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STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 14, 2003 08:01 AM

Doc No(s) 2003-048551

/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return by Mail (X) Pickup () To:

PILIWALE PARTNERS LLC
187 HAULANI STREET
PUKALANI, HI 96768TG: A325326 PTGE: A2-262-0472

GEORGIANNA DAVIS

Tax Map Key Nos. (2) 3-9-035:001, (2) 3-9-035:002

Number of Pages: 32**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR HONU ALAHELE**

THIS DECLARATION is made this 10th day of March, 2003, by Piliwale Partners LLC, a Hawaii limited liability company, whose principal place of business is 187 Haulani Street, Pukalani HI 96768, hereinafter referred to as the "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the fee simple owner of certain real property located at Kihei, Island and County of Maui, State of Hawaii, which is more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Declarant desires to have said property developed, maintained and preserved as a residential subdivision; and

WHEREAS, Declarant intends to organize a Hawaii non-profit corporation to maintain and improve the "Common Area" (as hereinafter defined) of said subdivision for the use and benefit of the owners and occupants of said lots, and others entitled thereto; to repair, maintain and replace improvements in the Common Area; to perform and provide for services necessary and required for the benefit of said subdivision, the owners and occupants of the lots thereof and others; and to supervise and enforce the compliance by the owners and occupants of said lots with all applicable provisions, covenants, conditions and restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the real property now or hereafter included in "Honu Alahele" (as hereinafter defined) shall, at all times, be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained, all of which are established and declared for the mutual benefit of the owners thereof. The covenants, conditions and restrictions set forth in this

Declaration shall run with said real property and shall be binding upon all persons acquiring any right, title or interest in and to said real property, and shall inure to the benefit of the Declarant, the "Association" (as hereinafter defined) and each person who becomes an owner of any part of Honu Alahele, and each successor in interest of such owner.

ARTICLE 1 DEFINITIONS

The following words when used in this Declaration, unless the context otherwise specifies or requires, shall have the following meanings:

1.1 **Architect.** "Architect" means a Person licensed to practice architecture in the State of Hawaii or a Person licensed in practice civil or structural engineering in the State of Hawaii.

1.2 **Articles of Incorporation.** "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Association granted or to be granted pursuant to Chapter 415B of the Hawaii Revised Statutes, as amended.

1.3 **Association.** "Association" means the Honu Alahele Homeowners Association, a non-profit Hawaii corporation, and its successors and assigns.

1.4 **Association Property.** "Association Property" means all real and personal property owned by or leased to the Association, including, but not limited to, the Common Area.

1.5 **Board.** "Board" means the Board of Directors of the Association.

1.6 **By-Laws.** "By-Laws" means the By-Laws of the Association.

1.7 **Common Area.** "Common Area" means 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 limitations, estates in fee, estates for a term of years, easements, leases, licenses and permits.

1.8 **Declarant.** "Declarant" means Piliwale Partners LLC, its successors and assigns, including such other Person or Persons whom said Piliwale Partners LLC may, by a Recorded Document, designate as having the powers and functions of Declarant, or some of such powers and functions.

1.9 **Declaration.** "Declaration" means this Declaration of Protective Covenants, Conditions and Restrictions, as the same may from time to time be amended.

1.10 **Design Rules.** "Design Rules" means the Honu Alahele Design Rules referred to in Article 14 hereof, which establish certain standards and procedures for the

approval and construction of Improvements within Honu Alahele, as the same may be amended from time to time.

1.11 **Improvements and Facilities.** "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 utility company), electronic entrance gates, landscape irrigation systems (including the cost of electricity and water to operate the landscape irrigation systems) and other similar systems, facilities and improvements. "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 an appearance consistent with that of first-class development.

1.12 **Invitee.** "Invitee" means any employee, tenant, or guest of an Owner, including transient guest, and any Person who is not an Owner and who has acquired any title or interest less than the fee simple title to a Lot by, through or under an Owner, including a lessee, licensee or mortgagee and any employee, tenant or guest of any such Person.

1.13 **Honu Alahele.** "Honu Alahele" means the Real Property and all buildings and other Improvements now or hereafter located on the Real Property, and the Common Area.

1.14 **Lot.** "Lot" means a portion of the Real Property which is a lot as shown on a Recorded Subdivision map, other than roadways.

1.15 **Member.** "Member" means any Person who is a member of the Association pursuant to Article III hereof.

1.16 **Notice of Nonconformance.** "Notice of Nonconformance" means a written notice by the Honu Alahele Design Committee which may be Recorded against an Owner's Lot which discloses that Improvements on an Owner's Lot have not been approved, that approval has been revoked, that such Improvements have not been completed in accordance with approved plans and specifications and other materials, that such Improvements have not be completed within the appropriate time period, or that such Improvements have not been maintained pursuant to this Declaration or the Design Rules.

1.17 **Owner.** "Owner" means any Person (including Declarant) who is, or any persons who are, jointly or in common, the Record owner of the fee simple title to any Lot. An Owner may assign all or a portion of his rights and privileges hereunder and delegate all or a portion of his duties and obligations hereunder as provided in Section 2.4 below. The By-Laws shall provide for the determination of who is the Owner of any Lot.

1.18 **Person.** "Person" means a natural individual, corporation, partnership or any other legal entity.

1.19 **Real Property.** "Real Property" means all of the land described in Exhibit "A" attached hereto, together with all buildings and other Improvements now or hereafter located thereon and all rights and interests appurtenant thereto.

1.20 **Record.** "Record", "Recorded" and "Recordation" means with respect to any Document, the recordation or filing of such document in the Bureau of Conveyances of the State of Hawaii.

1.21 **Single Family Residence.** "Single Family Residence" means a residential dwelling or dwelling complex designed to accommodate no more than one Family and no more than three (3) temporary guests.

1.22 **Subdivision.** "Subdivision" means a parcel of real property divided or separated into lots as shown on the subdivision map approved pursuant to the subdivision ordinances of the County of Maui, described in Exhibit "B", attached hereto.

1.23 **Subdivision Improvements.** "Subdivision Improvements" means all water lines and facilities, sewer lines and facilities, drainage culverts and other drainage facilities, roadways, utility lines and facilities, including electric, telephone and communications lines and facilities, irrigation lines and facilities, and other infrastructure improvements serving or for the benefit of Honu Alahele.

1.24 **Visible from Neighboring Property.** "Visible from Neighboring Property" means, with respect to any given object or activity, that such object or activity is or could be in a line of sight originating from any point six (6) feet above any ground level existing on any adjoining property, including roads.

ARTICLE 2

2.1 **Goals.** This Declaration, together with any and all rules and regulations promulgated pursuant hereto, is intended to accomplish the goals of enhancing, protecting and preserving the desirability, attractiveness, aesthetics and environment of Honu Alahele, by establishing criteria for the ordered growth, development, improvement and use of Honu Alahele, including, but not limited to, the following:

Architectural Style: to establish a harmonious character for buildings by allowing subtle individuality without discordant diversity of architectural style.

Drainage: to provide protection for land (soil) and Improvements both on-site and off-site.

Landscaping: to establish a harmonious character for plants, trees, hedges, grass and other foliage that will be compatible with the character and architectural styles of the Single Family Residences in the Project.

2.2 **Compliance with Design Standards.** No change in the existing state of a Lot such as by earth movement, grading, filling and planting, and no new Improvement may be constructed, nor may any alterations be made to any existing Improvement, except in compliance with the applicable Design Standards stated in Article 14 herein. No use of any Lot or portion of any Lot shall be permitted which is inconsistent with the provisions of this Declaration in said Article 14 herein.

2.3 **Construction of Subdivision Improvements.** Notwithstanding any provisions to the contrary contained in Section 2.2 hereof, or elsewhere in this Declaration, any work performed in Honu Alahele by Declarant, its representatives, agents, employees, or contractors in connection with the construction, repair, maintenance, operation or improvement of Subdivision Improvements required by the County of Maui pursuant to the grant of Subdivision approval for any Lots within Honu Alahele, or in connection with the construction, repair, maintenance, operation or improvement of any other roadways, irrigation systems, electrical, telephone, communication, water, sewer or other Improvements, shall be permitted without reference to the Design Standards stated in Article 14 hereof, and Declarant, its representatives, agents, employees or contractors may proceed with work on any such Improvements without complying with said provisions of Article 14.

2.4 **Assignment of Rights or Obligations.** An Owner may assign all or a portion of his rights and privileges under this Declaration or delegate all or a portion of his duties and obligations under this Declaration to another Person and may enter into any arrangement with such other Person under which such Person shall agree to assume some or all of such Owner's obligations under this Declaration. The Association shall recognize any such assignment or delegation of rights or arrangement for assumption of obligations, provided that, to be effective with respect to the Association, Declarant or any other Owner, such assignment or delegation of rights or arrangement for assumption of obligations shall be in writing and shall contain terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with the Association. Notwithstanding the foregoing, no Owner shall be permitted to relieve himself of the ultimate responsibility for fulfillment of all obligations under this Declaration of an Owner arising during the period he is an Owner. No Person shall exercise the rights and privileges of membership in the Association until satisfactory proof has been furnished to the Secretary of the Association that he is an Owner of a Lot or that the Owner of such Lot has assigned such rights and privileges to him as provided above.

ARTICLE 3 THE ASSOCIATION

3.1 **General Purpose and Powers.** The Association has been or will be incorporated to be and constitute the Association to which reference is made in this Declaration. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Articles or By-Laws.

3.2 **Membership; Voting Rights.** The Association shall have two (2) classes of membership, Class A and Class B.

3.2.1 **Class A.** Class A Members shall be all Owners (including the Declarant) other than the Class B Member, if any. Class A Members shall have one vote for each Lot of which they are Owners. Voting by proxy shall be permitted. In the event of multiple Owners of the same Lot, all such multiple Owners shall be Members, and the vote(s) for such Lot shall be exercised as such multiple Owners may themselves determine, but in no event shall more than one vote be cast with respect to such Lot, nor shall fractionalized voting be allowed. Such multiple Owners shall, prior to each meeting of Owners, provide the Board with a written statement, signed by each such multiple Owner, designating one Person who shall have the right to cast the vote assigned to the Lot owned by such multiple Owners, and in the event that such multiple Owners shall fail to designate such Person to cast the vote assigned to such Lot, no Person shall be entitled to cast the vote assigned to such Lot. Subject to the Owners' rights to assign or delegate all or a portion of their rights as Members, the right to vote pursuant to this Section 3.2.1 may not be severed or separated from any Lot, and any sale, transfer or conveyance of fee interest in any Lot to a new Owner or Owners shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto.

3.2.2 **Class B.** Declarant shall be the sole Class B Member. The rights of the Class B Member are specified more fully in the By-Laws. Subject to the provisions contained in the By-Laws, the Class B membership shall terminate and become converted to Class A membership upon the earlier of:

(a) one (1) year after expiration of the Class B Control Period (as defined in the By-Laws); or

(b) when, in its discretion, the Declarant so determines and declares such termination in a Recorded instrument.

3.2.3 **Corporate or Partnership Members.** For purpose of voting for directors, officers, 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.

3.2.4 **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.

3.2.5 **No Avoidance of Obligations.** No Owner may avoid 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.

3.2.6 **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 Owners Lot.

3.2.7 **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.

3.2.8 **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, the (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 five (5) days before the effective date of the suspension.

3.3 **Articles and By-Laws.** The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and By-Laws of the Association, including any reasonable provisions with respect to corporate matters, but in the event that any such provisions may be, at any time, inconsistent with any provision of this Declaration, the provisions of this Declaration shall govern.

3.4 **Notice of Association.** Each Owner shall within ten (10) days of any sale, transfer or conveyance of the fee simple title to the Owner's Lot notify the Association of such sale, transfer or conveyance.

ARTICLE 4 CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 **Association Rights in Lots.** The Association shall have the right to enter upon any Lot for the purpose of enforcing this Declaration.

4.2 **Maintenance of Association Property.** The Association shall be obligated to provide for the care, operation, management, maintenance, repair and replacement of Association Property. Without limiting the generality of the foregoing, said obligations shall include keeping Association Property in good, clean, attractive and sanitary condition, order and repair; maintaining all landscaping, signs and walls on Association Property; obtaining and maintaining insurance as required hereunder; and repairing damage to Association Property caused by the elements. Notwithstanding the foregoing, the Association shall not alter, add to, remove or replace any landscaping, sign or wall installed or constructed by Declarant on any Association Property.

4.3 **Common Areas.** 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. 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 or any owner 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, and irrigation systems) and do all things as are reasonable 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 levels and standards of maintenance and appearance which are 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 recognizes the possibility 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 roadway. 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.

4.4 **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 which are located within easements across, over or upon lots within the Subdivision and which run in favor of the Association.

If an Owner of a Lot has placed any driveway or other improvement within or over any Common Area, any and all expenses of repair, removal, or replacement of such improvement shall be at the sole cost of and be the sole responsibility of the Owner and not the Association.

4.5 **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 and Improvements and Facilities (without payment to the Association) whenever required by Declarant; provided, however, that such easements, licenses, fight-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, 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 shall 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.

4.6 **Insurance.** To the extent obtainable at a reasonable cost, the Association shall maintain the following insurance upon all Common 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 that \$1,000,000 for injury or death to one or more persons in any 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.

4.7 **Rules and Regulations.** The Board of Directors shall have the right to adopt, amend, modify or revoke, by vote of a majority of the 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 and Improvements and Facilities, including without limitations suitable regulations for and restrictions on the use of Common 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, and Improvements and Facilities, or Declarant's rights, privileges, powers and interests with regard to the Common 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, 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.

4.8 **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.

ARTICLE 5 POWERS

5.1 **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 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:

5.2 **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.

5.3 **Powers of Administration and Management.** In fulfilling any of its duties under this Declaration, including its duties for administering and managing the Association for the maintenance, repair, operation or administration of the Common 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 benefits 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.

5.4 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, or Improvements and Facilities.

5.5 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, and/or Improvements and Facilities.

5.6 Maintenance Fund. The Association shall create a reserve fund or funds for the purpose of maintaining the Improvements and Facilities of the Subdivision. All decisions regarding the fund(s) will be made by the Board of Directors. The amounts collected for the fund(s) shall be in addition to any other fees collected in furtherance of the obligations of the Association and shall be payable monthly into the fund(s). All amounts 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 provisions as may be necessary 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 uses and balances of the funds held within the fund.

ARTICLE 6

LIABILITY

6.1 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.

ARTICLE 7
ASSOCIATION MEMBERSHIP

7.1 **Members of Association.** Membership in the Association shall be mandatory for all owners of Lots. Membership 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 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.

ARTICLE 8
LIMITATION AND RESERVATIONS

8.1 **Limitation and Reservation.** 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.

8.2 **Easements, Licenses, Etc.** To designate and grant to any person, and/or reserve unto Declarant, easements, licenses, permits and right-of-way or 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, 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 and 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.

8.3 **Entry and Use.** To enter on and use any Common 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, 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.

8.4 **Assignment of Rights.** To assign and transfer, in whole or in part, any of its rights, privileges, powers, reservations, interests and obligations hereunder to another party, including without limitation, to any successor designated by Declarant or the Association.

8.5 **Approval of Amendments.** To approve or disapprove any proposed amendment to this Declaration.

8.6 **Approval of Changes to Common Areas, Etc.** To approve or disapprove any change in use of the Common 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 Area, and the Improvements and Facilities.

8.7 **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 and Improvements and Facilities and other real personal property and interests (including, without limitation, lease, easements, rights-of-way and licenses).

ARTICLE 9 ASSESSMENTS

9.1 **Responsibility.** Every initial and subsequent Owner of a Lot, by acceptance of fee simple title to such Lot, regardless whether it shall be expressed in a 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 pursuant to 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, and Improvements and Facilities and for the operation, management and maintenance of the Water System, and any other expenses not already included in this Declaration if decided to be in the best interest of the Association by a vote or not less than fifty-one percent (51%) of the Association Membership.

Certain assessments for the Association's expenses may be required from time to time to bring the Subdivision in compliance with County standards. 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.

9.2 **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.

The budget so prepared shall include the general expenses of the Association, including but not limited to the costs of insurance, maintenance and landscaping, management services, and electric and telephone utilities. All Owners of Lots shall be assessed for their proportionate share of the general expenses of the Association.

Assessments for expenses based on the 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 benefitting from the services performed by the Association). The initial assessments shall commence as of a date determined by the Declarant or 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 commencement of the fiscal year (or other period of time) for which such budget applies, or as soon as practicable thereafter; provided, however, that no copy of the initial budget need be distributed by the Board to the Owners until such budget has been adopted by the Board. If for any reason the Board should fail to adopt a budget for the upcoming fiscal year, then the assessments to be paid by the Owners pursuant to the budget then in effect automatically shall continue on the basis of the last budget in effect; provided, however, that the Board shall have the right to levy supplemental assessments as provided below. Each Owner shall pay the assessments to the Association, in advance, in annual, quarter-annual, bi-monthly or monthly installments, as the Board may direct.

9.3 Supplemental Assessments. In the event that the general assessments payable under Section 9.2 above prove inadequate for any reason, including nonpayment of any Owner's share thereof or unanticipated damage to any Common Areas, or Improvements and Facilities (such as by Acts of God or by Owners or non-owners), the Board by vote of a majority of Directors, or the membership by vote of a majority thereof may prepare or cause to be prepared a supplemental budget and levy further assessments in the amounts of such actual or estimated inadequacy, allocating such supplemental assessments equally among the Owners of each Lot. Such assessments shall be due and payable by the Owners as provided herein within twenty (20) days after the date of levy, or thereafter on such installment basis as may be determined by the Board.

9.4 Special Assessments. In addition to the assessments authorized above, the Board may also levy a reasonable assessment against any Owner for monies expended by the Association in performing any act, function or duty directly or indirectly caused by such Owner's act, or failure or refusal to act, or failure to comply with this Declaration, the

Articles, the Bylaws or the rules and regulations of the Association. Such assessment shall be in the amount so expended plus an amount to cover the Association's overhead equal to ten percent (10%) of the amount so expended (or such other amount for overhead as may be determined by the Board), and shall be due and payable to the Association within ten (10) days after the date of levy. Monies so expended shall include, without limitation, reasonable engineers', architects', attorneys', and accountants' fees incurred by the Association.

9.5 **User Fees.** Nothing herein shall be deemed to prevent, and the Board shall be empowered to establish and collect from time to time from individual Owners, reasonable fees on a separate and individual bill, for services rendered at the request of, or on behalf of individual Owners.

9.6 **Interest and Late Charges.** All sums not paid when due from and Owner shall bear interest from the due date until paid in full at the rate of one percent (1%) per month, or at such other interest rate as may be set from time to time by the Board. In addition, each Owner shall be subject to a late payment administrative charge of five percent (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.

9.7 **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 Lien 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 (j) 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.

9.8 **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.

9.9 **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.

9.10 **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 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 payment of all such assessments and sums accruing prior to such conveyance.

b. No amendment to this subparagraph (1) shall effect 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.

ARTICLE 10 **INDEMNITY**

10.1 **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 Improvements and Facilities at their sole risk without any obligation or responsibility whatsoever of Declarant for 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 subdivision of the real Property, Declarant entered into agreements with the County of Maui and various other County and State Agencies, each of which has been recorded in the Bureau of Conveyances of the State of Hawaii. 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 expenses related thereto, as the same may apply to the Subdivision and arise after recordation of this Declaration.

ARTICLE 11 RESTRICTIONS ON IMPROVEMENTS

11.1 **Restriction on Improvements.** All work undertaken in connection with improvements on the Property shall comply with the existing laws, rules, regulations, codes and ordinances of the County of Maui and the State of Hawaii. Where requirements in this Declaration are more stringent than applicable laws, rules, regulations, codes or ordinances, the requirements in this Declaration shall govern. The following restrictions apply to any and all improvements within the subdivision:

- a. Each Lot may have two Residences, being a main house of at least 1,000 square feet in living area (excluding garage) and one ohana unit of no more than 500 square feet. Each roadside Residence shall have a covered front porch of at least 24 square feet, visible from the roadway elevation.
- b. No Quonset huts, shacks, house trailers, mobile homes, tents or other temporary buildings or improvements may be located, installed or constructed on the Property.
- c. No used building or structure may be moved onto any lot and installed thereon.
- d. No used building materials shall be used in the construction of or incorporated into any building, improvement or structure on any lot.
- e. No curb cuts or means of vehicular access to lots other than permitted driveways are allowed.

f. The construction of any building, improvement or structure upon any lot shall be substantially completed with twelve (12) months from the visible commencement of such construction.

g. Owner will be responsible for installing all utility lines (electricity, electrical transformers, telephone, cable, etc.) within each Lot. All such utility lines shall be placed underground.

h. There shall be no antennae, or clotheslines of any sort either installed or maintained which are visible from any roadways.

i. All service areas for trash receptacles, pool equipment and any other maintenance or service facilities shall either be enclosed, surrounded or concealed by landscaping so as not to be visible from any neighboring lots. All rubbish, trash, garbage or other waste on any Lot shall be kept in sanitary closed containers and disposed from such Lot within a reasonable time.

j. No wells of any nature shall be dug, bored or drilled upon any Lot.

k. No soil materials shall be imported to any Lot, other than topsoil or engineered construction base course materials. No export of site materials shall be allowed other than excess excavation materials.

l. 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.

m. Exposed cut and or fill shall not exceed eight (8) vertical feet without being terraced, except where a hardship can be demonstrated.

n. All grading and other Improvements shall be done as to maintain the natural flow of surface water without creating erosion of or increasing discharge from the Lot.

o. All exposed cut, fill and graded areas shall be landscaped, i.e., grass and ground cover plants. In all such areas, measures shall be taken to mitigate the establishment of noxious weeds.

In the event of any violation of (k) through (o) 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.

p. 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 and the Subdivision. The term "professionally prepared" shall mean that such sign is prepared by a graphic designer.

q. Lighting should create a unified, natural effect. 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.

r. 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.

s. Garages must have garage doors and be set back at least twenty feet from the front boundary. The driveway shall be no less than twenty feet wide to accommodate a minimum of two parking spaces per lot. In the case of ohana units, concreted parking for the unit must be provided on the lot.

ARTICLE 12 LIMITATION ON USE OF THE PROPERTY

12.1 **Limitation of Use of the Property.** As long as the Property is located within a State Land Use district classified as "residential" and designated as an R-2 district pursuant to the comprehensive Zoning Code of the County of Maui, each lot shall conform and comply with the requirements of the Hawaii Revised Statutes pertaining to land in residential districts and the pertinent provisions of the Maui County Code. Such use of the Lots shall be further restricted and limited by the limitations, conditions, covenants and restrictions contained in this Declaration.

a. Notwithstanding the uses allowed by applicable land use and zoning designations, no pigs or roosters are permitted on any lot.

b. No noxious or offensive activity shall be permitted on any lot, nor shall anything be done or placed on any lot which may be or become a nuisance, or cause unreasonable embarrassment, odors, noise, disturbance, or annoyance to other owners or occupants of other lots. Each lot is allowed three (3) domestic animals. A decision on whether a nuisance is present will rest with the Board of Directors in its sole discretion.

c. No commercial activity shall be carried on or conducted from any Lot, except that: (1) a Lot may be leased or rented for residential purposes for a term that shall not be less than one hundred eighty (180) days; and (2) home offices and workshops are permitted, subject to County and State law.

d. There will be no parking at curbside. Any vehicles parked on the street within the subdivision shall be towed by a tow company designated by the Association, with the fees chargeable to the owner of the vehicle. Permits for parking will be issued by the Association on a case, by case basis for special events deemed appropriate by the Association. The permitted vehicles shall be allowed to park only for the time period designated on the permit.

ARTICLE 13 LOT MAINTENANCE

13.1 **Lot Maintenance.** Prior to construction of a dwelling, each lot shall be kept and maintained in a clean, neat, and orderly condition at all times or be left in its natural state. Each lot shall remain free and clear of trash, garbage, rubbish, debris and junk, to keep it from becoming unsightly, a nuisance, or a health or fire hazard. No garbage, refuse, or trash of any kind shall be thrown, placed, kept or burned in any lot other than within refuse containers or other disposal facilities provided for such purposes.

13.2 **Good Order.** Each owner shall, at its own expense, keep the dwelling and all other improvements, structures, and landscaping on its lot in good order and repair.

ARTICLE 14 ARCHITECTURAL DESIGN STANDARDS

14.1 **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. All accessory buildings and structures must be of similar design and theme to the primary dwelling and must conform to these Architectural Design Standards.

14.2 **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.

14.3 **Height of Improvements.** The maximum elevation of any Dwelling or other Improvement shall not exceed that which is allowed by the County of Maui Building Code.

14.4 **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. Flat roofs and nontraditional roofs are prohibited except where unique conditions warrant their use.

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 or 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. 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 ribs are prohibited.
- b. Finishes (except for copper) shall be factory painted. Finishes shall be low reflective, natural earthtone color.
- c. Roof sheets shall be continuous length with no overlaps.
- d. Mechanical equipment and other unsightly rooftop features shall be concealed from public views. 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 non-reflective finish.

14.11 **Patios and Courtyards.** Patios and courtyards should be designed as an integral part of the architecture of the Dwelling or other Improvement.

14.12 **Solar Application.** Solar collectors, due to excessive glare and reflection, can only be approved if integrated into the Improvements or landscaping on a Lot and 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 roofs surface but may not be mounted on an angle to the roofs surface) and if they are non-reflective.

14.13 **Fences, Gates and Walls.**

- a. Fencing fronting a paved road shall be three rail, painted white, and made of wood or PVC. Any deviation from this theme requires Declarant or Board approval.
- b. No used materials or corrugated fencing is allowed.

c. All exposed retaining walls, site walls, exposed foundation walls or other walls shall be constructed of rock, hollow tile, or be finished with plaster or plaster-like colored coating or faced with rock.

14.14 Foundations. All exterior wall materials must be continued down to within six inches (6') of finished grade. All Dwellings built above grade shall use "skirting" to within 6 inches of finished grade to conceal the underside of the Dwelling, including but not limited to: sub-floor framing, bracing and plumbing. Skirting material, if spaced, shall be spaced no greater than 1" apart.

14.15 Interpretation/Waiver. In the event of a 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.

ARTICLE 15

CONSTRUCTION REGULATIONS

15.1 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.

15.2 Occupational Safety and Health Act Compliance (OSHA). All applicable OSHA regulations and guidelines must be strictly observed at all times.

15.3 Construction Trailers. No construction trailer or field office may be used for overnight or residential purposes.

15.4 Debris and Trash Removal. Owners and builders shall clean up all trash and debris on the construction site at the end of each week. 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 roadways, open spaces, and driveways or other portions of the Subdivision.

15.5 **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.

15.6 **Vehicles and Parking Areas.** Without permission of the Declarant or the Board, construction crews will not park on or otherwise use 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.

15.7 **Excavation Materials.** Excess excavation materials must be hauled away from the Subdivision.

15.8 **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.

15.9 **Restoration or Repair of Other Property Damage.** 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.

15.10 **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 contract 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.

15.11 **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.

15.12 **Dust and Noise.** The contractor shall take appropriate precautions and abatement procedures to minimize dust and noise from the construction site.

15.13 **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 allowed.

15.14 **Daily Operation.** Daily working hours for each construction site shall be 7:00 am. to 5:00 p.m. Monday through Friday, 8:00 am. to 4:00 p.m. Saturday. All work on Sundays is prohibited except in the case of an emergency, which will require special written permission from a Board Member or Declarant.

15.15. **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 or not less than \$250,000 for damage or loss to property in any one accident or occurrence naming the Association as an additional insured. 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) day's 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.

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

ARTICLE 16
ENFORCEMENT OF THIS DECLARATION

16.1 **Enforcing Authority.** The Association (acting through the Board or the Association's Managing Agent) shall have the right (but shall not be obliged) to exercise any remedy in law or in equity for the enforcement of this Declaration.

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

ARTICLE 17
BINDING EFFECT

17.1. **Binding Effect.** All restrictions, covenants, conditions and provisions contained herein, shall constitute covenants and servitude's 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.

ARTICLE 18
AMENDMENT

18.1. **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.

ARTICLE 19
SEVERABILITY

19.1 **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.

ARTICLE 20
DURATION

20.1 **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, subjected 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.

ARTICLE 21
DEDICATION

21.1 **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 shall automatically 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.

ARTICLE 22
NOTICES

22.1 **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 address as the Association shall have previously given 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.

ARTICLE 23
JOINT AND SEVERAL LIABILITY

23.1 **Joint and Several Liability.** If an "Owner" consists of more than one person, all 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 for their failure to comply with the provisions of this Declaration.

ARTICLE 24
INTERPRETATION; NO WAIVER

24.1 **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 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.

ARTICLE 25
AUDIT

25.1 **Audit.** Any Owner may, at any reasonable time and at such Owner's 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.

ARTICLE 26
NO RIGHTS IN PROPERTY OF DECLARANT

26.1 **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 or interest in 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 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.

ARTICLE 27
PROJECT NAME

27.1 **Project Name.** Declarant reserves for itself the right to use the name "Honu Alahele" and any name which is a variation thereof

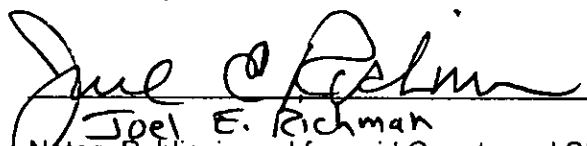
IN WITNESS WHEREOF, Declarant has executed these presents as of the day and year first above written.

Piliwale Partners, LLC, a Hawaii limited liability company,

By 
Sterling J. Kim, Manager

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On March 10, 2003, before me appeared Sterling J. Kim, to me personally known, who, being by me duly sworn, did say that he is a manager of Piliwale Partners, LLC, a Hawaii limited liability company, and that said instrument was signed in behalf of said company, and the said Sterling J. Kim acknowledged said instrument to be the free act and deed of said company.


Joel E. Richman
Notary Public, in and for said County and State

My commission expires: 6/4/06

EXHIBIT "A"

PARCEL FIRST:

All of that certain parcel of land (being all of the land(s) described in and covered by Land Patent Grant Number 11301 to August Raposa Pimentel) situate, lying and being at Waiakoa, District of Kula, Island and County of Maui, State of Hawaii, being LOT 1-A, and being a portion of Lot 1 of the Waiakoa Homesteads, Makai Section, and thus bounded and described:

Beginning at a pipe at the southwest corner of this lot, the northwest corner of Lot 1-B, Waiakoa Homesteads, Makai Section, and on the east side of Homesteads Road (40 feet wide), the coordinates of said point of beginning referred to a + on rock (Kalaepohaku) at seashore and on the boundary between the lands of Pulehunui and Waiakoa being

274.26 feet South and
709.12 feet East,

and the coordinates of said + on rock (Kalaepohaku) referred to the Government Survey Triangulation Station "Puu-o-Kali" being

17,875.5 feet North and
25,734.0 feet West,

as shown of Government Survey Registered Map 2416, and thence running by azimuths measured clockwise from true South:

1. 166° 36' 177.50 feet along the east side of
 Homestead Road to a pipe
2. Thence along the east side of Homestead Road on a curve to
 the left having a radius of 260.0
 feet, the chord azimuth and
 distance being

 152° 50' 00" 123.98 feet to a + on rock, thence
3. 269° 11' 00" 1333.27 feet along the boundary between the
 lands of Waiakoa and Pulehunui to
 old fence post on the west side of
 Homestead Road, thence
4. 350° 45' 00" 221.97 feet along the west side of
 Homestead Road to a pipe, thence
5. 86° 16' 10" 1273.74 feet along Lot 1-B, Waiakoa
 Homesteads Makai Section, to the
 point of beginning and containing
 an area of 7.51 acres, more or
 less.

PARCEL SECOND:

All of that certain parcel of land (being all of the land described in and covered by Land Patent Grant Number 11,166 to Shuichi Yamamoto) situate, lying and being at Waiakoa, in the District of Kula, Island and County of Maui, State of Hawaii, being LOT NUMBER ONE-B (1-B) of a portion of Lot Number One (1) of "WAIAKOA HOMESTEADS MAKAI SECTION", and thus bounded and described:

Beginning at a pipe at the northwest corner of this lot, the southwest corner of Lot 1-A, Waiakoa Homesteads, Makai Section, and on the east side of Homestead Road (40 feet wide), the coordinates of said point of beginning referred to a + on rock (Kalapohaku) at seashore and on the boundary between the lands of Pulehunui and Waiakoa being

274.26 feet South and
209.12 feet East,

and the coordinates of said + on rock (Kalaepohaku) referred to Government Survey Triangulation Station "Puu-o-Kali" being

17,875.5 feet North and
25,734.0 feet West,

as shown on Government Survey registered Map 2416, and thence running by azimuths measured clockwise from true South:

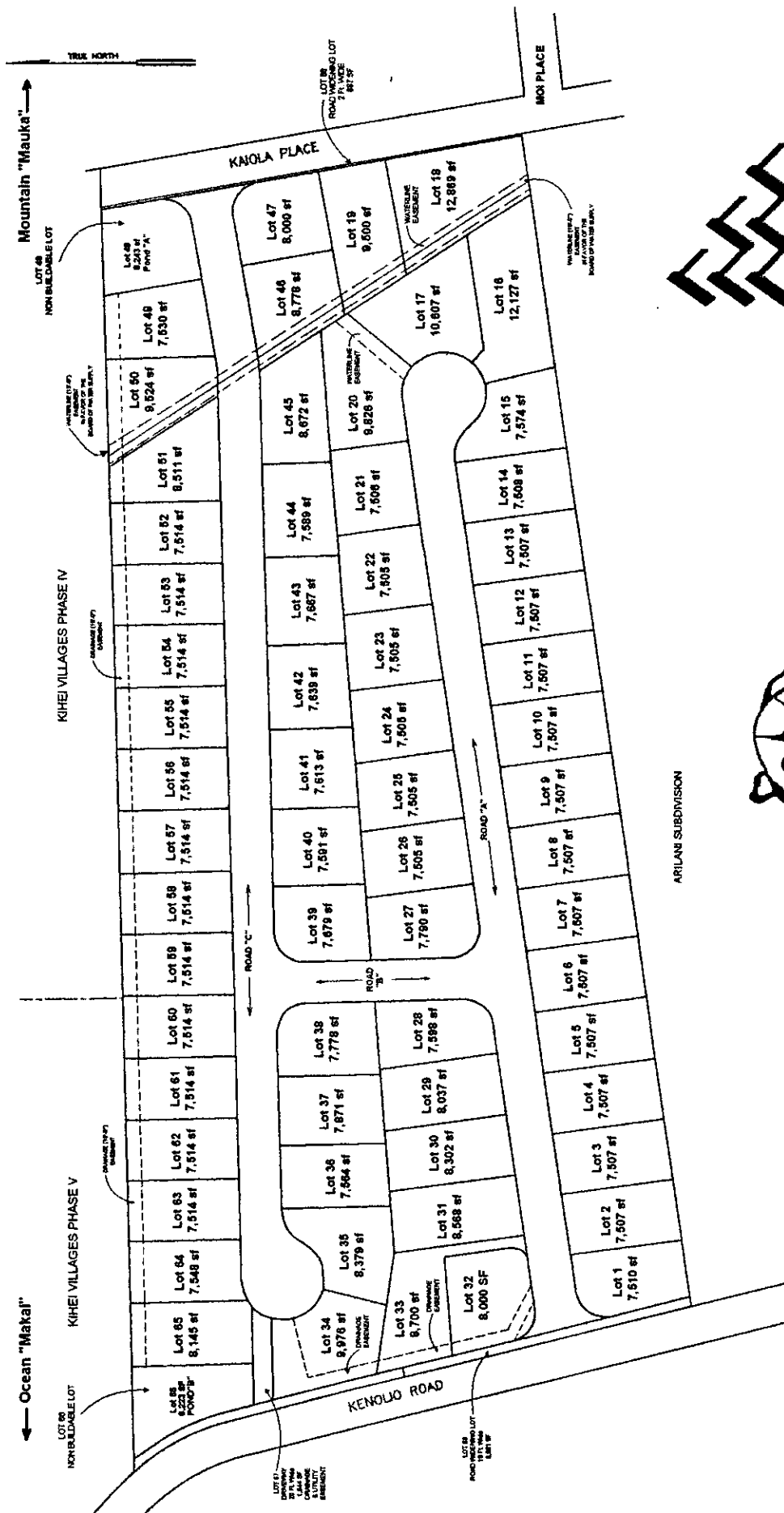
1. 266° 16' 10" 1273.74 feet along Lot 1-A, Waiakoa Homesteads, Makai Section, to a pipe at old fence on the west side of Homestead Road to a pipe, thence
2. 350° 24' 11" 221.83 feet along fence along the west side of Homestead Road to a pipe, thence
3. 82° 40' 30" 1247.95 feet along Lot 1-C, Waiakoa Homesteads, Makai Section, to a pipe on the east side of Homestead Road, thence
4. 166° 36' 00" 303.20 feet along the east side of Homestead Road to the point of beginning and containing an area of 7.55 acres, or thereabouts.

Being all the property conveyed by the WARRANTY DEED from KYUSHU & TOYO CORPORATION, a Hawaii corporation, to PILIWALE PARTNERS LLC, a Hawaii limited liability company, recorded October 2, 2002, in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-174622

SUBJECT, HOWEVER, to:

1. The RESERVATION in favor of the STATE OF HAWAII of all mineral and metallic mines.
2. CLAIMS arising out of customary or traditional rights and practices, including those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes, as amended.

END OF EXHIBIT "A"



NOTE

This site map is not to scale. The configuration, elevations and lay of the lots shown on this site map is a fair representation to assist the public in visualizing the subdivision and may not be accurately depicted.

The site map is subject to change. The developer, its agent and associate companies reserve the right to modify the site plan, lot configuration and square footage without prior notice or obligation.



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