

- (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.

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- 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.

DECLARANT:

KAHAKULOA MAUI ASSOCIATES, LLC

By: _____
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.

Notary Public, State of Hawaii
My Commission expires: _____