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Honolulu, Hawaii 96813

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THE GRAND FAIRWAYS NORTH
DECLARATION OF DESIGN COVENANTS,
CONDITIONS AND RESTRICTIONS

THE GRAND FAIRWAYS NORTH
DECLARATION OF DESIGN COVENANTS,
CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF DESIGN COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of May 4, 2000, by MAUI LANI HOMES, a joint venture registered as a Hawaii general partnership ("Developer").

Developer is the owner of that certain real property located in the County of Maui, State of Hawaii, described in Exhibit "A" attached hereto. Developer desires to develop the Property (as defined in Section 1.22) as a residential subdivision, and intends by this Declaration to impose upon the Property certain covenants, conditions and restrictions relating to the design, construction and maintenance of improvements on the Property made by Owners (as defined in Section 1.19) and Occupants (as defined in Section 1.18) other than Developer.

Developer hereby declares that all the Property shall be held, sold, conveyed, encumbered, occupied, used and improved subject to the provisions of this Declaration, all provisions of which are for the purpose of protecting the value and desirability of, and shall run with, the real properties subjected to this Declaration.

Article I
Definitions

Defined terms appear throughout this Declaration with the initial letter of each such term capitalized. Unless the context clearly requires otherwise, the terms set forth in this Article I and used in this Declaration are defined and/or described as set forth below; provided, however, that this Article I may not include all the defined terms used in, or incorporated into, this Declaration.

Section 1.1 Incorporation of Definitions. Each of the defined terms contained in that certain Maui Lani Declaration of Covenants and Restrictions recorded on January 23, 1997 in the Bureau of Conveyances of the State of Hawaii as Document No. 97-010578, as amended from time to time (the "Master Declaration"), unless separately defined in this Article I or elsewhere in this Declaration, is incorporated into this Declaration by this reference. In the event any of the terms defined in the Master Declaration are otherwise defined in this Declaration, the definition contained herein shall control in the interpretation of this Declaration (but shall not affect the Master Declaration) notwithstanding any provision to the contrary, including Article III, contained in this Declaration. Any defined term preceded by the term "Master Declaration" shall refer to and describe the term defined as set out in the Master Declaration, independent of the term as defined in this Declaration.

Section 1.2 "Common Areas" means all real property, together with the Improvements or amenities thereon, and personal property in which the Master Association or a Subassociation for the Project now or hereafter holds any interest for the common use and enjoyment of all or any group of

Owners, together with those areas that the Master Association or such Subassociation is responsible for maintaining and/or operating pursuant to the Master Declaration, this Declaration or a separate agreement.

Section 1.3 "**Declaration**" means this instrument, as it may be amended from time to time.

Section 1.4 "**Design Documents**" means the Master Declaration, this Declaration and the Design Guidelines.

Section 1.5 "**Design Guidelines**" means the rules, regulations, restrictions, architectural and construction standards and design guidelines governing improvements to the Property, currently set out in The Grand Fairways North Design Guidelines adopted by Developer pursuant to Section 5.3 of this Declaration, as may be amended from time to time.

Section 1.6 "**Design Review Committee**" or "**DRC**" means The Grand Fairways North Design Review Committee established pursuant to Section 5.2.

Section 1.7 "**Developer**" means Maui Lani Homes, a joint venture registered as a Hawaii general partnership, and its successors or assigns. A Person shall be deemed a successor and/or assign of Developer for purposes of this Declaration only if specifically so designated in a duly Recorded written instrument as a successor or assign of Developer under this Declaration, and such Person shall be deemed a successor or assign of Developer only as to the particular rights or interests of Developer under this Declaration that are specifically designated in the Recorded written instrument. Any such instrument may be limited to specific rights of Developer hereunder and be subject to such conditions and limitations as Developer may impose in its sole and absolute discretion.

Section 1.8 "**Developer Control Period**" means the first to occur of the following:

(a) when one hundred percent of the Lots in the Project have been conveyed to Persons other than Developer and construction of a Dwelling Unit on each of such Lots has been substantially completed ; or

(b) thirty years after the date on which this Declaration is recorded in the Bureau of Conveyances of the State of Hawaii; or

(c) when, in its discretion, Developer so determines.

Section 1.9 "**Dwelling Unit**" means any building or structure (or portion thereof) situated upon a Lot designed and intended for use and occupancy for single-family residential purposes.

Section 1.10 "**Excavation**" means any grading of the surface of the land or any disturbance of the surface of the land, except temporary disturbances for planting approved vegetation, which

results in the removal of earth or rock or other substance to a depth of twelve inches below the natural surface of the land.

Section 1.11 **"Improvement"** means buildings, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, signs, changes in any exterior color or shape, Excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings and so forth, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement" does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior improvements. "Improvement" does include both original improvements and all later changes and improvements.

Section 1.12 **"Lot"** means any area of the Property, whether developed or undeveloped, which is designated or intended as a residential lot on the subdivision map or file plan Recorded or approved by or with the consent of Developer.

Section 1.13 **"Master Association"** means the Maui Lani Community Association, Inc., a Hawaii nonprofit corporation, and its successors for similar purposes, as described in the Master Declaration.

Section 1.14 **"Master Bylaws"** means the bylaws of the Master Association, as amended from time to time.

Section 1.15 **"Master Board of Directors"** or **"Master Board"** means the Board of Directors of the Master Association, being the body responsible for the administration of the Master Association.

Section 1.16 **"Master Declaration"** means that certain Master Declaration described at Section 1.1 of this Declaration.

Section 1.17 **"Maui Lani Community"** means that planned development created by, described in and subject to the Master Declaration, of which the Project described in this Declaration is part.

Section 1.18 **"Occupant"** means any Person, other than an Owner, in rightful possession of any portion of the Property, whether as a guest, tenant or otherwise.

Section 1.19 **"Owner"** or **"Lot Owner"** means the Record owner, whether one or more Persons, including Developer, of fee simple title of any Lot, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded agreement of sale, or is leased for a term of thirty or more years under a Recorded lease, the purchaser or lessee, respectively (rather than the fee owner) shall be considered the Owner.

Section 1.20 "**Person**" means a natural person, a corporation, a partnership, a limited liability entity, a trustee or other entity capable of holding title to real property, and such holder's respective heirs, personal representatives, successors and assigns.

Section 1.21 "**Project**" means the planned development subject to this Declaration consisting of the Property and all of the Improvements now or hereafter located thereon as described in this Declaration.

Section 1.22 "**Property**" means the real property described in Exhibit "A" attached hereto, together with all Improvements now or hereafter located on such property, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

Section 1.23 "**Record**", "**Recorded**", "**Recording**", "**Recordation**" or a like reference means an instrument of record in, or the act of recording or filing or having recorded or filed an instrument with the Bureau of Conveyances and/or the Department of Commerce and Consumer Affairs of the State of Hawaii.

Article II

Statement of Purpose and Imposition of Covenants

Developer has developed the Property by subdivision and otherwise into various Lots and the Common Areas, and intends to develop, sell and/or otherwise convey the Lots and Common Areas. Developer hereby declares that all of the real property comprising or constituting the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property, the Project and every part thereof. All of this Declaration shall run with the Property and every part thereof for all purposes and, as and to the extent provided herein, shall be binding upon and inure to the benefit of Developer and all other Persons having any right, title or interest in the Property or any part thereof, and their heirs, personal and legal representatives, successors and assigns; provided, however, that Developer reserves the unilateral right, without having to obtain the consent or joinder of any Owner, Occupant, lender or other Person, to amend this Declaration to delete from the purview of this Declaration any portion of the Property that is owned by Developer, the Master Association or any Subassociation, or to include additional real property within the purview of this Declaration.

Article III

Master Declaration

The Project is within and a part of the Maui Lani Community, and is subject to the Master Declaration and all of its provisions, as the same may be amended or supplemented from time to time. This Declaration, which constitutes a "Supplemental Declaration" under the Master Declaration, supplements the Master Declaration as to the Property covered hereby, and, except as permitted under

the Master Declaration, in the event of a direct conflict between the provisions of this Declaration or the Design Guidelines and the Master Declaration, the more stringent provision shall control; provided, however, that enforcement of such provision does not result in a violation of the Master Declaration.

Article IV **Subassociation**

If deemed necessary by Developer, in its sole discretion, to carry out the purposes of this Declaration, Developer shall have the unilateral right, without having to obtain the consent or joinder of any Owner or other Person having an interest in the Property, to form a "Subassociation" of the Master Association. Such Subassociation shall be comprised of all Owners and shall be subject to such rules and procedures as Developer shall deem appropriate.

Article V **Architectural and Landscape Control; Design Guidelines**

Section 5.1 Architectural and Landscape Control. Subject to such exceptions as may be set forth in the Design Documents, no Lot Owner shall construct, reconstruct, refinish, alter, modify, maintain or add to any Improvement on the Owner's Lot, or install any utility line (wire or conduit) thereon, or make any Excavation, or cut or remove any trees from such Lot, or do any act that would affect the drainage thereof (such actions collectively referred to as "construction"), until the Lot Owner first obtains the approval thereof from the Design Review Committee and otherwise complies with the Design Documents. Unless a written exemption therefor is received from the DRC, all proposals and plans for construction shall be prepared by an architect registered and licensed in the State of Hawaii and then submitted to the DRC for written approval as set forth in the Design Documents. The Owner or other party seeking architectural approval from the DRC shall bear all costs, including reasonable architects, engineers, attorneys and overhead charges, incurred in connection with reviewing and approving plans and specifications.

Section 5.2 Design Review Committee.

5.2.1 The Design Review Committee, which shall consist of no fewer than two but no more than five members, shall have jurisdiction over all construction on any portion of the Property.

5.2.2 Developer initially shall appoint all members of the DRC and, during the Developer Control Period, shall retain the right to appoint, augment or replace all members of the DRC. There shall be no surrender of this right during the Developer Control Period, except in a written instrument in Recordable form executed by Developer.

5.2.3 Prior to the end of the Developer Control Period, Developer shall make a final determination of the number of members to comprise the DRC, provided that, if Developer fails to

make such a determination, the number of DRC members shall be fixed at the number serving when the Developer Control Period terminates.

5.2.4 Developer shall have the right, at its sole discretion and at any time during the Developer Control Period, to relinquish control of the DRC to the Master Board by Recording a document to that effect containing the consent of the Master Board. Further, at the termination of the Developer Control Period, Developer shall, if it had not done so already, relinquish control of the DRC to the Master Board by Recording a document to that effect containing the consent of the Master Board. Upon Recording of a document transferring control of the DRC to the Master Board, the Master Board shall appoint the members of the DRC, who shall serve as a committee of the Master Board pursuant to Section 5.1 of the Master Declaration.

5.2.5 In the event the Master Board refuses to accept control of the DRC, Developer shall have the unilateral right to form a Subassociation (as referenced in Article 4 above), which shall have the right and duty to, among other things, appoint and/or elect the members of the DRC according to such procedures and upon such terms as Developer shall implement.

5.2.6 Except with respect to members of the DRC appointed during the Developer Control Period, all members of the DRC shall be Owners and no Lot shall be represented by more than one DRC member at the same time.

Section 5.3 **Design Guidelines.**

5.3.1. Developer shall establish and, on behalf of the DRC, shall promulgate the Design Guidelines, which shall contain design and development guidelines and application and review procedures for the Project. During the Developer Control Period, Developer shall have sole and full authority to modify and amend the Design Guidelines from time to time without the consent or approval of any Owner or other Person, and shall likewise have sole and full authority to prepare and amend the application and review procedures. After the Developer Control Period, the DRC shall have sole and full authority to modify and amend the Design Guidelines from time to time without the consent or approval of any Owner or other Person. The DRC shall make the Design Documents available to Owners, builders, and developers who seek to engage in construction upon any portion of the Property, and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

5.3.2 The Design Guidelines may, but need not necessarily, include the following restrictions and limitations:

- (a) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required pursuant to the Design Documents;
- (b) Designation (which may be by reference to an independent map or plot plan) of "Lot Building Coverage" or a "Building Envelope" or "Buildable Area" (or similar terms) within

individual Lots, thereby establishing the maximum developable area of the Lot and "view corridors" relative to neighboring Lots;

(c) Restrictions on use of or construction or landscaping within certain land areas within those Lots bordering The Dunes at Maui Lani Golf Course;

(d) Procedures for supplementary review by Developer or the DRC of an Owner's plans and specifications, as and to the extent deemed necessary or appropriate by Developer and the DRC for compliance with the Design Documents;

(e) Procedures for assuring conformity of completed Improvements to drawings and specifications approved by the DRC; and

(f) Such other limitations and restrictions as Developer or the DRC, as appropriate, in their reasonable discretion shall adopt, including, without limitation, the regulation of all landscaping (including the absolute prohibition of certain types of land use, lighting, signage, landscaping, grasses, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such Improvement.

5.3.3 The Design Guidelines shall supplement the Master Declaration as to the Property, and except as permitted under the Master Declaration, shall not be inconsistent with the Master Declaration; provided, however, that the Design Guidelines may be more stringent or restrictive than the Master Declaration. Each Owner acknowledges that the Design Documents applicable to the Project include the Master Declaration, this Declaration and the Design Guidelines.

Section 5.4 **Fee Assessment.** Developer and the DRC (acting through Developer, the Master Board or the Subassociation, as appropriate) may assess reasonable fees to Owners in connection with their roles in assuring compliance with the Design Documents. Pursuant to and in accordance with the Master Declaration, the Master Board may assess Special Assessments in connection with its role, if any, in assuring compliance with the Design Documents. A Subassociation for the Project may also be given the right to make special assessments in connection with its role, if any, in assuring compliance with the Design Documents.

Section 5.5 **Enforcement.**

5.5.1 Developer and the DRC (acting through Developer, the Master Board or the Subassociation, as appropriate) shall have the authority and standing, but not the obligation, to pursue all legal and equitable remedies available to enforce this Declaration and the Design Guidelines in courts of competent jurisdiction. Further, Developer and the DRC (acting through Developer, the Master Board or the Subassociation, as appropriate) may impose reasonable fines up to \$10,000 for failure to obtain any required approval from the DRC and may require security deposits to assure compliance.

5.5.2 Any Owner may seek to enforce this Declaration and the Design Guidelines, provided that such Owner shall first attempt to enforce this Declaration and the Design Guidelines by submitting to the DRC a written request for enforcement of this Declaration and the Design Guidelines and identifying the owner of the nonconforming property, the nature of the violation, and the date when such violation occurred. The DRC shall decide whether to investigate the alleged violation and whether to intercede on behalf of the complaining Owner and forward a written request to the alleged violating Owner. If the DRC, in its discretion, decides not to intercede on behalf of the complaining Owner, said complaining Owner shall have the right to pursue all legal and equitable remedies available to enforce this Declaration and the Design Guidelines against the alleged violating Owner.

5.5.3 Regardless of whether a request from an Owner is received, if Developer or the DRC determines a violation has occurred and decides to enforce this Declaration and the Design Guidelines, the violating Owner shall, at such Owner's own cost and expense, upon written request from Developer or the DRC: (i) remove such construction, alteration, or other work and either restore the land and/or improvement to substantially the same condition as existed prior to the construction, alteration, or other work; or (ii) perform such remedial construction, alteration or other work necessary to cause the land and/or improvement to conform with this Declaration and the Design Guidelines. Should an Owner fail to remove and restore or perform such remedial work as required hereunder, Developer, the DRC or their respective designee shall have the right, but not the obligation, to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, together with the interest thereon at the maximum rate then allowed by law, may be assessed against the Lot and collected as a Special Assessment pursuant to Article XI, Section 4(b) of the Master Declaration.

Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration and the Design Guidelines may be excluded by Developer or the DRC (acting through Developer, the Master Board or the Subassociation, as appropriate) from the Property, subject to the notice and hearing procedures contained in the Master Bylaws or the bylaws of the Subassociation, as appropriate. In such event, neither the Developer, the DRC (acting through Developer, the Master Board or the Subassociation, as appropriate), the Master Association, the Subassociation, if any, nor their employees, agents, members, officers or directors shall be held liable to any Person for exercising the rights granted by this section.

Section 5.6 Delegation of Review Responsibilities. The Design Review Committee may delegate all or any portion of its drawings and specifications review responsibilities to one or more of its members or architectural consultants retained by the DRC. The Design Review Committee may further avail itself of technical and professional advice and consultants (architectural, design, landscaping, etc.) as it deems appropriate, the cost of which shall be borne by the Lot Owner seeking review of plans.

Section 5.7 Non-liability for Approval of Drawings and Specifications. By its part, if any, in assisting with the approval of the plans and specifications for a Lot, neither the DRC, Developer, the Master Board, the Subassociation, if any, nor any officer, director or member thereof assumes or

shall have any liability or responsibility therefor, or for assuring compliance with the Design Documents, or for any defect in any structure constructed from such plans and specifications. Neither the DRC, Developer, the Master Board, the Subassociation, if any, nor any officer, director or member thereof shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the inaccuracy of items shown or referenced on any map or plot plan, (b) the approval or disapproval of any plans and specifications, whether or not defective, (c) the grant or denial of any requests for variances to the Design Documents, (d) the construction or performance of any work, whether or not pursuant to approved plans and specifications, (e) the development, or manner of development, of any property within the Property, (f) any change in the size, configuration or location of any Improvement or the changing of the natural grade of any Lot, or (g) the execution and Recording of an estoppel certificate by Developer or the DRC or otherwise pursuant to the Design Documents, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed by the decision maker, was taken in good faith. Approval of plans and specifications by Developer or the DRC, or the approval of any change in the size, configuration or location of any Improvement, or a change in the natural grade of any Lot is not, and shall not be deemed to be, a representation or warranty by Developer, the DRC, the Master Board, the Subassociation, if any, or any officer, director or member thereof that said plans, specifications or changes comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes. Approval of plans and specifications by the DRC shall not be deemed a representation by Developer, the DRC, the Master Board or the Subassociation that such plans and specifications comply with this Declaration or the Design Documents, nor be deemed a waiver by Developer, the DRC, the Master Board or the Subassociation of any rights hereunder to enforce this Declaration and the Design Documents.

Section 5.8 Inspection and Recording of Approval. Any member or authorized consultant of Developer or the DRC may, at any reasonable time and in good faith, enter, without being deemed guilty of trespass, upon any Lot, except the interior of any completed Dwelling Unit, after reasonable notice to the Owner, in order to inspect Improvements constructed or being constructed on such Lot, or any changes in the grade thereof, to ascertain that such Improvements or changes have been or are being built or changed in compliance with the Design Documents.

Section 5.9 No Waiver of Future Approvals. The approval by Developer or the DRC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of Developer or the DRC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 5.10 Right of Removal. Any construction, alteration, or other work done in violation of the Design Documents shall be deemed to be nonconforming. Upon written request from Developer or the DRC, Owners shall, at their own cost and expense, remove such nonconforming construction, alteration, or other work and shall restore the Lot to substantially the same condition as existed prior to the nonconforming construction, alteration, or other work. Should an Owner fail to remove and restore as required in this Section 5.10, Developer, the DRC or their designees shall have

the right, but not the obligation, to enter the Lot, remove the violation and restore the property to substantially the same condition as existed prior to the nonconforming construction, alteration or other work. The Owner shall be liable for all costs thereof together with interest thereon at the maximum rate then allowed by law, and, to secure the payment of such costs, the Master Board, if authorized by Developer, the DRC or the Subassociation, if any, shall have the right to levy and enforce a lien on the Lot in the same manner as set forth in the Master Declaration. A Subassociation for the Project may also be given the right to levy and enforce liens.

Section 5.11 Development by Developer. Any provision of this Declaration or the Design Guidelines to the contrary notwithstanding, the provisions of this Declaration shall not apply to any Improvements, or other use of any portion of the Property, including the Lots, proposed or made by Developer in connection with its development, construction, promotion, marketing, sale or leasing of any Lot, Common Areas, or any other portion of the Property.

Section 5.12 Estoppel Certificate. Upon request by any Owner, and upon payment therewith to the DRC of the reasonable fee from time to time to be affixed by the DRC, the DRC shall deliver to such Owner an estoppel certificate executed by any two of its members in a form suitable for recording in the Bureau of Conveyances of the State of Hawaii, certifying with respect to any Lot of said Owner that, as of the date thereof, either (a) all Improvements and other work made or done upon or within said Lot comply with the Design Documents, or (b) such Improvements and/or work do not so comply, in which event the certificate shall also (i) identify the non-complying Improvements and/or work, and (ii) set forth with particularity the cause or causes for such noncompliance. Any purchaser or lessee from the Owner or mortgagee or other encumbrancer of the property shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the DRC, Developer and all Owners and such purchaser, lessee, mortgagee or other encumbrancer.

Article VI **Amendment**

Section 6.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided in this Declaration, amendments may be adopted upon the vote or written assent, or any combination thereof, of Owners representing at least seventy-five percent (75%) of the Lots. In all events, the amendment when adopted shall bear the signature of at least two members of the DRC and shall be attested by the secretary or an assistant secretary of either the Master Association, if the DRC is controlled by the Master Board, or the Subassociation, if the DRC is controlled by a Subassociation, who shall state whether the amendment was properly adopted. Amendments once properly adopted shall be effective upon Recording of the Amendment to Declaration, or at such later date as may be specified in the amendment.

Section 6.2 Required Approvals. Notwithstanding the foregoing provisions of this Article VI:

(a) During the Developer Control Period, this Declaration may not be amended by the Owners pursuant to Section 6.1 without the written consent of Developer, which consent may be withheld for any reason in the sole and absolute discretion of Developer, and the following provisions of this Declaration may not be amended at any time (including after the Developer Control Period) without the written consent of Developer: Sections 5.11; 6.1; and Article VII; nor may this Declaration be amended at any time without the written consent of Developer to remove, revoke or modify any right or privilege of Developer under this Declaration.

(b) During the Developer Control Period, Developer reserves the right to unilaterally amend this Declaration without the approval of the DRC, the Master Board, the Subassociation, if any, or the Owners; provided, however, that after the conveyance of the first Lot to an Owner other than Developer, any such amendment shall have no material adverse effect upon the rights or obligations of any Owner other than Developer, other than as expressly permitted in this Declaration; thereafter and otherwise, this Declaration may be amended only in the manner provided in Section 6.1.

(c) This Declaration may not be amended in any manner which affects the obligations of the Owners relative to the Master Declaration, without the prior written consent of the appropriate entity thereunder.

Section 6.3 Requested Amendment; Legislative Change. Subject to the limitation on Developer's right to amend this Declaration in Section 6.2(b), but without limiting Developer's reserved right to amend this Declaration as provided in Section 6.2(b), Developer specifically reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"), and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any chartered lending institution as a condition precedent to lending funds upon the security of any Lot or any portions thereof. It is the desire of Developer to retain control of the DRC and its activities for so long as Developer desires to do so. If any amendment requested pursuant to the provisions of this Section 6.3, or if any federal, state or other legislation hereafter enacted, diminishes or alters such control, Developer shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions to achieve such control or equivalent control.

Article VII

Term; Termination

This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term co-terminous with the Master Declaration. Upon such termination, the DRC shall cause to be Recorded a Certificate of Termination, duly signed by at least two members of the DRC, Developer, if during the Developer Control Period, and attested by the secretary or an assistant secretary of either the Master Association, if the DRC is

controlled by the Master Board, or the Subassociation, if the DRC is controlled by a Subassociation. Thereupon, this Declaration shall have no further force and effect, and the DRC shall be dissolved.

Article VIII **General Provisions**

Section 8.1 **Notice.** If notice of any action or proposed action by Developer, the DRC, the Master Board, the Subassociation, if any, or any committee or of any meeting is required by applicable law or this Declaration to be given to any Owner or Occupant then, unless otherwise specified herein, such notice shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, to the address of such Owner on file in the records of the Master Association or the Subassociation at the time of such mailing. This Section 8.1 shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner. General notices to all Owners or any classification thereof need not be certified, but may be sent regular first class mail.

Section 8.2 **Captions; Construction.** Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the implementation of the provisions of this Declaration and the Design Guidelines.

Section 8.3 **Severability.** If any provision of this Declaration or the Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration or the Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration or the Design Guidelines shall be construed as if such invalid part were never included therein.

Section 8.4 **Interpretation.** Except for judicial construction, the DRC shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the DRC's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the provisions hereof.

Section 8.5 **References to Declaration in Deeds.** Deeds to and instruments affecting any Lot or any part of the Property may contain the provisions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, all of the provisions hereof shall be binding upon the grantee-Owner or other Person claiming through any instrument and his heirs, executors, administrators, successors and assigns as though set forth in full in such instrument.

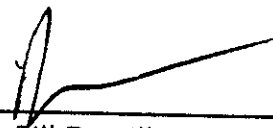
Section 8.6 **Incorporation of Exhibit.** Exhibit "A", as it may be amended from time to time in accordance with this Declaration, is incorporated into this Declaration by this reference.

Developer has duly executed this Declaration as of the date first referenced above.

MAUI LANI HOMES,
a Hawaii general partnership

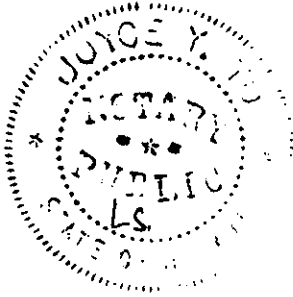
By Maui Lani Partners,
a Hawaii general partnership
Its General Partner

By Mills/Dowling-Maui Lani, Inc.,
a Hawaii corporation
Its General Partner

By 
Bill D. Mills
Its President

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

On this 21st day of July, 2000, before me personally appeared Mill B. Mills, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacities.



Joyce Y. Lo
Notary Public, State of Hawaii
Type or Print Name: Joyce Y. Lo
My commission expires: June 2, 2003

EXHIBIT "A"

All of those certain parcels of land situate at Wailuku, Island and County of Maui, State of Hawaii, of the "MAUI LANI SUBDIVISION - PHASE I/INCREMENT 5", as shown on File Plan No. 2267, filed in the Bureau of Conveyances of the State of Hawaii, described as follows:

<u>LOTS</u>	<u>AREA</u>
1	8,940 square feet,
2	8,523 square feet,
3	9,624 square feet,
4	7,599 square feet,
5	7,605 square feet,
6	8,105 square feet,
7	8,260 square feet,
8	7,800 square feet,
9	7,800 square feet,
10	7,888 square feet,
11	8,488 square feet,
12	11,130 square feet,
13	11,756 square feet,
14	10,689 square feet,
15	10,130 square feet,
16	10,204 square feet,
17	10,253 square feet,
18	10,138 square feet,
19	10,064 square feet,
20	10,275 square feet,
21	10,216 square feet,
22	10,111 square feet,

LOTS

AREA

23	10,275 square feet,
24	10,133 square feet,
25	10,090 square feet,
26	10,083 square feet,
27	11,782 square feet,
28	10,062 square feet,
29	9,462 square feet,
30	7,861 square feet,
31	7,598 square feet,
32	7,705 square feet,
33	8,340 square feet,
34	9,834 square feet,
35	10,155 square feet,
36	9,333 square feet,
37	9,288 square feet,
38	10,367 square feet,
39	8,714 square feet,
40	8,531 square feet,
41	9,496 square feet,
42	9,246 square feet,
43	9,175 square feet,
44	8,186 square feet,
45	7,800 square feet,
46	7,800 square feet,
47	7,800 square feet,
48	7,869 square feet,
49	9,202 square feet,

LOTS

AREA

50	7,822 square feet,
51	7,961 square feet,
52	8,476 square feet,
53	8,152 square feet,
54	8,520 square feet,
55	8,019 square feet,
56	7,920 square feet,
57	7,596 square feet,
58	8,729 square feet,
59	10,794 square feet,
60	8,755 square feet,
61	7,547 square feet,
62	7,583 square feet,
63	8,216 square feet,
64	9,461 square feet,
65	8,637 square feet,
66	9,577 square feet,
67	10,121 square feet,
68	9,233 square feet,
69	8,729 square feet,
70	8,852 square feet,
71	9,961 square feet,
72	8,115 square feet,
73	13,020 square feet,
74	8,114 square feet,
75	7,565 square feet,
76	8,287 square feet,

LOTS

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AREA

9,973 square feet,

9,976 square feet,

11,625 square feet,

11,014 square feet,

2,883 square feet,

582 square feet,

65,920 square feet,

82,396 square feet,

20,394 square feet,

10,211 square feet, and

5,597 square feet.