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Olowalu Makai-Komohana

Declaration of Covenants, Conditions and Restrictions

Declarant: Olowalu Elua Associates LLC
173 Ho'ohana Street
Kahului, Hawaii 96732

OLOWALU MAKAI-KOMOHANA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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Declaration of Covenants, Conditions and Restrictions

This Declaration is dated as of this _____ day of _____, 2001, and is executed by Olowalu Elua Associates LLC, whose principal place of business is 173 Hooohana Street, Kahului, Maui, Hawaii 96732 (the "Declarant").

1. RECITALS

The land to which this Declaration applies is the land described in Exhibit A attached hereto and made a part hereof. This land has been subdivided into seven agricultural lots and one road lot, all to be known as the "Olowalu Makai-Komohana". This Declaration and each covenant will run with the land and will be binding upon and will inure to the benefit of each subdivided lot within said land (except road and widening lots if any, which shall be dedicated after to a governmental body) and all of its successive owners and occupants.

It is the Declarant's intention to create a common development plan, enforceable by the Declarant or any property owner within the said land, in accordance with this Declaration. The acceptance of a deed, Agreement of Sale, lease or other conveyance by any person of any property or any interest in any property within the subdivision shall constitute acceptance of these covenants, regardless of whether or not said instrument is expressly made subject hereto. This Declaration shall be binding upon and enforceable against each owner, purchaser, tenant and occupant of all or any part of said land, including each Property (defined in Section 2.06 below) and their respective successors in interest; and shall be deemed incorporated in each deed, lease or other instrument by which any right, title or interest in Olowalu Makai-Komohana or any Property is granted, devised or conveyed, whether or not expressly referred to therein.

2. DEFINITIONS

The following terms shall have the following meanings:

2.01 "Declarant" means Olowalu Elua Associates LLC and its successors, assigns or designees who may be identified as such in an instrument executed by Declarant (or a successor or assign of Declarant), to be recorded in the Bureau of Conveyances of the State of Hawaii.

2.02 "Declaration" means this Declaration of Covenants, Conditions and Restrictions as it may be amended from time to time.

2.03 "Committee" is defined in Section 4.02.

2.04 "Common Area" means (i) the roadway (Easement A) if and so long as said road shall not have been dedicated to and accepted by the County of Maui; (ii)

designated waterlines not owned by the water provider which serve more than one lot or the subdivision as a whole; (iii) Easement A-1, for drainage purposes, located on Lot 4-A; (iv) all other areas within one or more Properties to be designated by Declarant and comprising landscaping easements, drainage easements or utility easements for the benefit of one or more other Properties, the common areas or Olowalu Makai-Komohana as a whole or as may be required by governmental authorities; and (v) such other assets, properties, facilities, and property rights, if any, which may in the future be designated as Common Area by Declarant or transferred to or acquired by the Association (defined below).

2.05 "Association" shall mean the Olowalu Makai-Komohana Association, Inc., a Hawaii non-profit corporation, as more particularly described in Article 5 below, and any other association referred to in Section 5.01.

2.06 "Property" and "Lot" means each of the six subdivided Lots numbered 1, 2, 3, 4A, 4B and 4C, described on the Plan and any other lots which may be added to this Declaration by Declarant in its discretion.

2.07 "Neighborhood" and "Olowalu Makai-Komohana" mean Olowalu Makai-Komohana Subdivision as described on the Plan and as it may be altered or enlarged from time to time, including any future development phase or other subdivisions annexed to the subdivision, and including but not limited to all Properties and all roads and other Common Areas (whether now or in the future designated as such).

2.08 "Owner" of a Property means any person (including Declarant) who owns a fee simple interest in said Property, and any person to whom all rights as Owner (including voting) shall have been transferred by means of (a) a deed, (b) a lease of said Property for a period in excess of 5 years, or (c) an agreement of sale which transfers all rights of possession and occupancy; provided, however, that in each such case the transferee of said rights will not be recognized as an "Owner" by the Association unless a written notice of transfer is filed in the official ownership records of the Association maintained by the Board of Directors.

2.09 "Plan" means the two subdivision plats both entitled "Olowalu Makai-Komohana Subdivision" dated _____, 20__ and _____, 20__, respectively, by R.T. Tanaka Engineers, Inc., as approved by the County of Maui.

2.10 "Utility" includes electricity, telephone, cable television, water and any other existing or future use normally considered a utility.

3. COVENANTS

3.01 Permitted Uses. Olowalu Makai-Komohana is an agricultural subdivision and shall be subject to the Hawaii Right to Farm Act, HRS Chapter 165. All lots may be used for agricultural uses including farm dwellings, orchards, crops, ranching and other productive agricultural pursuits, all as permitted by the County of Maui Zoning

Ordinance as amended from time to time, except the following activities which shall be prohibited to the extent that such prohibition may be restricted by the Hawaii Right to Farm Act or other provision of State or County law:

- (a) The raising or storage of pigs or roosters for any purpose;
- (b) The slaughtering, smoking or curing of animals; or
- (c) Any use prohibited by any other section of this Article 3.

All buildings and structures shall comply with all applicable County of Maui Codes and Regulations.

3.02 Animal Control. All animals will be confined to the borders of their Owner's Property at all times when out of doors and shall be controlled so as not to disturb any occupant of the neighborhood.

3.03 Vehicles and Parking. Vehicles which become inoperable and outside of an enclosed garage must be removed from the property or promptly placed within an enclosed garage within two weeks of becoming inoperable. School buses, heavy trucks and heavy non-agricultural equipment shall not be parked on any Property except on a temporary basis in connection with construction or site work being conducted on said Property.

3.04 Nuisances. No noxious or offensive activity shall be carried on upon any Property, nor shall anything be done on any Property which may be or may become an annoyance or nuisance to any occupants of the Neighborhood, including but not limited to activities (other than normal and reasonable agricultural activities) which cause unreasonable noise, dust, or odors or unreasonably violate privacy or violate any applicable laws, rules or regulations. It is understood that this restriction shall not, however, apply to Declarant or its successor as developer of said land with respect to noise, dust or inconvenience caused by the construction of roads, utilities or other improvements or to the grading of, or construction of buildings on, any lot, provided that such activities are carried on with reasonable safeguards consistent with normal industry practices and standards. See also Section 3.01 concerning the Hawaii Right to Farm Act and Section 8.01 concerning the non-liability of Declarant and others for development and agriculture nuisances.

3.05 Maintenance of Structures, Properties and Drainage Reserves. All structures located on each Property shall be kept in attractive condition, in good order and repair, and free from visible deterioration. Whether vacant or improved with a dwelling each Property shall be irrigated and kept green with healthy vegetation (except during periods immediately following harvest) consistent with sound and prudent soil, conservation and agricultural maintenance practices. The Owner of each Property will maintain any drainage area on the Property in accordance with all County of Maui requirements and will refrain from dumping vegetation waste or other debris therein and shall keep said area free

of buildings, paving and obstructions which would reduce or interfere with its operation as a drainage facility.

3.06 Irrigation System Plan. Attached hereto as Exhibit D is the current version of Declarant's Irrigation System Plan, as required by the County of Maui. Declarant shall not be obligated to provide non-potable water for irrigation, but if in Declarant's discretion Declarant does so, all Owners will be bound by said plan. The Declarant reserves the right to change said plan from time to time as the irrigation and non-potable water system is implemented and operated, the requirements of regulatory authorities may change, the needs and requirements of system operations may dictate, and other developments to be served by the system shall require. Declarant shall obtain all necessary governmental approvals for each such change and shall notify the Association of each such change. Declarant may delegate this authority to any entity to which the system or its operation may be transferred or delegated.

3.07 Hazardous Materials. No Owner shall use, generate, store or dump any hazardous materials on any Property or in any other portion of the Neighborhood. "Hazardous materials" means those materials and substances which are identified as hazardous, toxic or otherwise regulated under applicable federal, state or local environmental laws, rules or regulations.

3.08 Refuse and Building Materials. Trash, garbage and domestic waste shall not be kept on any Property except in containers, stored inside the dwelling or enclosed garage and not visible from any street or other Property. Agricultural waste shall be managed and maintained in a prudent and responsible manner consistent with Section 3.04 above. No new or used building materials shall be stored on any Property except during active construction and all construction waste will be removed promptly after construction is complete. No Property shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All garbage and refuse shall be regularly transported to the common central storage and collection centers, all in accordance with such rules and regulations as the Board of Directors of the Association may adopt from time to time.

3.09 Exterior Lighting. All exterior lights shall be appropriately screened so as not to cause any unreasonable glare visible from adjoining Properties or roads and so as to prevent harm to the shearwater and other seabirds. The detailed exterior lighting standards, approved by the County of Maui, are attached hereto as Schedule 1 to Exhibit "B" to this Declaration, and incorporated by reference herein.

3.10 Grading and Drainage. No Owner of any Property will alter the grade or topography of any Property in a manner which would materially increase or change the location or direction of the flow of drainage from the Property to any adjoining Property or to any road.

3.11 Completion of Construction. Once the construction of any building or structure on a Property has commenced, said building or structure shall be pursued in good faith and with due diligence to completion within the shortest reasonable time and in all events said building or structure and all surrounding grass, planted areas and other landscaping shall be completed not later than 18 months from the date of commencement.

3.12 Easement Areas. No buildings or other structures shall be built within any area labeled on the Plan as easements for landscaping, setbacks, water, drainage, electricity, telephone, CATV or other utilities.

3.13 Signs. Signs shall be prohibited except (a) Declarant's signs in connection with the construction, promotion and sale of Olowalu Makai-Komohana, (b) not more than one standard broker's-type "for sale" sign on a Property in connection with resale of said Property, (c) subdivision and road identification signs installed by the Declarant or the Board of Directors of the Association and approved by Declarant, and (d) signs permitted by the Design Guidelines.

3.14 Utilities. All utilities within Olowalu Makai-Komohana and within each Property shall be underground, except for overhead lines existing on the date of this Declaration.

3.15 Building Height. The height of any building or structure on a property shall not exceed 30 feet above finished grade.

3.16 Reflective Materials. No building, improvement or structure located on any lot shall have a roof consisting of a highly reflective material or incorporate mirrored glass on the exterior of such building, improvement or structure.

3.17 Temporary Structures. No temporary buildings or structures, sheds, tents or trailers of any kind shall be erected or permitted to remain on any Property except during periods of construction and only incidental to construction.

3.18 Septic. The Owner of each Property shall be responsible for installing, operating, maintaining, repairing and replacing the septic system on his or her lot, which shall comply with all applicable laws, rules and regulations. Aerobic systems shall be required for all systems located within one thousand feet (1000') of a well.

3.19 Further Additions and Divisions of Properties. Declarant reserves the right to add additional Properties to this Declaration. See Section 11.04 below.

No property shall be further divided into smaller parcels by subdivision, condominium or any other form of division:

This Declaration hereby prohibits the division of ownership of any Property by submission of a Property to a Condominium Property Regime under HRS Chapter 514A or any successor statute.

3.20 Timeshares. No timesharing plans as defined in HRS Chapter 514E or any successor statute or any comparable Maui County Ordinance shall be permitted.

3.21 Development and Shoreline Matters. No structure shall be constructed within 150 feet of the certified shoreline and certain other restrictions shall apply as set forth on Exhibit C attached hereto and made a part hereof.

3.22 Community Gate. An entry gate may be installed within the main access road in the subdivision at the option of the Association provided that the decision to install and maintain such gate shall be approved by the affirmative vote or written consent of a majority of the Properties in Olowalu Makai-Komohana. Said gate, if so installed, shall be a common area of Olowalu Makai-Komohana and shall be maintained and operated by the Association as a common expense of the Neighborhood.

3.23 Cultural Reserve Buffer. Lot 3 is subject to a buffer/setback 30 feet deep along the northwesterly boundary of Lot 3 where it abuts Lot 4-D and the Cultural Reserve Easement R-1. No dwellings or other structures may be constructed within the 30 foot buffer except a boundary wall which may not exceed four feet in height.

3.24 Shoreline Setback. A shoreline setback of 150 feet is required for construction of improvements or for alterations to topography and shall be governed by the applicable rules and regulations of the County of Maui. In addition, as required by the Unilateral Agreement dated as of February 1, 2001, to be recorded in the State of Hawaii Bureau of Conveyances, the setback for each Property shall be established from the certified shoreline regardless of whether that shoreline is located on the Property or is makai of the Property abutting a government beach reserve. Also, in establishing the shoreline for purposes of determining the setback, the erosion rate shall be considered, as established through the review of historic shoreline data for the area. No structures on any Property shall encroach into the shoreline setback area, to ensure that future shoreline erosion and storm wave action will not adversely affect structural development on said Property.

3.25 Public Lateral Access. Public lateral access along the shoreline shall be provided and landscaping of the area of any Property within 50 feet of the shoreline should be spaced far enough apart so as not to interfere with lateral access. In many cases the shoreline area and lateral access area will be located within the government beach reserve abutting the makai boundary line of the Property and lateral pedestrian access will not encroach on said Property. In other areas, where the shoreline is less than 20 feet makai of the Property boundary or the shoreline encroaches into the Property, the pedestrian corridor shall be provided over the Property within 20 feet of the shoreline,

except for areas where an existing physical barrier would cause the corridor to meander around the barrier.

3.26 Native and Endangered Species. Certain native and endangered species have been sited within Olowalu. Endangered bird sightings include but are not limited to the Nene - Hawaiian goose, Alae Ke'okeo - Hawaiian coot, Koloa - Hawaii duck and the Ae'o - Hawaiian stilt. Black Crown Night Herons and the Dark-Rumped Petrel have also been noted. Endangered species are protected under federal and state laws, and all occupants of Properties must take precautions against domestic dogs and cats endangering any endangered animals. Also all Owners and occupants of Properties understand and accept that crop damage could occur from these water birds. The State of Hawaii Department of Forestry and Wildlife is the local management and enforcement agency.

3.27 Archaeological Sites. There are two archaeological preservation sites on Lot 4-A, defined as Site No. 1602 (the old Olowalu Mill site) and Site No. 4698 located to the west of Site No. 1602. These sites will be preserved and maintained in accordance with the archaeological preservation and monitoring plans required by applicable governmental authorities.

3.28 Compliance With Design Standards and Laws. All structures, shall comply with (a) the Design Standards attached hereto as Exhibit B as they may be amended by the Declarant from time to time and (b) all applicable laws, rules and regulations. Where requirements in this Declaration are more stringent than applicable laws, rules and regulations, the requirements in this Declaration shall govern.

3.29 Other Limitations Required by the County of Maui. Attached as Exhibit C is a list of additional restrictions which encumber each property and which have been required by the County of Maui Planning Commission and the Department of Public Works and Waste Management as a condition of obtaining certain approvals for the subdivision.

4. ARCHITECTURAL CONTROLS.

4.01 Purpose. The purpose of the architectural controls set forth in this Article 4 is not to regulate all details of an owner's construction and landscaping activity, but instead is to give the Declarant the means to attempt in its discretion to avoid strange, jarring or inappropriate structures being initially developed within Olowalu Makai-Komohana which may be out of harmony with Olowalu Makai-Komohana as a whole. It is hoped that all concerned will cooperate in this process with the mutual objective of protecting property values and the general appearance of the neighborhood. The power to exercise these controls is reserved to the Declarant and may be exercised and delegated at Declarant's option only.

4.02 Restriction and Scope. No structure which is or will be visible from

a road or from any other Property may be constructed without the prior written approval of the Design Review Committee (defined below, and hereinafter called the "Committee"); and no such feature, once built, may be externally remodeled, or otherwise visually altered to any material extent without the prior written approval of the Committee. The Owners of each Property shall comply with and abide by all proposals, plans and specifications submitted to and approved by the Committee with respect to said Property. The term "structure" includes a building, any addition or expansion, pool, fence, wall, and any other man-made item located on or above the surface of the ground which may be visible from any road or other Property, and also includes any pavement of a driveway, parking area, lanai or open patio.

Notwithstanding the foregoing, the following shall not be subject to prior written approval of the Committee under this Article 4: (a) the construction, remodeling or change of any structure by the Declarant (or any successor as developer of all or part of Olowalu Makai-Komohana) as part of the development or initial sale of Olowalu Makai-Komohana; (b) the construction, remodeling or change of any structure by the Association of any Common Area facilities and (c) the repair or reconstruction of a damaged structure in accordance with plans previously approved for the original structure or the repainting of a structure in accordance with a previously approved color and color scheme.

4.03 Composition of Architectural Design Committee. The Declarant, or any person or persons whom the Declarant in its sole discretion may designate, shall serve as the Architectural Design Committee until the date, if any, on which the Declarant (or Declarant's assignee) shall, in its sole discretion, notify the Board of Directors of the Association or the owners of all Properties that the Declarant (or said designee) assigns the Architectural Design Committee's function to the Association, after which time the Board of Directors shall act as the Design Review Committee. At all times there shall be a licensed architect on the Architecture Design Committee or retained by it as a consultant.

4.04 Standards and Procedures of the Architectural Design Committee. All proceedings by the Architectural Design Committee shall be conducted in an orderly manner and a reasonable record of all proceeding shall be maintained.

All applications for approval of the Architectural Design Committee shall be accompanied by plans, specifications and other supporting material which shall be detailed and complete to the point which would, in the Architectural Design Committee's reasonable judgment, enable it to adequately understand and evaluate the location and appearance of the planned work. The Architectural Design Committee shall engage one or more architects, engineers or other professionals (including any architect service on the Committee and who renders his or her professional services) to assist in its deliberations and review and process of applications and may assess to the applicant all reasonable costs and fees incurred. The Architectural Design Committee shall have the right to refuse to consider any application unless and until the application shall have been completed, and no application to said Committee shall be deemed completed until all materials shall have been received by said Committee in accordance with the Design Standards and all rules

and requests of said Committee, all requests and rules of said Committee shall have been complied with, and all assessments shall have been paid.

The Architectural Design Committee may in its discretion adopt reasonable rules and regulations to govern its procedures and requirements as it may deem appropriate from time to time.

The approval of the Architectural Design Committee shall not be withheld unreasonably, provided that the following conditions are met: (a) all permissions and approvals of all governmental authorities having jurisdiction shall have been obtained; (b) the proposal complies with all terms and conditions of this Declaration; (c) the proposal conforms to the Design Standards attached hereto as Exhibit B as they may be amended from time to time (or conforms to any variance granted by the Architectural Design Committee), and (d) the appearance of the proposed structure, alteration, addition or treatment is not likely to be out of harmony or out of scale or visually inconsistent with the rest of Olowalu Makai-Komohana. Any decision of the Architectural Design Committee which involves a subjective conclusion as to taste or aesthetics (such as matters referred to in clauses (c) or (d) in the preceding sentence which require an opinion or judgment) shall be final and binding on all concerned and shall not be appealable to any court or tribunal (but any such decision may be reconsidered by the Architectural Design Committee in its sole and absolute discretion).

4.05 Responsibility. The members of the Architectural Design Committee shall not be personally liable, and the Architectural Design Committee itself and Declarant shall not be liable, for any of their or its acts or omissions in connection with the performance of (or failure to perform) any duties hereunder so long as such actions or omissions were grounded in the belief that such actions or omissions were in the best interests of Olowalu Makai-Komohana or the Declarant.

Neither the Declarant, the Association, its Board of Directors, nor the Architectural Design Committee (nor the agents, officers, members or affiliates of any of them) shall be held liable for any injury, loss or damages arising out of or in any way connected with the integrity, quality or execution of any construction or design, or the failure of any construction or design to comply with any laws, rules or regulations, or the failure to approve or to require the approval of any structure.

4.06 Variances. The Architectural Design Committee in its sole discretion may grant variances from the strict requirements of the Design Standards in individual cases if said Committee determines that (a) strict compliance would result in an undue hardship or would serve no reasonable purpose, and (b) the structure, alteration or addition, or its location, as proposed, complies with the general spirit and intent of the Design Standards and this Declaration. The Architectural Design Committee's discretion to grant or withhold a variance in any particular case shall be solely within the Committee's discretion, shall be binding on all parties and shall not be appealable, and shall not bind said Committee as precedent in any other case.

4.07 No Protection of Views. No Property shall have any vested rights or easements for the protection of any view from said Property and the Declarant makes no warranties or representations of any kind to the buyer, owner or occupant of any Property concerning the extent, attractiveness or protection of any view over any Property or Common Area from any other Property or Common Area. The Architectural Design Committee shall have no obligation to consider the protection of views in any case before it (including both original applications or variance applications) unless a formal written view easement shall have been specifically granted by the Owner(s) of any Property in favor of the applicant before the Committee and said easement shall have been recorded in the Bureau of Conveyances of the State of Hawaii and a true copy delivered to the Architectural Design Committee with the application. However, the Architectural Design Committee shall have the unilateral right, in its sole discretion, to consider views in approving proposed structures, improvements, topographical changes, landscaping and trees.

4.08 Design Standards. The Design Standards attached hereto as Exhibit B are hereby adopted by the Declarant as the Design Standards for Olowalu Makai-Komohana. They shall apply to all Properties except where variances are granted in individual cases as provided in Section 4.06 above. The Design Standards may be amended from time to time by the Declarant provided that no amendment shall be inconsistent with, or have the express or implied effect of superseding the body of this Declaration of Covenants, Conditions and Restrictions (as it may be amended by the Association under Section 11.04 below). The Declarant shall give notice of all proposed amendments to all lot owners (as shown on the records of the Association) and a reasonable opportunity to comment, all in accordance with reasonable procedural rules implemented by the Architectural Design Committee from time to time. Said power to amend may be exercised by any person or entity, including the Association, to which the Declarant may, in its discretion, assign said power in the future.

No amendment to the Design Standards or this Declaration shall apply to any structure which shall have been previously approved by the Architectural Design Committee and the construction or placement of which (in accordance with said approval) has commenced or will, in the reasonable judgment of the Architectural Design Committee, be commenced by the Owner in good faith without undue delay.

5. ASSOCIATION

5.01 Membership. The Owners of each Property shall automatically be members of the Olowalu Makai-Komohana Association, Inc., a Hawaii nonprofit corporation and said membership will be mandatory.

In the Declarant's discretion, one or more additional associations may be formed for the purpose of holding, controlling, managing and operating roads, open areas, public areas, utility services, utility distribution systems, drainage facilities and other facilities which shall serve or be associated with other subdivisions or developments at

Olowalu or nearby areas and which shall also serve or be associated with Olowalu Makai-Komohana. In this event the term "the Association" as used in this Declaration shall also include any such association in addition to Olowalu Makai-Komohana Association, Inc.

Similarly, the Declarant in its discretion may expand the scope, functions and membership of Olowalu Makai-Komohana Association, Inc. to include common areas, properties and members outside of Olowalu Makai-Komohana, regardless of whether or not contiguous.

In each case, the said membership in the Association may be transferred or encumbered only with and to the same extent as the Property to which it is appurtenant is transferred or encumbered. In the event fee title to a Property is transferred without mention of said membership, said membership shall be deemed to be automatically transferred with said Property. Also, see Section 2.07 concerning the recognition of certain other persons as "Owners."

5.02 Government and Control of Common Areas. Such Association shall hold, control, manage and operate, as a common expense, all Common Areas and facilities, from and after the time when ownership or use thereof shall have been transferred to the Association (or the Association acquires rights with respect thereto), and may exercise all reasonable management rights, powers and authority with respect thereto including, but not limited to, (a) the power to enter into contracts for, or otherwise to implement, the maintenance, operation, repair, replacement and sale of such assets and facilities; (b) the power to maintain appropriate casualty and liability insurance; and (c) the power to adopt, implement and enforce reasonable rules and regulations to govern the orderly use and operation thereof. All such dominion, control and authority shall cease with respect to any road, water line or sewer line, or other facility, the responsibility of which shall be accepted by the County of Maui or other governmental authority or any regulated public utility. NOTE: THE COUNTY OF MAUI HAS NOT AGREED TO ACCEPT ANY SUCH ROADS, LINES OR FACILITIES, AND DECLARANT DOES NOT WARRANT OR REPRESENT THAT ANY SUCH ACCEPTANCE WILL OCCUR IN THE FUTURE.

5.03 Common Expenses. Each Property shall be subject to the obligation to pay all assessments for common expenses assessed to said Property by the Association in accordance with the Articles of Incorporation and Bylaws thereof. The Association, by its Board of Directors, may enforce and collect each such assessment (together with all legal fees and expenses of enforcement) by legal proceedings to enforce such obligation. All amounts so owed shall be a lien on the Property obligated. Said lien may be enforced by judicial foreclosure or power of sale in the same manner as a mortgage is enforced under Hawaii law, as amended from time to time. The Association may file a notice of said lien in the State of Hawaii Bureau of Conveyances, but said filing shall not be a prerequisite to the perfection of said lien. In addition to, and without limiting said lien and foreclosure, the Association may obtain an ex parte attachment or Lis Pendens against the delinquent Property or its owners.

Said lien or attachment, however, shall be junior and subordinate in lien priority to the lien of any mortgage or other encumbrance which shall have been in existence and duly recorded in said Bureau of Conveyances prior to the date the Association's notice of lien, attachment or pending litigation is recorded.

5.04 Rules and Regulations. The Association acting through its Board of Directors (and in the Board of Directors' discretion) shall have the power to adopt, amend and enforce reasonable rules and regulations for (a) the reasonable and orderly use of roads and other common areas and facilities, if any, (b) the clarification, implementation and enforcement of the covenants and restrictions contained in Sections 3.01 through 3.29 including (by way of example) the establishment and collection of fines for violations) and (c) the clarification, implementation and enforcement of any other provisions of this Declaration.

5.05 Declarant's Control. Notwithstanding anything herein to the contrary, the Declarant and its appointees shall act in all respects as and on behalf of the Association and its Board of Directors in all matters until the first to occur of the following: (a) the expiration of ten (10) years from the date of recording of this Declaration in the Bureau of Conveyances of the State of Hawaii; or (b) the date on which Declarant notifies the Owners of the Properties of its relinquishment of said authority. The Declarant may in its discretion relinquish said authority either in full at one time or in portions or stages over time during the 10-year period. Upon the expiration or relinquishment of Declarant's control, the Association shall promptly elect a Board of Directors so as to minimize any disruption in the Association's affairs caused by the transition.

6. EASEMENTS.

6.01 Easements Shown on Plan. The Plan specifically describes certain Easements over, across and affecting certain Properties. Each of said Easements is hereby established for those purposes and in those locations ("Easement Areas") which are shown on the Plan. Each Easement shall be non-exclusive and shall be for the benefit of (a) the Property or Properties served by such Easement; (b) the Association and its members where so indicated; or (c) the public or private utility provider whose pipes or lines are installed within any such Easement. Each Easement shall confer the right to the benefitted Property, person or entity to construct, operate, maintain, repair and replace such improvements and facilities within the Easement Area as may be reasonably necessary or appropriate for the purposes for which the Easement is established as stated on the Plan.

(a) Buffer Setback Restriction on Lot 3. Reference is made to Section 3.23 defining a buffer/setback restriction 30 feet deep along the northwesterly boundary of Lot 3.

(b) Utility Easement on Lot 3. As shown on the Plan Lot 3 is subject to an Easement A-2, in favor of Maui Electric Co. Ltd. and Verizon Hawaii, Inc., for electrical transformer purposes.

(c) Road Easement. Lot 4-A is subject to Easement A which is a 75 foot wide, non-exclusive access and utility easement in favor of Lots 1, 2, 3, 4-B and 4-C.

(d) Drainage Easement on Lot 4-A. Lot 4-A is subject to Easement A-1 which is a non-exclusive easement for drainage purposes in favor of Declarant (and the Association following completion of construction of the roadway).

All work within each Easement Area shall be conducted in a reasonable and orderly manner, so as to minimize any disturbance to the Owners and occupants of the encumbered Property, and all excavations will be filled in and promptly returned to even grade without unreasonable delay.

6.02 Encroachments. Upon the completion of the installation of any utility line, water line, sewer line, drainage structure, or other facility which is part of the Common Areas, if it is determined that the location of the line, structure or facility inadvertently encroaches on any Property outside of the Easement Area as defined on the Plan, a nonexclusive, perpetual Easement shall thereafter exist for the maintenance, operation, repair and replacement of such line, structure, or facility in its location as built, provided that its location outside of the Easement Area shall not unreasonably interfere with the reasonable use and enjoyment of the encumbered Property by the Owners and occupants thereof or cause any diminution in value of the encumbered Property.

6.03 Additional Easements. Declarant hereby reserves for itself and its successors in interest the right to grant and create further easements within the roads and Common Areas of Olowalu Makai-Komohana and in any Property for the purpose of establishing or relocating utility lines, water lines, sewer lines, effluent lines, as well as pumps, controls, access points, meters, poles, anchors, stays and wires or any other equipment necessary or appurtenant thereto, and for establishing any necessary drainage structures or areas; provided, however, that no such additional easement within any Property shall unreasonably interfere with the reasonable use and enjoyment of said Property by the owners and occupants thereof or cause any diminution in value thereof.

In addition, so long as the Declarant owns any portion of the land described on Exhibit "A" of this Declaration, the Declarant reserves for itself, the Association, and the designees of each (which may include, without limitation, Maui County and any utility provider) access and maintenance easements upon, across, over and under all of the Properties and common areas to the extent reasonably necessary for the purpose of installing, replacing, repairing and maintaining telecommunication systems, roads, walkways, drainage systems, irrigation systems, signage, and all utilities, including, but not limited to , water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on land which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, this easement shall not entitle Declarant or the easement holders to

construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Property, and any damage to a dwelling resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of this easement shall not unreasonably interfere with development or use of any dwelling and, except in an emergency, entry onto any dwelling shall be made only after reasonable notice to the Owner or occupant thereof.

7. ROADS.

7.01 Use. A nonexclusive, perpetual easement is hereby granted to the Owners and occupants of all Properties and their tenants, licensees and visitors for pedestrian and vehicular passage over the roadway lot described on the Plan and any associated easements, together with the nonexclusive right to construct, maintain, improve, operate, repair and replace lines for utility services in or over such roads, all subject to such reasonable rules and regulations as Declarant or the Association (through its Board of Directors) may establish from time to time. Note that the public may have rights of access over some or all of the roads in the neighborhood as may be required by law or the County of Maui.

7.02 Responsibility. From and after the date on which each road or related Common Area is available for use by the lot owners (regardless of whether or not it shall have been conveyed to the Association) or such later date as Declarant may determine in its discretion, the Association will assume all responsibilities and liabilities with respect to its use, operation, maintenance and improvement. All costs and expenses will be assessed to and paid by all Properties as common expenses as provided in Section 5.03 above and in the Bylaws of the Association.

7.03 Conveyance to the County. Declarant shall have the authority, without the consent of the Association, to convey to the County of Maui an easement to use, or legal title to, all or any part of any road. If, after Declarant's control shall have ceased as provided in Section 5.05 and title to any road shall have been conveyed to the Association, the Association through its Board of Directors shall decide to convey to the County of Maui the title to all or any part of any road and related facilities or any other common areas and facilities, and the County agrees to accept them, Declarant (or the Association as the case may be) shall execute and deliver such deeds and other documents as shall be necessary or appropriate for the purpose of implementing said conveyance and the transfer of all responsibilities to the County. Upon said transfer becoming effective, all rights and easements established under Section 7.01 shall automatically terminate if and to the extent that the rights granted by Section 7.01 may be enjoyed after said transfer by agreement with the County or by ordinance or other grant of rights.

8. NUISANCES FROM AGRICULTURAL AND DEVELOPMENT OPERATIONS.

8.01 Operations. All Owners and occupants of Properties are hereby notified that certain lands nearby or abutting Olowalu Makai-Komohana are or may become zoned to permit residential and agricultural development and agricultural operations and that in the future, the Owners and occupants may be subject to noise, dust, emissions, traffic and other nuisances in connection with such activities. The developer of said facilities and Declarant (and their respective officers, directors, employees and agents of each) shall not have any liability or responsibility for any such noise, dust, emissions and nuisances. Each Owner of a Property, by taking title to said Property, thereby waives all such rights and claims.

9. WATER SYSTEM.

9.01 Potable Water. The potable water system for Olowalu Makai-Komohana will be provided by a water system which is shared by this and other subdivisions in the area and which is owned and operated by Olowalu Water Company LLC, a regulated public utility. The owners and occupants of each Property shall pay all water rates and assessments charged by said water company from time to time and shall comply with the PUC Tariff and all other applicable rules and regulations.

9.02 Irrigation (Non-Potable) Water. Refer to the Irrigation System Plan described in Section 3.06 and in Exhibit D.

10. ADDITIONAL LOTS.

10.01 Addition of Lots. Declarant has the right to add additional lots in Olowalu, and may amend this Declaration unilaterally, from time to time, to add said lots to the "Properties" to which the benefits and burdens of this Declaration shall accrue in accordance with this Declaration. Refer also to Sections 2.06, 2.07 and 3.19.

11. ADMINISTRATIVE PROVISIONS.

11.01 Right to Abate Violations. If any person or entity shall violate or attempt to violate any of the covenants herein contained, any rules or regulations of the Association or any ruling of the Architectural Design Committee, the Owner of any Property (or the Association or the Declarant in its discretion, but in any case without having any affirmative duty to do so) may commence legal action at law or in equity against such person or entity, either to prevent or abate such violation or to recover damages caused by such violation, or both. Such enforcement initiated by the Association must be approved by vote of the Board of Directors at any special or annual meeting. Said damages may expressly include a judgment for all of the plaintiff's costs of suit, including reasonable attorney's fees.

11.02 Resolution of Disputes Between Owners of Properties. If a dispute arises between Owners of Properties as to any matter relating to any terms, meaning, application or enforcement of this Declaration, said Owners may, by mutual agreement, refer the matter to the Board of Directors of the Association for nonbinding arbitration (except as otherwise provided in Section 4.04 relating to the finality of certain decisions by the Architectural Design Committee). The Board of Directors may conduct proceedings to hear and consider both sides of the dispute, in accordance with reasonable procedures to be established by the Board of Directors, and may decide any such matter by majority vote of the Board members in attendance. Any decision in such matter shall be advisory only and shall not pre-empt or restrict either party's rights to pursue legal action in said matter. The Board may, in its discretion, for any reason, refuse to hear any matter referred to it under the terms of this paragraph.

11.03 Duration of Covenants. These covenants shall be binding for a period of fifty (50) years from the date this instrument is recorded in the Bureau of Conveyances of the State of Hawaii. Thereafter, they shall automatically be extended without any documentation or any action of any person or the Association, for successive periods of ten (10) years each unless terminated at the end of said initial 50-year period or at the end of any such successive 10-year period by the affirmative vote or written election of Owners representing not less than 65% of all Properties which are subject to this Declaration, evidenced by an instrument reciting said vote or election, signed and sworn by the Owners of not less than three Properties, and recorded in the Bureau of Conveyances of the State of Hawaii.

11.04 Amendment of Covenants. These covenants may be amended or terminated at any time by the affirmative vote or the written consent of the Owners of not less than 65% of all Properties which are subject to this Declaration. Said amendment shall be effective upon the filing in the Bureau of Conveyances of the State of Hawaii of an instrument which shall (a) recite said amendment; (b) recite that the Owners of not less than 65% of all Properties which are subject to this Declaration voted for, or gave their written approval for, said amendment or termination; and (c) be signed and sworn by the Owners of not less than 3 Properties.

Notwithstanding the foregoing, this Declaration may not be amended in any event, or at any time, without Declarant's written consent as long as the period of Declarant's control under Section 5.05 shall remain in effect, and thereafter as long as Declarant shall elect to maintain this approval right, unless Declarant shall be dissolved, shall be declared bankrupt, or shall in its sole discretion elect to relinquish said approval by right of written notice signed by Declarant and duly recorded in the State of Hawaii Bureau of Conveyances

Notwithstanding the foregoing, the Declarant acting unilaterally may amend these covenants at any time and for any purpose within ten years from the date these covenants are recorded in the Bureau of Conveyances of the State of Hawaii. In addition, notwithstanding anything herein to the contrary, the Declarant may from time to time

amend these covenants unilaterally without the consent of any Owner or mortgagee of any Property during or after the end of said five year period, for any of the following purposes:

- (a) to correct any drafting or typographical error;
- (b) to comply with (i) any applicable law, rule or regulation of the State of Hawaii or the County of Maui, (ii) any requirement or condition of any governmental agency or (iii) any governmental approval, permit or order affecting the subdivision;
- (c) to qualify some or all of the Properties for financing through the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or any similar program to facilitate the financing of Properties through any mortgage market or general financing program; or
- (d) to annex to this Declaration additional Lots and Common Areas which may be developed in the future in lands abutting or near Olowalu Makai-Komohana.

The Declarant's rights reserved under this Section 11.04 may be released by Declarant in its discretion at any time upon Declarant's voluntary relinquishment of said rights by written release recorded in the Bureau of Conveyances of the State of Hawaii.

Notwithstanding anything herein to the contrary, the conditions and restrictions set forth in Exhibit C hereto may not be amended without the appropriate approval of the Maui County Planning Commission in conjunction with an amendment to the Special Management Area Permit for the subdivision.

11.05 Severability. Invalidation of any one or more of these covenants by judgment or court order shall not affect any of the other provisions hereof.

11.06 Perpetuities. If any provision of this Declaration shall be void or voidable for violation of the Rule Against Perpetuities in effect in the State of Hawaii, said provision shall continue only until the end of such period as shall not violate the Rule Against Perpetuities, measured by the lives of the following persons on the date of this Declaration: The members of the United States Senate serving in office on the date of this Declaration, and the descendants of such persons living on the date of this Declaration.

11.07 Notice of Sale or Transfer of Title. Upon the sale or transfer of title to any Property, the transferee shall promptly notify the Board of Directors of the Association in writing of the name of each new Owner of said Property and his or her mailing address and home and business phone numbers.

11.08 Records of Ownership and Notices. The Declarant, the Association and the Architectural Design Committee shall be entitled to rely conclusively on the records of ownership of the Properties provided to the Association pursuant to Section 11.07 and 2.07 above, for all purposes, including, but not limited to, names and addresses for all

communications, notices, service of process, approvals, voting and consents, it being the obligation and burden of each Owner of each Property to ensure that the Declarant and the Association have ownership records which are accurate and up-to-date. The Declarant, the Association and the Architectural Design Committee may also conclusively rely, in the sole discretion of each, on the records of ownership and addresses of Owners of each Property as shown on the real property tax records of Maui County in any particular case.

Executed the day and year first above written.

Olowalu Elua Associates LLC

By: Olowalu Land Company, LLC,
Its: Managing Member,



By: _____
Its: _____

EXHIBIT "A"

[Description of Properties and Subdivision,
by Perimeter Metes and Bounds and Lot Numbers]

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EXHIBIT "B"

[Design Standards]

EXHIBIT "C"

1. If required in connection with the construction of any building or any site improvements, the owner of each Property shall prepare a dust-and erosion-control plan for review and approval by the Maui Planning Department to ensure that any fallow agricultural lands do not create future adverse dust and erosion impacts on the surrounding area. Said plan shall be reviewed and approved by the appropriate State of Hawaii agencies and implemented as soon as practicable by the applicant and its assigns and successors. A copy of the approved dust-and erosion-control plan for the agricultural lands shall be submitted to the Maui Planning Department and the Department of Public Works and Waste Management for the Department's records.
2. Each Property is a commercial agricultural lot. Hawaii's Right to Farm Act prohibits conditions, covenants, and restrictions that will prevent or impede reasonable agricultural use of the lots.
3. That archaeological monitoring of land-altering construction in the sand areas along the shore shall occur, as a contingency to identify, document, and treat any burials that might be found. A monitoring plan (scope of work) shall be submitted to and be approved by the SHPD prior to the beginning of the monitoring. This plan must specify how any burials that are found will be documented archaeologically , notification procedures, and treatment measures that will be taken. This scope should be completed before a monitoring contract is negotiated.
4. That adequate buffers between the cultural preserve areas and the agricultural lots shall be established to ensure that the cultural experience is not impacted by the agricultural use and structures on the adjoining lots. Mitigation measures from high boundary walls, residences, farm buildings, and operations shall be submitted to the Maui Planning Department for review and approval. The construction of the following are restricted: high boundary walls (over four feet), residences, farm buildings and any farm operations, within thirty (30) feet from the portion of any parcel that adjoins the cultural reserve.
5. Unless removal is necessary for intersection improvements, to the extent practicable, the Monkey Pod trees within any Property on the side of Honoapiilani Highway shall be retained and consideration shall be given to extending the Monkey Pod trees as part of the cultural landscape.
6. All structures located within the floodway Flood Zone A0 and A4 shall be constructed above the flood elevation. Measures such as post and pier construction shall be considered to conform to the Flood Hazard District and to allow flood waters to continue to traverse the property.

7. All development within flood hazard areas shall be implemented in accordance with Chapter 19.62, Maui County Code, as amended.
8. The use of soil as fill is prohibited within the Shoreline Setback Area, except for clean sand. Further, any grading or mining of a coastal dune is prohibited.
9. A minimum shoreline setback of 150 ft. from the certified shoreline is established for all lots regardless of a government beach reserve fronting the subdivided lots. No structures shall encroach into the Shoreline Setback Area to ensure that future shoreline erosion and storm-wave action will not adversely affect structural development on the properties.
10. Public lateral pedestrian access along the shoreline within the Shoreline Setback Area shall be provided. Landscaping in the area within 50 ft. of the shoreline should be spaced far enough apart so as not to interfere with lateral access.
11. Outdoor lighting plans for each lot shall be submitted to the Maui Planning Department for review and approval to reduce the negative impacts on seabirds, especially the dark-rumped petrel (*Pterodroma phaeopygia sandwichensis*) which is a federally endangered species. Appropriate measures approved by the Maui Planning Department may be taken to reduce the negative impacts of night lights. See Schedule 1 for the plan approved by the Maui Planning Department.
12. There may be potential waste from the old mill site (Olowalu Mill) and other vacated agricultural industrial areas. Remedial cleanup must be conducted before any new development occurs.
13. Survey monuments located within the boundaries of their lots which need to be protected from any development activities. Further, in the event the survey monuments are disturbed or destroyed during development of the subdivision or Properties, it will be the responsibility of the Property Owner, assigns or successors to reference and replace the monuments.
14. Swimming Pool/Spa: It is expressly prohibited to discharge any chlorinated water into the ocean, stream or any area that would ultimately discharge into these waters, such as drainage culverts, drainage ways or roadways.