

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

THIS DECLARATION, made this date: _____ 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.

**Lot I-A, "Kahakuloa Agricultural Park Subd." Por. L.P. Grant 4982 to J.W.L. Marshall
Kahakuloa, Maui, Hawaii**

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- 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.
- 1.3 "Bylaws": The Bylaws of the Association, as the same may be from time to time duly amended.
- 1.4 "Articles": The Articles of Incorporation of the Association, as the same may be from time to time duly amended.
- 1.5 "Common Areas": The Common Areas described in paragraph 3. 1, below.
- 1.6 "Declarant": Kahakuloa Maui Associates LLC, a Hawaii limited liability company ("KMA"), and its successors and assigns, and such other persons to whom KMA, or its successors or assigns, may assign its rights as Declarant. (For purposes of this definition of "Declarant", KMA's "successors and assigns" shall not include any person to whom KMA conveys or leases a Lot, unless the rights of "Declarant" have been expressly assigned to such person.)
- 1.7 "Designated Areas": The Designated Areas described in paragraph 3.2, below.
- 1.8 "HRS": Hawaii Revised Statutes, as amended from time to time.
- 1.9 "Improvements and Facilities": The Improvements and Facilities described in paragraph 3.3, below.
- 1.10 "Lot": Each agricultural lot in the Subdivision.
- 1.11 "Lot in the Subdivision": Each lot in the Subdivision, including all agricultural lots ("Lots"), roadway lots, utility lots and all other lots.
- 1.12 "Owner": The record owner of fee simple title to each Lot.
- 1.13 "Paramount Liens": The Paramount Liens described in paragraph 8.10, below.
- 1.14 "Person": Any person, individual or entity (including, without limitation, any trustee, mortgagee, personal representative, corporation (profit or nonprofit), partnership (general or limited), association, joint venture or trust).

- 1.15 "Plot Plan": The individual plot plan given to the initial purchaser of each Lot. Each Lot has its own Plot Plan.
- 1.16 "Structure": any and all buildings, fences, walls and improvements of every description, whether above, on or below ground, including, but not limited to, storage sheds, barbecues, walls, walkways, and slabs.
- 1.17 "Subdivision": The Subdivision of Lot I -A of the Kahakuloa Agricultural Park Subdivision, and referred to herein as MALUHIA COUNTRY RANCHES Subdivision.
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 event 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 than (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;