owners or occupants of the Lots and others so entitled, and may include, without limitation, estates in fee, estates for a term of years, easements, leases, licenses and permits. The Association may accept any property easements, rights-of-way and licenses which are conveyed or transferred to it, whether as a Common Area or otherwise, by any other person. Common Areas which are real property and which have been conveyed or transferred to the Association by Declarant shall not be consolidated, subdivided or rezoned, except with the written consent of Declarant. Common Areas and any interest therein shall not be conveyed, assigned, dedicated or in any way transferred by the Association except as provided herein.

Unless approved by both the Board and Declarant, residences or other structures for habitation shall not be constructed or placed upon any Common Area nor shall the Common Areas be used by the Association for commercial or business purposes.

The Association shall at all times operate and maintain, landscape, plant and replant the Common Areas and maintain all improvements in the Common Areas (including, but not limited to, roads, utility systems, water transmission and irrigation systems), and do all things as are reasonably necessary to insure reasonable use and/or enjoyment of the Common Areas by the owners and occupants of the Lots and others so entitled and, except as otherwise provided herein, shall be solely responsible for the care, maintenance and preservation of the Common Areas. The Association shall at all times maintain, landscape, plant and replant the Common Areas at a superior level and standard of maintenance and appearance which is consistent with that of a first-class development.

Each Owner of a Lot subject to this Declaration (as the same may hereafter be amended according to its terms) shall have an equal beneficial interest, in common with all other such Owners, in the Common Areas.

Declarant anticipates that some of the roadways within the Subdivision may be dedicated to the County of Maui or other governmental authority. Although the maintenance of a roadway may become the responsibility of the County following dedication, the Association, and thus each Owner, will continue to be obligated to maintain certain culverts and drainage improvements around and under said roadways. Furthermore, dedication will not relieve the Association from its other maintenance obligations, including but not limited to the maintenance and landscaping of common areas adjacent to said roadways.

3.2 Designated Areas. The Association shall also at all times maintain or cause to be maintained, landscape, plant and replant the following areas (the "Designated Areas"), which areas may be owned by private individuals or governmental bodies or agencies: (i) the shoulders of all private or public roadways in, or immediately adjacent to or surrounding the Subdivision, and (ii) all right-of-way areas between the boundary line of all Lots and the curb of all public or private roadways adjacent to such Lots. The Designated Areas shall be maintained at a superior level and standard of maintenance and appearance which is consistent with that of a first-class development.

3.3 Improvements and Facilities. The Association shall at all times maintain, repair and replace, in good order, condition and appearance, consistent with a first-class development, all Improvements and Facilities which are transferred to or owned by the Association, or which are located within the Common Areas or Designated Areas or which are located within easements across, over or upon lots within the Subdivision and which run in favor of the Association. "Improvements and Facilities" shall include, without limitation, all roadways, pavement, curbs, gutters, sidewalks, storm drain systems, drainage systems, trash enclosures, walls, signs, equipment, street lighting systems (other than those owned by a utility company), landscape irrigation systems (including the cost of electricity and water to operate the landscape irrigation systems) and other similar systems, facilities and improvements including the water transmission system. "Improvements and Facilities" shall not include improvements or systems which have been dedicated to or are owned by the County of Maui (or any department thereof or a private or public utility such as Maui Electric Company, Hawaiian Telephone Company or a private cablevision company; provided, however, the Association shall maintain, plant and replant all grass, plants and landscaping in the areas in which such improvements or systems are located, at a superior level and standard of maintenance and appearance consistent with that of a first-class development.

In the event an Owner of a Lot has placed any driveway or other improvement within or over any Common Area or Designated Area, any and all expenses of repair,

removal, or replacement of such improvement shall be at the cost of and be the responsibility of the Owner and not of the Association.

- 3.4 **Water System/ Water Company.** Water for domestic and limited agricultural purposes has been made available to the Lots (and to various neighboring properties) from one or more wells located on a neighboring parcel of land (TMK II 3-1-1:31). All assets and equipment related to the Water Company, water system, and all assets and improvements related thereto, regardless of whether located within or outside of the Subdivision, shall be deemed to be assets of said Water Company, and all water pipelines and transmission and storage facilities within the Subdivision shall, for the purposes of this Declaration and for the purposes of their future maintenance also be deemed "Improvements and Facilities", as defined in Section 3.3 above, and referred to elsewhere in this Declaration.

The governing documents and/or rules and regulations of said Water Company shall, among other things, provide that water from the Water Company shall comply with the State of Hawaii Department of Health Standards, that water sources, will be tested on a regular basis to confirm the absence/presence of certain elements. Upon the detection of nitrate, arsenic, barium, chromium or lead, above EPA limits, the Water Company will notify lot Owners within the Subdivision.

- 3.5 **Easements.** The Association shall be required to grant and convey to any third parties easements, licenses, rights-of-way or other rights, benefits or interests in, on, over or under any Common Areas, Designated Areas and Improvements and Facilities (without payment to the Association) whenever required by Declarant; provided, however, that such easements, licenses, rights-of-way or interest must be exercised in such manner as not to materially interfere with the use to which the Association has devoted such Common Areas, Designated Areas and Improvements and Facilities.

To the extent that any valid easement has been granted and is binding upon the Subdivision and therefore upon the Association and all lot Owners within the Subdivision, the Association and the individual lot Owners indemnify any such easement holders against damage caused to such easement or to any pipeline on other improvement properly placed in said easement by the Association, or by any individual lot Owner, to the extent provided in such easement agreement.

- 3.6 **Insurance.** To the extent obtainable at a reasonable cost, the Association shall maintain the following insurance upon all Common Areas, Designated Areas and Improvements and Facilities:
- (a) Fire and hazard insurance covering the full replacement cost (with a reasonable deductible) of all Improvements and Facilities, and

- (b) Liability insurance with limits of not less than \$1,000,000 for injury or death to one or more persons in any one occurrence and \$300,000 for property damage, naming the Association and Declarant as insureds.

The Association shall also maintain from time to time such other insurance as may be determined to be necessary by the Board of Directors.

- 3.7 Rules and Regulations. The Board of Directors shall have the right to adopt, amend, modify or revoke, by vote of a majority of Directors at a meeting properly called, such rules and regulations as it deems necessary or desirable for the proper maintenance and operation of the Common Areas, Designated Areas and Improvements and Facilities, including without limitation suitable regulations for and restrictions on the use of Common Areas, Designated Areas and Improvements and Facilities, and penalties for the violation thereof, provided, however, there shall be no rule or regulation which may in any manner adversely affect or limit Declarant's use and enjoyment of the Common Areas, Designated Areas and Improvements and Facilities, or Declarant's rights, privileges, powers and interests with regard to the Common Areas, Designated Areas and Improvements and Facilities, as such rights may have been reserved to Declarant hereunder or in any deed, declaration or other document relating to the Common Areas, Designated Areas and Improvements and Facilities. The Association, through the Board, shall have the power to enforce such rules and regulations by any lawful means, including but not limited to the imposition and collection of a reasonable amount (not to exceed \$100 per violation) as an administrative penalty for any violation thereof.
- 3.8 No Delegation of Obligations. The obligations of the Association set forth in this Declaration shall not be assigned, delegated or transferred by the Association either in whole or in part; however, the Board may enter into contracts or other similar arrangements with any person or management company for the performance of duties to be undertaken by the Association pursuant hereto.
- 4. POWERS OF THE ASSOCIATION. The Association (acting by and through the Board) and the Board shall have all the powers set forth in the Articles of Incorporation and the Bylaws of said Association, together with a powers generally permitted to a nonprofit corporation by law, and to do any and all things which may be authorized, required or permitted to be done by the Association or the Board under or by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association (acting through the Board) and the Board shall have the following powers:
 - 4.1 Powers of Enforcement. The Association shall have the power and authority, from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, or to enforce by mandatory injunction, declaratory judgment or otherwise any provision of the

Declaration, or to recover damages or obtain any other relief available at law or in equity as a result of any breach of this Declaration.

4.2 Powers of Administration and Management. In fulfilling any of its duties under this Declaration, including its duties for administering and managing the Association and Water Company, and for the maintenance, repair, operation or administration of the Common Areas, Designated Areas and improvements and Facilities, the Association shall have the following powers and authority:

- (a) To obtain, maintain and pay for such insurance policies or bonds as the Association may deem to be appropriate for the protection or benefit of the Association, Declarant, the Board of Directors or the Owners;
- (b) To contract and pay for, or otherwise provide for, such utility and other services including, without limitation, water, trash, electrical, telephone, cable television, and gas services as the Association may from time to time deem desirable;
- (c) To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys and certified public accountants or such other professional or nonprofessional services as the Association may deem desirable;
- (d) To contract and pay for, or otherwise provide for, fire, police, security, sanitary, communications, transportation and such other services as the Association deems desirable;
- (e) To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment, services and labor as and to the extent the Association deems desirable, and to pay and discharge any and all liens placed upon any Common Areas or Improvements and Facilities on account of any work performed by the Association;
- (f) To open and maintain one or more accounts in the name of the Association at any federally insured bank, savings and loan, or similar financial institution; and
- (g) To hold title to real and/or personal property of any kind.

4.3 Employment of Manager. The Association, through its Board of Directors, may from time to time, employ the services of a manager to manage the affairs of the Association and its employees and agents; provided, however, the Association cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of One Thousand Dollars (\$1,000) for any one job or service without approval by two officers; nor for the performance of any work or services which cannot be completed within sixty (60) days; nor the power to sell, convey, transfer,

mortgage or encumber any Common Areas, Designated Areas or Improvements and Facilities.

- 4.4 Taxes and Assessments. The Association shall have the right to pay, compromise or contest any or all taxes and assessments levied against all or any part of the Common Areas, Designated Areas and/or Improvements and Facilities.
- 4.5 Roadway Maintenance Fund. The Association shall create a Roadway Maintenance Fund for the sole purpose of maintaining the private roadways within the Subdivision. All decisions regarding the fund will be made by the property owners of the Maluhia Country Ranches Homeowners Association, Inc., a Hawaii non-profit corporation. Each parcel of property in the residential portion of the subdivision has one vote as a member of the Association. The amounts collected for the fund shall be in addition to any other fees collected in furtherance of the obligations of the Association and shall be payable annually into the fund. All funds collected shall be deposited in an interest bearing account in a federally insured financial institution duly licensed to do business in the State of Hawaii. The Board of Directors shall as a part of the preparation of the annual operating budget of the Association make such proposals for the collection and disbursement of the monies held in the fund. The Board of Directors shall report annually to the members of the Association on the proposed uses of and balances of the funds held within the fund.
5. LIMITATION OF LIABILITY. No member of the Board or officer of the Association shall be personally liable to any Owner or to any other person for any act, error or omission of a Board member or Association officer, or for any act, error or omission of the Association or the Board, or their representatives, employees, agents and contractors, or the manager; provided that such member or officer has not acted in bad faith or with gross neglect.
6. ASSOCIATION MEMBERSHIP.
 - 6.1 Members of Association. Membership in the Association shall always consist of and be limited to the record owners of the fee simple title to each Lot (each such owner being referred to in the Declaration as an Owner); provided, however, that any Owner may, to the extent provided for in any recorded agreement of sale, assign such Owner's membership rights (including voting rights) to the vendee under the agreement of sale, but in no event shall such assignment serve to (i) release the Owner of such Owner's obligations and liabilities under this Declaration (including the Owners personal liability for the payment of all assessments levied by the Association); (ii) diminish or impair any liens created by this Declaration upon the Owner's fee simple title to the Owner's Lot or the priority of such liens; or (iii) diminish or impair any of the Association's rights under this Declaration (including the right to foreclose its lien upon the Owner's fee simple title to the Lot). Any such assignment shall not become effective unless and until a true and correct copy of the recorded agreement of sale has been delivered to the Board.

Where there are multiple owners of one lot, they shall collectively be deemed to be one Owner, and they shall be entitled to one vote, to be cast as they may collectively agree.

- 6.2 Corporate or Partnership Members. For purposes of voting, directorships, officerships and the exercise of membership privileges, a corporate or partnership Owner or multiple owners of a single Lot shall be considered to be one Owner, and shall act through or be represented by one officer, director, partner, employee or other designated representative.
- 6.3 Additional Members. In the event that any Lot is subdivided into two or more Lots, the record owner of each such fee simple Lot shall become a separate and equal member of the Association. In the even that any Annexed Property becomes subject to this Declaration, the record owner of each Lot in said Annexed Property shall likewise become a separate and equal member of the Association.
- 6.4 No Avoidance of Obligations. No Owner may avoid the obligations of membership by nonuse of the Common Areas, Designated Areas or Improvements and Facilities, renunciation or abandonment of the Owner's Lot, or any other act of abandonment or renunciation.
- 6.5 Termination of Membership. No membership shall be terminated, forfeited or transferred and no member in the Association shall be expelled, except upon transfer of the Owner's entire interest in the Owner's Lot.
- 6.6 Articles and Bylaws. The membership status, rights, duties, privileges and obligations of any owner as a member of the Association shall be as set forth in this Declaration and the Articles and Bylaws. Each owner of a Lot shall at all times comply with and observe all other provisions of the Articles and Bylaws.
- 6.7 Suspension of Voting Rights. The Board of Directors shall have the right to suspend the voting rights of any Owner during the period when the Owner shall be in default in the observance of any provision of this Declaration; provided, however, that (i) upon the curing of such default, such Owner's voting rights automatically shall be restored, and (ii) prior to suspending such Owner's voting rights, the Board shall give the Owner not less than fifteen (15) days written notice of the Board's proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less that (5) days before the effective date of the suspension.
7. LIMITATIONS AND RESERVATIONS. Declarant specifically reserves unto itself, its successors and assigns, the following rights to be exercised in its sole determination and discretion at any time and from time to time, so long as it remains an Owner of at least one Lot.

- 7.1 Easements, Licenses, Etc. To designate and grant to any person, and/or reserve unto Declarant, easements, licenses, permits and rights-of-way for public or private access and/or utility purposes, water distribution system, drainage, gas distribution systems, walkways, roadways, electrical, telephone and television cables and other or similar purposes and uses in, over, across, through and under any Common Areas, Designated Areas and Improvements and Facilities as Declarant deems appropriate or necessary. In connection with the foregoing reservations, each Owner shall be deemed, upon acceptance of a deed conveying any Lot or interest in any Lot, subject to the terms hereof, to irrevocably appoint Declarant as such Owner's attorney-in-fact (which power of attorney shall be deemed to be "coupled with an interest") to execute such documents, to file maps designating such easements, to grant such easements and rights, and to do all things necessary or convenient in connection therewith without further notice to or action by such Owner, and upon Declarant's request, each Owner, promptly and for no additional consideration shall execute all documents which may be requested by Declarant to designate or reconfirm such easements on any map and/or to grant or reconfirm such easements and rights.
- 7.2 Entry and Use. To enter on and use any Common Areas, Designated Areas and Improvements and Facilities for the purpose of selling Lots, or of constructing any improvements or changes in or appurtenant to the Common Areas, Designated Areas and Improvements and Facilities as it may deem appropriate or necessary, provided that work is performed in a good and workmanlike manner and free and clear of all liens.
- 7.3 Assignment of Rights. To assign and transfer, in whole or in part, all or any of its rights, privileges, powers, reservations, interests and obligations hereunder to any other person, including without limitation, to any successor designated by Declarant or the Association.
- 7.4 Approval or Amendments. To approve or disapprove any proposed amendment to this Declaration.
- 7.5 Approval of Changes to Common Areas, Etc. To approve or disapprove any change in use of the Common Areas, the Designated Areas and the Improvements and Facilities, and further to approve or disapprove any and all improvements, alterations and other work performed to, in, on, over, under and across the Common Areas, the Designated Areas and the Improvements and Facilities.
- 7.6 Transfer to Association of Common Areas, Etc. To transfer from time to time to the Association, by deed and/or other appropriate conveyance document, ownership, possession, and the obligation to maintain, landscape, repair and replace Common Areas, Designated Areas and Improvements and Facilities and other real and personal property and interests (including, without limitation, leases, easements, rights-of-way and licenses). This shall also include transfer of part or all of the Water Company and of the system and equipment providing pumping, storage and transmission of water to

the Lots, as well as to other neighboring properties (i.e., the water system) and its organization and operation including the responsibility for its operation, maintenance; repair and replacement (provided, however, that nothing herein shall require Declarant to make any such transfer).

8. ASSESSMENTS.

- 8.1 Responsibility. Each and every initial and subsequent Owner of a Lot, by acceptance of fee simple title to such Lot, regardless whether it shall be expressed in any deed to such Lot or any other conveyance instrument, shall be deemed to covenant and agree to pay such Owner's proportionate share of all assessments in accordance with the provisions of this Declaration. These assessments include, but are not limited to assessments for the operation and administration of the Association, as well as the maintenance of all Common Areas, Designated Areas and Improvements and Facilities and for the operation, management and maintenance of the Water Company, and any other expense not already included in this Declaration if decided to be in the best interest of the Association by virtue of a vote of not less than fifty-one percent (51%) of the Association membership.

Certain assessments for the Association's expenses will be required from time to time to bring the Subdivision in compliance with County standards, such as for the installation of street lighting. Each lot Owner shall be responsible for such Owner's proportional share of such expenses to the extent that they are or are not incorporated into the budget as described below.

- 8.2 General Assessments. At least sixty (60) days prior to the date set for each annual meeting of the Association, the Board shall prepare or cause to be prepared and shall adopt a budget for the upcoming fiscal year of the Association; provided, however, that in the case of the initial budget of the Association, the Board shall have the right (but not the obligation) to adopt such budget at any time (in the Board's sole discretion) after the recordation of this Declaration. Such budget shall cover all of the then applicable estimated costs of all operations, activities and obligations of the Association, including the cost of operating and maintaining the Common Areas, Designated Areas and Improvements and Facilities, as provided herein, the payment of any taxes, insurance and other expenses of the Association, the cost of performing all of the Association's obligations under this Declaration, amounts for capital expenditures and reserves, and the cost of performing all necessary or desired services. Assessments based on such budget shall be allocated equally among each of the Lots (regardless of such factors as the size, value or location of the Lots or the degree to which a particular Lot may or may not be benefiting from the services performed by the Association). The initial assessments shall commence as of a date determined by the Board in its sole discretion, and no delay in the commencement of such assessments shall in any manner affect, impair or waive the right of the Board to later commence such assessments. A copy of the Board's budget and the amount of assessments to be paid by the Owners shall be sent to each Owner at least thirty (30) days before the

(5%) of the unpaid amount if not paid within fifteen (15) days of its due date, or such other late charge as may be set from time to time by the Board. The failure by the Association to collect such interest or late charge shall not constitute a waiver of the right to do so at any time thereafter.

- 8.7 Lien and Default. Each assessment (whether regular, supplemental or special) and all other sums owed by an Owner under this Declaration shall be a separate, distinct and personal debt and obligation of such Owner. Each assessment or any installment thereof when due, all other sums owed under this Declaration, together with all costs and expenses of collection, including all reasonable attorneys' fees, shall also be and are a continuing and perpetual lien and charge upon the fee simple title to such owner's Lot and upon the owner's interest in such Lot. Upon an owner's failure to pay any such assessment or installment thereof or any other sums due under this Declaration, the Association may, but need not, record a Notice of Default in the Bureau of Conveyances of the State of Hawaii. The Association's lien shall be subject and subordinate to the lien of the Paramount Liens as more particularly set out in paragraph 8.10 below, but shall be prior to all other liens, encumbrances and interests upon or in the Lot or the owner's interest in the Lot, including any leases and agreements of sale. The Association's lien may be foreclosed through suit in like manner as a mortgage on real property (including by foreclosure pursuant to Chapter 667, HRS). The Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for damages or for unpaid assessments and other sums shall also be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law or equity in the enforcement of each owner's obligations.
- 8.8 Voluntary Conveyances. Co-Owners. In a voluntary conveyance of any Lot, the transferee of the Lot shall be jointly and severally liable with the transferor for all unpaid assessments and other sums, interest, late charges and costs of collection, without prejudice to the transferee's right to recover from the transferor the amounts paid therefor by the transferee. If more than one person owns a Lot or interest therein, all such persons shall be jointly and severally liable for the payment of all assessments, sums, interest, late charges and costs of collection.
- 8.9 Estoppel Certificate. When requested by an Owner, the Association shall execute a certificate stating the amount of any delinquent or unpaid assessment owed by the owner. Such certificate shall, except as to the amount of any unpaid assessments which such certificate failed to reflect due to any checks which, within thirty (30) days before or after the date of the certificate, have been or are dishonored or not otherwise paid, be conclusive upon the Association in favor of all persons who may in good faith rely thereon, as to the amount of such delinquency as of the date of the certificate. The Association shall be entitled to a reasonable servicing charge as a condition to issuing the certificate. No such certificate, however, shall constitute any representation or

agreement by the Association that the owner is in compliance with any other provision of this Declaration.

8.10 Paramount Liens. Notwithstanding all other provisions of this Section:

- (a) A lien created upon any Lot pursuant to Section 8.7 above shall be subject and subordinate to the following liens and indebtedness secured by such liens (such liens being herein called "Paramount Liens"): the lien of any recorded first mortgage recorded prior to time of lien in favor of any person (meaning a mortgage having first priority over other mortgages) upon the fee simple interest in the Lot made in good faith and for value. If a Lot should be conveyed pursuant to a foreclosure of a Paramount Lien encumbering such Lot, the purchaser at such foreclosure sale shall not be liable for any assessments or other sums payable under this Declaration and accruing prior to the date of conveyance, but shall be liable for all assessments and other sums accruing thereafter. No such conveyance shall relieve the prior owner of personal liability for the payment of all such assessments and sums accruing prior to such conveyance.
- (b) No amendment to this subparagraph (a) shall affect the rights of the holder of any Paramount Lien who does not join in the execution thereof.
- (c) By written subordination agreement authorized by the Board, the benefits of (a) and (b) above may be extended by the Board to mortgages and other liens not otherwise entitled thereto.

9. INDEMNITY. The Association and all Owners and occupants of Lots shall defend, indemnify and hold harmless Declarant, (and the members thereof and agents therefor) from and against all claims and demands for loss or damage, including property damage, personal injury or wrongful death, arising out of or in connection with the exercise by any of them or their agents, contractors, servants, guests or invitees of any rights or obligations created by this Declaration, and shall use and permit the use of the Common Areas, the Designated Areas and the Improvements and Facilities at their sole risk without any obligation or responsibility whatsoever of Declarant for the condition, control or other use thereof, and shall jointly and severally reimburse Declarant for any and all costs and expenses, including reasonable attorneys' fees, incurred in connection with the defense of any such claim or demands, or incurred in connection with any act or failure to act by the Association, or in case Declarant, without any fault on its part, shall be made a party to any litigation commenced by or against the Association.

During the course of subdividing the Property, Declarant entered into subdivision agreements with the County of Maui and various other County and State Agencies, each of which has been recorded in the Bureau of Conveyance of the State of Hawaii prior hereto. Pursuant to said agreements Declarant has agreed on behalf of itself, its successors and assigns, to indemnify the County and other agencies from liability. By

accepting title to a Lot within the Subdivision, the Owner thereof, and the Association on behalf of all Owners, shall be deemed the successors and assigns of Declarant with respect to said indemnification and shall be primarily liable for, and shall indemnify Declarant against, such indemnification and all costs, fees and expenses related thereto, as the same may apply to the Subdivision and arise or be involved from and after the date of recordation of this Declaration.

10. USE OF OWNER'S LOT; COMPLIANCE WITH LAWS. Each Owner and all occupants of any Lot in the Subdivision shall at all times comply with all applicable County, State and Federal laws applicable thereto including but not limited to State Department of Health and Federal Environmental Protection Agency rules and regulations. In addition, each Owner and occupant shall at all times comply with and observe each and every one of the following provisions; provided, however, that in the event of any conflict between or among the provisions set forth below and applicable laws, the most restrictive provision or law shall control:

10.1 Use and Site Development Restrictions and Requirements.

- 10.1.1 Land Use and Building Type. Each Lot shall be used only for purposes as permitted under the Agricultural District. No lot or residence or other building constructed on any Lot may: (a) be leased or rented by the owner thereof for any term of less than six (6) consecutive months, and such lease or rental agreement shall not contain any option or right to cancel such lease or rental agreement at any time prior to the expiration of said six-month period; or (b) be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so called "vacation license," "travel club membership" or "time-interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Lot or residence or other building upon the Lot rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise.

No more than two single family dwellings shall be placed, altered or permitted to remain on any Lot together with private garage, and related barn/stable/workshop structure(s), provided that in no event shall any structure be permitted except in conformance with Maui County law, building and zoning regulations and the Design Guidelines set forth herein.

- 10.1.2 Rezoning. No Lot shall be rezoned prior to twenty (20) years from date hereof without consent of Declarant or Declarant's successor or assign.

- 10.1.3 Utilities. Except for propane gas, cable TV and trash collection, any utility services provided to the boundary of each Lot shall be in a completely underground distribution

and/or collection system. Propane gas must be kept underground or within an enclosure. Trash receptacles shall be screened from view of adjacent properties and roadways.

10.1.4 Individual Lot Plot Plans.

- (a) Plot Plans for each individual Lot will be furnished to the initial Owner thereof designating utility locations and contours. All grades and contours indicated thereon are approximate and subject to verification by the Owner. (b) It shall be the owner's responsibility to examine the Plot Plans, to arrange for subsurface soil investigation and to design and construct the owner's structures accordingly. Each owner is advised to obtain a comprehensive soils report prior to commencing any construction upon a Lot.

10.1.5 Easements. Easements for the installation and maintenance of utilities, for drainage facilities, and for any other purposes, will be set forth in or shown on the deed conveying the Lot to the owner, and/or the Plot Plan for each Lot. No improvements, roof eaves or overhangs, or major plantings shall be placed on, below or above these easements without the conformance of any applicable governmental authority.

10.1.6 Lot Drainage. The flow of surface and/or subsurface drainage onto, across or from each Lot, shall not be obstructed. Such run-off shall be dispersed or channeled by surface swales or other facilities in such a manner as to prevent erosion and damage to adjacent or nearby properties. Designs which are impractical or do not adequately consider the possible adverse effects on adjoining property, will be disapproved.

Each Lot owner shall be solely responsible for the design of all drainage facilities for the owner's Lot and will be liable for all claims for damages resulting therefrom. Drainage design plans shall require an architect's or engineer's stamp.

10.1.7 Temporary Structures and Surplus Materials. Temporary structures, trailers and construction materials may be placed on a Lot only at the commencement of construction and are to be completely removed from the Lot no later than thirty (30) days from the "date of completion", as that term is defined in HRS, Section 507-43. A refuse disposal bin shall be placed on site and shall be serviced on a weekly basis during the entire term of construction.

10.2 Pollutants. Each Owner and such Owner's lessees, invitees, guests and other occupants of such Owner's Lot shall not, through their intentional acts or gross neglect, cause any pollutants, contaminants or similar harmful substances, to be introduced into any water passing through any water pipeline passing under or through such Owner's Lot or the Common Areas.

11. LANDSCAPE DESIGN STANDARDS. The climate and existing landscape are important factors which must be considered in the design of improvements and

alterations to the landscape. The following landscape design standards relate to the land and deal with the issues of siting, grading, excavation and landscaping.

- 11.1 Developed Area. The Developed Area includes the Building Area, the Private Area and the Agricultural Area as defined below.
- 11.2 Building Area. The Building Area shall include (only) the portion of the Lot upon which may be constructed the Dwelling and other related buildings.
- 11.3 Private Area. The Private Area is that part of the Developed Area which is next to any Dwelling and extends out not more than fifty (50) feet in any direction. The Private Area is the least restrictive in terms of what plants, shrubs, and trees can be planted therein. Windbreak planting may be allowed if the owner demonstrates that such planting will be located and maintained in such a way as not to obstruct the view from the "Building Area" of other Lots.
- 11.4 Agricultural Area. The Agricultural Area is that portion of the Lot not identified as Developed or Private and shall be used by the owner for agricultural purposes. This area will be planned in such a manner that the visual impact and activity level of farming, grazing or other agricultural use will be minimized in terms of adjacent Lot owners. The Agricultural Area may be extended into the front, side and rear yards. The use of Agricultural area shall conform to the following:
 - (a) Every Owner shall engage in some agricultural pursuit, whether related to the growing and gathering of crops, fruits, vegetables, flowers, trees or other plants, or to grazing of authorized livestock.
 - (b) Each Owner shall, within ninety (90) days of closing of escrow (or such longer period as may be agreed to by the Board of Directors), erect a three rail, white, wood or PVC fence at all boundaries fronting roadways, and some form of a wood or metal fence along all other boundaries of such Owner's Lot.
 - (c) Cows, horses and/or sheep shall be allowed to graze in the Agricultural Area, but no more than a combined total of six animals per lot. No other livestock shall be allowed. Dogs and cats will be allowed to the extent that their numbers do not create a nuisance to other Lot Owners. Up to four (4) chickens (no roosters) may be allowed on any Lot, upon prior approval by the Board, provided the same do not create a nuisance (noise or otherwise). A decision on whether a nuisance is present will rest with the Association Board in its sole discretion.
 - (d) Dwellings (including Farm Dwellings), accessory buildings, enclosures or any other structure (other than fencing and improvements) more than six (6) inches above grade level shall not be allowed in the setback areas set forth in paragraph 11.9.

- (e) Proposed agricultural pursuits shall conform to all of the provisions of the Declaration and the Design Guidelines and to all codes, ordinances, rules and regulations of any governmental authority having jurisdiction over the Lot.

11.5 Sitework.

- (a) No soil materials shall be imported to any lot; other than topsoil or engineered construction base course materials. No export of site material shall be allowed other than excess excavation materials.
- (b) Import material shall be free of noxious substances, spores, seeds, plant material, insects, larva and eggs, particularly termites and carpenter ants, or other materials or organisms that may cause a nuisance or hazard to persons, property or plant life.
- (c) Exposed cut and or fill shall not exceed eight (8) vertical feet without being terraced, except where a hardship can be demonstrated.
- (d) Cut or fill slope shall not be steeper than three (3) horizontal feet to one (1) vertical foot.
- (e) Except for access drives and approved improvements within the Agricultural Area, cut and fill shall not occur outside the Private Area.
- (f) All grading and other Improvements shall be done in a manner that maintains the natural flow of surface water without creating erosion of or increasing discharge from the Lot.
- (g) All exposed cut, fill and graded areas shall be landscaped, i.e., grass and ground cover plants, and/or maintained in an agricultural use. In all such areas, measures shall be taken to mitigate the establishment of noxious weeds.

In the event of any violation of (a) through (g) above, the Declarant or the Association may cause such Lot to be restored to its condition existing immediately prior to such violation. The owner of such Lot shall reimburse expenses incurred by the Declarant or the Association in performing such obligations under this paragraph, including attorneys' fees and costs.

- 11.6 Parking Spaces. Each Lot shall contain parking space within the Lot for at least two automobiles in an enclosed garage either attached to or detached from the main Dwelling. Additional parking spaces are highly desirable to accommodate guest parking. No on-street parking or parking in easement or setback areas will be permitted.

- 11.7 No Visible Storage Tanks. All fuel tanks, water tanks, or similar storage facilities shall either be constructed to be shielded from view from public areas and neighboring lots by walls, fences or landscaping, or shall be installed or constructed underground. All tanks of any type shall comply with all applicable Federal, State and County laws.
- 11.8 Site Drainage. Site drainage shall not drain to adjoining Lots, except as established by natural drainage patterns, nor cause a condition that could lead to soil erosion on open spaces.
- 11.9 Setbacks. All Lots of four (4) acres or more shall have minimum 100-foot setback from all road rights-of-way and 30-foot setback from the side and rear property lines. Lots smaller than four (4) acres shall have minimum 50-foot setbacks from all road rights-of-way and 30-foot setback from the side and rear property lines. These setbacks shall not apply to driveways and access roads within each residential lots.
- 11.10 Access Drives. Wherever feasible, access drives shall be paved with either asphalt or concrete.
- 11.11 Swimming Pools. No temporary, plastic, or prefabricated swimming pools will be allowed to be placed on any Lot above the natural grade. Permanently constructed swimming pools will be allowed below grade or above grade so long as they are appropriately integrated into the Landscaping and grading design so as to minimize the visual impact on common areas and neighboring Lots.
- 11.12 Signs and Other Improvements.
- (a) Signs. No Signs or advertising posters of any kind shall be maintained or permitted within the Subdivision; provided, however, that notwithstanding the foregoing, (a) one professionally prepared, securely, installed sign not exceeding five (5) square feet in area may be displayed upon a Lot advertising such Lot for sale or lease provided that no such sign may indicate prices or other sales terms, and (b) Declarant may construct, install, and maintain "For Sale" signs as above described on Lots owned by Declarant, and larger signs at the entrances of and other strategic places within the Subdivision for the promotion and marketing of the Subdivision and signs for advertising the Declarant's efforts in the construction of the Improvements at the Subdivision. The term "professionally prepared" shall mean that such sign is prepared by a graphic designer.
- (b) Lighting. Lighting should create a unified, natural effect that will not interfere or compete with the dramatic nighttime panorama views of the landscape and surrounding mountains. Mercury vapor lamps or lamps which emit light of a similar character, exposed fluorescent lamps visible from adjacent lots, flashing lights, color lights, unshielded exterior lights and lights which result in excessive glare are prohibited.

12. ARCHITECTURAL DESIGN STANDARDS

The following architectural design standards have been developed in the response to climatic and aesthetic considerations of the Subdivision. In the event of conflict between these Architectural Design Standards and applicable County Building Codes or other regulation, the more restrictive shall apply. During most of the year, the climate is mild and comfortable with light trade winds. These conditions will be enhanced by various design solutions, such as keeping building at grade, shading window openings, and courtyards, and not using exterior materials which will increase glare. Muted colors which allow the natural colors of the landscape to predominate and other similar design requirements will be required to preserve the integrity of the Subdivision.

- 12.1 No Reflective Finishes. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including without limitation the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes, equipment and mailboxes.
- 12.2 Height of Improvements. Because the landscape is rolling, and because low buildings will maintain cooler summer daytime temperatures, single story buildings are encouraged. The maximum elevation of any Dwelling or other Improvement shall not exceed 30 feet. The maximum 30-foot elevation shall be the vertical distance measured from the highest point from natural grades adjacent to or under the Dwelling or other Improvement to the highest point on the roof, not including chimneys. In addition to the 30-foot height limit described above, no portion of a Dwelling or other Improvements shall be more than 30 feet high measured from the natural grade directly below. Chimneys, roof vents and other architectural projections may exceed the height limitations by no more than 6 feet.
- 12.3 Size. Dwellings, including detached Farm Dwellings, shall each contain not less than the following minimum square feet of living area, except and unless there are special circumstances or unique design solutions, as approved by the Board:
- (a) Lots under 5 acres - 1,750 square feet Main Dwelling
500 square feet Farm Dwelling
 - (b) Lots over 5 acres - 2,000 square feet Main Dwelling
750 square feet Farm Dwelling
- 12.4 Roofs. In keeping with the low landscape, roofs should be predominantly of moderate pitch to reinforce the traditional Hawaiian ranch architecture. The overall appearance of the Dwelling or other Improvement will be an important consideration. The pitched roofs may be up to a maximum pitch of 12 in 12. Roof design shall be modulated to

avoid large expanses of uninterrupted roof surfaces. Roofs shall step down from the highest elevations located at the center of the Lot to lower roof elevations located at the perimeter. The roof eaves line shall also be modulated to avoid monotonous building facades. Gable roofs, flat roofs, and nontraditional roofs are prohibited except where unique conditions warrant their use. The roof of any Dwelling (excluding any detached garage) will have not less than eight (8) corners.

The color of roofs must conform to the color standards set forth in the Design Guidelines which include only muted, light to middle range values of the landscape. Reflective roof surfaces which cause excessive glare are not allowed. Flat roofs are prohibited. Material shall be wood shakes, wood shingles, clay, ceramic, and cement tiles, copper, or other roofing materials of equivalent texture and character. Asphaltic composition roofing materials are acceptable. All roofing materials shall be noncombustible or fireproof. Metal roofs may be used provided that the following conditions are met:

- (a) Material shall be 26 gauge minimum and shall be copper (oxidized), aluminum, or hot-dipped galvanized steel. Flashing shall be the same material as roofing.
- (b) Fasteners shall be concealed using screws. Penetration through the roof is not allowed.
- (c) Profile shall be box or standing seam type ribs with ribs spaced at no less than 6 inches on center. Ribs shall be 1 inch minimum height. Corrugated type ribs are prohibited.
- (d) Finishes (except for copper) shall be factory painted with SMP, Kynar 500 full strength or the equivalent, and shall be low reflective, natural earthtone color.
- (e) Roof sheets shall be continuous length with no overlaps.

Mechanical equipment and other unsightly rooftop features shall be concealed from public view. Vent stacks, gutters, and other roof projections shall be compatible with the roof and walls. Downspouts must be attached (not freestanding) to the Improvement with color to match exterior walls. The glazing material and framing components for skylights shall be of a non-reflective finish.

Exposed prefabricated metal chimney flues shall be appropriately clad with material and color to match the exterior walls.

- 12.5 Colors. The color of external materials must generally be subdued to enhance the colors of the natural landscape. The colors of the landscape are rich and varied and are highlighted by different light conditions based on time of day.

- 12.6 **Materials - Exterior Surfaces.** Exterior surfaces will be generally of natural materials that blend and are compatible with the natural landscape. Stucco or traditional wood siding are to be the predominant exterior surfaces. Exterior wall finishes permitted shall include wood siding (tongue and groove siding, and shiplap siding), cement plaster (stucco) finish, moss rock wall, or other exterior wall finishes of equivalent texture and character.
- 12.7 **Building Projections.** All projections from a Dwelling or other Improvement including, but not limited to, chimney flues, vents, gutters, downspouts, utility boxes, porches, railings, and exterior stairways shall match the color of the surfaces from which they project, or shall be of another approved color. Electric metering equipment which is not attached to a Dwelling must be installed in an approved wall.
- 12.8 **Antennae; Earth Receivers; Clotheslines.** There shall be no antennae, satellite earth receiver or clotheslines of any sort either installed or maintained which are visible from neighboring Lots.
- 12.9 **Windows Doors and Skylights.** Windows, clearstories and skylights of anodized aluminum, baked enamel or wood are preferred for the Hawaiian climate. Window and door frames shall be constructed of wood, PVC, PVC coated wood frames, or anodized aluminum. Bronze tinted glazing material is recommended to minimize the intensity of the sun.
- Window and door frames of natural aluminum finish, and glazing material of reflective or color tint, other than bronze or gray, shall be prohibited.
- Windows and doors shall not be covered with wrought iron or ornamental metal grilles. Wood grilles and screens shall be finished to match walls.
- Metal doors, except on barns or roll-up metal grilles, are not permitted.
- 12.10 **Garages.** All garages and adjacent areas shall abide by the following:
- (a) Garages shall be constructed to contain two (2) cars and shall be enclosed with an operable door of wood or similar construction.
 - (b) Garages shall not be used as habitable space.
 - (c) Garage doors shall not open directly to the view from project roadways.
 - (d) All garages shall have minimum of 100 square feet of storage space.
 - (e) Driveways located along any property line of another Lot or Common Areas must have a minimum landscape strip of twenty (20) feet from said property line.

- (f) Areas for long term parking of motor vehicles and water craft must be screened from public view.
 - (g) Any and all automotive or equipment repairs must be performed inside garages or other areas not visible from public areas or neighboring Lots.
- 12.11 Patios and Courtyards. Patios and courtyards should be designed as an integral part of the architecture of the Dwelling or other Improvement.
- 12.12 Solar Application. Solar collectors can result in excessive glare and reflection, and can only be approved if they are integrated into the Improvements or landscaping on a Lot and are not visible from neighboring Lots. Solar panels may be permitted on the roof of Dwellings or accessory buildings only if they are mounted flush on the roof (solar panels may extend above the roof s surface but may not be mounted on an angle to the roof s surface) and if they are non-reflective.
- 12.13 Service Yard. Walls or other appropriate screening are required for a service yard, if any, to enclose all above-ground garbage and trash containers, clotheslines, and other outdoor maintenance and service facilities.
- 12.14 Foundation; Walls. All exterior wall materials must be continued down to within 6 inches of finished grade. All walls should not exceed 10 feet in height from the top of the wall to the finished floor elevation. Open construction under Improvements is prohibited and areas underneath Improvements must be entirely enclosed with materials allowed pursuant to Section 12.6 hereof. Screening under Improvements shall be achieved by the use of walls of an acceptable material, with the height of such walls measured from the finished floor elevation to the finished grade not to exceed 6 feet.
- 12.15 Accessory Buildings. All permissible accessory buildings and structures must be compatible in design with the main Dwelling, conform to these Architectural Design Standards and be in compliance with the Maui County Code guidelines relating to farm dwellings in the agricultural district.
- 12.16 Mechanical Equipment. All water tanks, air conditioning condenser and cooling equipment, pool equipment, and other similar mechanical equipment located at grade, shall be concealed so as not to be visible from any neighboring Lots. Noise from mechanical equipment shall be abated to acceptable levels. Mechanical equipment shall not be placed in any set-back areas.
- 12.17 Fences and Gates. The design of fences and gates:
- (a) Fronting a paved road or within 100 feet of a paved right-of-way shall be three rail, painted white, and made of wood or PVC.

- (b) Located within side or rear setbacks may be three rail (PVC or wood) or metal fence of type customarily used in agricultural districts.
 - (c) Erected for the purpose of containing animals shall be stockproof and shall be equal to or better than hog wire with metal posts in overall quality.
 - (d) in all other areas must be compatible with the fencing of the adjoining properties.
- 12.18 Interpretation/Waiver. In the event of question as to interpretation of, or application for waiver from, the foregoing Architectural Design Standards, the same shall be resolved by vote of a majority of the Directors.
13. **CONSTRUCTION REGULATIONS.** In order to assure that the natural landscape of each Lot is not damaged during any construction activities, the following construction regulations shall be enforced during the construction of each dwelling, building or structure or other Improvement on a Lot and all builders, owners, and other persons shall be bound by these regulations. Any violation by a builder shall be deemed to be a violation by the owner of the Lot.
- 13.1 Occupational Safety and Health Act Compliance (OSHA). All applicable OSHA regulations and guidelines must be strictly observed at all times.
- 13.2 Construction Trailers, Portable Field Offices, Etc. No temporary trailer, field office, etc., established for construction supervision and temporary convenience may be used for overnight or residential purposes.
- 13.3 Debris and Trash Removal. Owners and builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping site located off the Subdivision. Lightweight material, packaging, and other items, shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and builders are prohibited from dumping, burying or burning trash anywhere on the Lot or in the Subdivision. Concrete trucks shall wash out spill pans before entering the Subdivision and before leaving the construction site. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore, or affecting other Lots. Any clean-up costs incurred by the Declarant or the Association in enforcing these requirements will be billed to and paid by the owner. Dirt, mud, debris or concrete resulting from activity on each construction site shall be promptly removed from public or private roads, open space, and driveways or other portions of the Subdivision.
- 13.4 Sanitary Facilities. Each owner and builder shall be responsible for providing adequate sanitary facilities for construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the construction site itself.

- 13.5 Vehicles and Parking Areas. Construction crews will not park on, or otherwise use, other Lots or any Common Area. All vehicles will be parked so as not to inhibit traffic, and within the designated areas so as not to damage the natural landscape. Parking of vehicles and equipment along road shoulders is prohibited. Speed limits must be adhered to by all vehicle drivers.
- 13.6 Excavation Materials. Excess excavation materials must be hauled away from the Subdivision.
- 13.7 Blasting. No blasting or impact digging which would cause seismic vibrations beyond the boundaries of the Lot on which the same is to occur may be undertaken. Applicable governmental regulations must also be reviewed prior to any blasting activity and must be complied with at all times.
- 13.8 Restoration or Repair of Other Property Damaged. Damage and scarring to other property, including, but not limited to, open space, other Lots, the Common Areas and/or other Improvements will not be permitted. If any such damage occurs, it shall be repaired and/or restored promptly at the expense of the person causing the damage or the owner of the Lot on which the construction activity is taking place. Upon completion of construction, each owner and builder shall clean his construction site and repair all property which was damaged, including but not limited to restoring grades, planting shrubs and trees, and repair of streets, driveways, drains, culverts, ditches, signs, lighting, and fencing.
- 13.9 General Construction Practices. All owners will be absolutely responsible for the conduct and behavior of their agents, representatives, builders, contractors, subcontractors, tenants and invitees on or within the Subdivision and neighboring areas. The following practices are prohibited within the Subdivision.
- (a) Changing the oil of any vehicle or equipment other than at a location designated for that purpose, i.e. garage/barn.
 - (b) Allowing concrete suppliers and contractors to clean their equipment other than at locations designated for that purpose.
 - (c) Removing any rocks, plant material, topsoil, or similar items from any property of others within the Subdivision, including construction sites.
 - (d) Using disposal methods or units other than those approved by the County of Maui.
 - (e) Careless disposition of cigarettes and other flammable material. At least one 10-pound ABC-rated dry chemical fire extinguisher shall be present and available in a conspicuous place on the construction site at all times.

- (f) No pets, particularly dogs, may be brought onto the Subdivision by contractors or their employees. Under no circumstances will pets be allowed to roam at will within the Subdivision. In the event of any violation thereof, the Association or Declarant shall have the right to contact the County of Maui authorities to impound the pets, or to take such other action as may be permitted by law, the Design Guidelines, or the Declaration.
- 13.10 Construction Area Plan. Prior to the commencement of any construction activity on a Lot, the Owner and builder shall provide to the Declarant and/or the Board of Directors a detailed plan as to the manner in which the natural terrain will be protected, and the areas within which all construction activity will be confined, including: size and location for construction material storage, limits of excavation, drive areas, parking, chemical toilet location, temporary structures, if any, dumpsters, storage of debris, fire extinguisher, utility trenching, and construction sign. This plan should identify the methods for protection, such as fencing, flagging, rope, barricades, or other means, to be set up prior to commencement of construction.
- 13.11 Construction Access. The only approved construction access during the time a Dwelling or other Improvement is being built will be over the approved driveway for the Lot.
- 13.12 Dust and Noise. The contractor shall take appropriate precautions and abatement procedures to minimize dust and noise from the construction site.
- 13.13 Signage. Temporary construction signs shall be limited to one sign per Lot not to exceed five (5) square feet of total surface area. The sign shall be free standing. No subcontractors' signs shall be approved.
- 13.14 Daily Operation. Daily working hours for each construction site shall be 7:00 a.m. to 6:00 p.m. Monday through Friday. 8:00 a.m. to 6:00 p.m. Saturday. All work on Sundays is prohibited except in the case of an emergency which will require special permission from a member or Declarant.
- 13.15 Contractor Insurance. Each general contractor shall acquire and maintain in effect for the duration of any construction on the Lot, at its sole cost and expense, commercial general liability insurance, including automobile accident liability coverage, in an amount not less than \$1,000,000 for bodily injury or death to any one person or more in any one accident and with a limit of not less than \$250,000 for damage or loss to property in any one accident or occurrence naming Association as additional insureds. Such policies shall contain no deductible or risk retention by the contractor and shall be maintained with an insurance company or companies permitted to do business in the State of Hawaii. Each contractor shall arrange for the insurance companies providing the required insurance to provide the Association thirty (30) days advance written notice of any cancellation or change in coverage or in any material terms of such

insurance policies. Each contractor shall furnish the Association with a written certificate of insurance demonstrating that such policies are in effect prior to commencing construction on the Lot.

13.16 Construction Water. Prior to the commencement of any construction on the Lot, the Owner shall complete and file with Water Company (as defined in Section 3.4 above) an application for water service. Water for construction on the Lot shall only be obtained from the water meter installed by Water Company on the Lot.

13.17 Design Guideline Violations. Violations of and deviations from the Design Guidelines by the owner's agents, representatives, builders, contractors and subcontractors shall be corrected at the owner's expense.

14. ENFORCEMENT OF THIS DECLARATION.

14.1 Enforcing Persons. The following persons (the "Enforcing Persons") shall have the right (but shall not be obliged) to exercise any remedy in law or in equity for the enforcement of this Declaration:

(a) The Association (acting through the Board or the Association's Managing Agent).

(b) In the event of a dispute between the Association and any individual Lot, owner(s), the Lot owner and Association mutually agree by this clause to interpretation and enforcement of this Declaration by binding arbitration.

15. SPECIAL PROVISIONS REGARDING OWNERSHIP OF LOTS IN THE SUBDIVISION.

15.1 Agricultural Activities. The Subdivision is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for crop cultivation and cattle ranching and other "Agricultural Activities", which activities may from time to time bring upon each Lot or result in smoke, dust, noise, fumes, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively, the "Agricultural By-Products"). Each owner, by acquiring any interest in a Lot, automatically:

(a) Assumes complete risk of and forever releases Declarant and the Association from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the Lot or in the Subdivision and arising out of any Agricultural Activities or Agricultural By-Products;

(b) Forever waives any right to require Declarant or the Association, and releases Declarant from any obligation, to take any action to correct, modify, alter,

eliminate or abate any Agricultural Activities or Agricultural By-Products, and waive any right to file any suit or claim against Declarant for injunction or abatement of nuisances or damages;

- (c) Agrees to and shall indemnify, defend and hold harmless Declarant from and against all claims demands, actions, losses, damages, liabilities, costs and expenses, including, without limitation, attorneys' fees, asserted against or incurred by Declarant or the Association, which arise out of any injury, death or damage to person, property or business that occurs on the owner's Lot and is the result of any Agricultural Activities or Agricultural By-Products, irrespective of the theory of liability asserted against Declarant; and
- (d) Agrees that any Agricultural Activities or Agricultural By-Products, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom, shall not constitute a breach of any covenant or warranty of Declarant or be the basis for a suit or other claim for injunction or abatement of nuisances or damages, and forever waives any right to file any such suit or claim.

As used in this subparagraph 15.1, all references to "Declarant" shall mean and include Declarant, its members, general partners and agents, and all subsidiary, sister and affiliated companies of Declarant, in their respective capacities as the Declarant under this Declaration and the developer of the Subdivision and the initial seller of the Lots, the current owner of the lands on which the Agricultural Activities are conducted, and the person conducting the Agricultural Activities, and all successors and assigns of Declarant, its general partners and its subsidiary, sister and affiliated companies.

- 16. **BINDING EFFECT.** All restrictions, covenants, conditions and provisions hereof shall constitute covenants and servitudes running with the Land and with all Lots in the Subdivision, and shall be binding on and inure to the benefit of each owner of a Lot and such owner's heirs, personal representatives, successors and assigns. Each Owner of a Lot will be responsible for ensuring that the provisions of this Declaration are complied with by each and every occupant of, person upon and visitor to the Owner's Lot (including without limitation any tenant, lessee or vendee of the Owner's Lot), and the owner shall be personally liable for any noncompliance by such occupant.
- 17. **AMENDMENT.** Any provision of this Declaration may, from time to time, be amended by filing in the Bureau of Conveyances of the State of Hawaii, an amendment duly executed by both (a) two (2) officers of the Association, and (b) Declarant; provided that such amendment shall have been previously approved by the vote or written consent of both (i) the owners of at least fifty-one percent (51%) of the total Lots, and (ii) Declarant; provided, however, that Declarant's approval and/or signature shall not be required when and after Declarant ceases to be the Owner of at least one (1) Lot.

18. **SEVERABILITY.** The invalidation of any restriction, covenant, condition or other provision hereof by final judgment, order or decree of any court or governmental commission, board or agency having jurisdiction thereof shall in no way affect the other restrictions, covenants, conditions and provisions hereof, which shall remain in full force and effect according to their terms.
19. **DURATION.** The provisions of this Declaration shall be valid and shall run with and bind the land for a term of fifty-five (55) years from the date this Declaration is recorded in the Bureau of conveyances of the State of Hawaii. After such 55-year period, they shall automatically be extended for successive periods of ten (10) years each unless an instrument agreeing to terminate them, signed by the owners of not less than eighty-five percent (85%) of the total Lots, the subject hereto, shall be filed in the Bureau of Conveyances of the State of Hawaii; provided, however, that in the event the application of this paragraph would, as to any provision of this Declaration, violate the rule against perpetuities or any other limitation on duration imposed by law, then such provision shall be deemed to remain in effect only for the maximum duration permitted by law.
20. **DEDICATION.** If any Land or Lot in the Subdivision should be dedicated in fee simple to any government body or agency ("Government Entity"), the Government Entity need not comply with the provisions of this Declaration; provided, however, that should such Government Entity thereafter convey, license, lease, assign or transfer its interest or rights in such lot to any person who is not a Government Entity, such lot and conveyance, license, lease, assignment or transfer automatically shall be subject to and be governed by this Declaration and the grantee, licensee, lessee, assignee or transferee automatically shall be bound by and required to comply with all of the provisions of this Declaration, whether or not such conveyance, license, lease, assignment or transfer expressly refers to or is made subject to this Declaration.
21. **NOTICES.** Whenever any notices are sent to an Owner such notices shall be sent to the address of the owner's Lot (or to such other address as shall have previously been given in writing by the Owner to the Association and sent by registered or certified mail, postage prepaid), and shall be deemed to be received by the Owner on the earlier of actual date of delivery or three business days after postmark (whether or not actually received by the owner). If a Lot is owned by more than one person, notice to any one person shall be deemed to be notice to all such persons. Each Owner, upon conveying fee simple ownership of a Lot to a new owner, shall immediately deliver or cause the new owner to deliver a true and correct copy of the recorded conveyance instrument to the Association at the Association's principal office (or to such other address as the Association shall have previously give in writing to the owners and sent by registered or certified mail). Until such conveyance instrument is received by the Association, any notice identifying the previous owner as addressee shall be deemed notice to the new owner.

22. **JOINT AND SEVERAL LIABILITY.** If an "Owner" consists of more than one person, all of the obligations of the Owner under this Declaration shall constitute the joint and several obligation of all such persons. The obligations of more than one owner under this Declaration shall constitute the joint and several obligation of all such owners. Each Owner shall be liable for all acts and omissions of such owner's guests, invitees, agents, employees, customers and contractors, and their failure to comply with the provisions of this Declaration.
23. **INTERPRETATION; NO WAIVER.** The provisions hereof shall be construed and enforced under the laws of the State of Hawaii and be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Subdivision. The headings of paragraphs, sections and articles herein are inserted only for ease of reference and shall not define or limit the scope or intent of any provision of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce thereafter said provision or to enforce any other provision hereof. No acceptance of any assessment paid by any owner shall be deemed to be a waiver of any breach by such owner of any provision of this Declaration or a waiver of any rights of any Enforcing Person or any other person under this Declaration, or be construed as any agreement or representation by any Enforcing Person that such owner is in compliance with the provisions of this Declaration.
24. **AUDIT.** Any Owner may, at any reasonable time and at such Owner's own expense, cause an audit or inspection to be made of the books and records of the Association. The Association shall furnish to each Owner a report on the financial status of the Association within one hundred twenty (120) days after the end of each fiscal year of the Association.
25. **NO RIGHTS IN PROPERTY OF DECLARANT.** Except as may be expressly provided in a separate writing duly executed by Declarant, no person shall have any right, title of interest in or to or any right to use or enjoy any Lot or other property owned or controlled by Declarant or by any general partner or agent of Declarant or by any parent, subsidiary, sister corporation or affiliate of Declarant, regardless of whether such Lot or property is undeveloped or developed, and regardless of whether or not such Lot or property is in this Subdivision.
26. **PROJECT NAME.** Declarant reserves for itself the right to use the name "Maluhia Country Ranches" and any name which is a variation thereof.

IN WITNESS WHEREOF, Declarant has executed these presents as of the day and year first above written.

EXHIBIT "A"

Those certain parcels of real property, being a portion of "MALUHIA COUNTRY RANCHES," a Subdivision of Lot 1-A of the "KAHAKULOA AGRICULTURAL PARK SUBDIVISION," being a portion of Grant 4982 to J. W. L. Marshall, situate at Waiokila, Makalua, Kahakuloa, Island and County of Maui, State of Hawaii, as described in that final subdivision map approved by the Department of Public Works, County of Maui on August 7, 1998; which lots are described as follows:

Lot 1	2.483 acres
Lot 2	4.223 ares
Lot 3	2.335 acres
Lot 4	2.802 acres
Lot 5	3.728 acres
Lot 6	4.108 acres
Lot 7	8.610 acres
Lot 8	3.832 acres
Lot 9	3.112 acres
Lot 10	2.417 acres
Lot 11	2.417 acres
Lot 12	12.292 acres
Lot 13	6.420 acres
Lot 14	2.256 acres
Lot 15	2.283 acres
Lot 16	6.573 acres
Lot 17	6.228 acres
Lot 18	6.890 acres
Lot 19	5.617 acres
Lot 20	2.376 acres
Lot 21	2.768 acres
Lot 22	8.002 acres
Lot 23	6.247 acres
Lot 24	20.674 acres
Lot 25	6.235 acres
Lot 26	5.751 acres
Lot 27	5.305 acres
Lot 28	5.225 acres
Lot 29	5.206 acres
Lot 30	3.893 acres
Lot 31	2.747 acres
Lot 32	2.692 acres
Lot 33	2.334 acres
Lot 34	2.603 acres
Lot 35	3.574 acres
Lot 36	3.493 acres
Lot 37	5.665 acres

Lot 38	4.608 acres
Lot 39	6.303 acres
Lot 40	5.339 acres
Lot 41	3.886 acres
Lot 42	3.685 acres
Lot 43	3.441 acres
Lot 44	3.517 acres
Lot 45	3.203 acres
Lot 46	3.055 acres
Lot 47	2.954 acres
Lot 48	11.980 acres
Lot 49	0.232 acres (Remnant lot)
Lot 50	0.176 acres (Remnant lot)
Lot 52	1.896 acres (Roadway lot-Hulumanu Place
Lot 53	3.169 acres (Roadway lot-Laha'ole Place

Being a portion of the property acquired by the Declarant by deed recorded in the Bureau of Conveyances of the State of Hawaii on August 14, 1998 as Document number 98-120049

DECLARANT:

KAHAKULOA MAUI ASSOCIATES, LLC

By: *Martin W. Quill*
MARTIN W. QUILL
Its: Manager

STATE OF HAWAII)
) S.S.
COUNTY OF MAUI)

On this date before me personally appeared MARTIN W. QUILL, to me personally known, who being by me duly sworn, did say that he is the manager of KAHAKULOA MAUI ASSOCIATES LLC, a Hawaii limited liability company, that the foregoing instrument was signed in the name of and in behalf of said company, and said manager acknowledged that he executed the same as his free act and deed and as the free act and deed of said company.

M Denise Conte
Notary Public, State of Hawaii
My Commission expires: *7/2/2000*
M DENISE CONTE

l.o.



TITLE GUARANTY OF HAWAII

INCORPORATED

235 QUEEN STREET HONOLULU, HAWAII 96813

PHONE: (808) 533-6261 FAX: (808) 521-0221

175014

R KAHAKULOA MAUI ASSOCS LLC

/

R MALUHIA COUNTRY RANCHES HOMEOWNE

DATE OF RECORDING : NOVEMBER 02, 1999

DESCRIPTION : DECLN 98-198304

DOCUMENT TYPE : AM DECLN

FILE 280997

TITLE GUARANTY OF HAWAII, INCORPORATED

HEREBY CERTIFIES THAT THIS IS A TRUE COPY

OF THE ORIGINAL DOCUMENT RECORDED

REGULAR SYSTEM DOCUMENT NO. **99-175014**

ON **NOVEMBER 02, 1999** AT **8:01 A.M.**

BY:

Jayne K. Horiochi