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PEAHI HUI SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Declarant: PEAHI HUI LLC
305 E. Wakea Avenue, Suite 100
Kahului, Hawaii 96732

TO BE RECORDED

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Table of Contents

1.	RECITALS	-1-
2.	DEFINITIONS	-1-
	2.01 "Declarant"	-1-
	2.02 "Declaration"	-2-
	2.03 "Common Area"	-2-
	2.04 "Association"	-2-
	2.05 "Drainage Facilities"	-2-
	2.06 "Property" and "Lot"	-2-
	2.07 "Neighborhood" and "Peahi Hui Subdivision"	-2-
	2.08 "Owner"	-3-
	2.09 "Plan"	-3-
	2.10 "Utility"	-3-
3.	COVENANTS	-3-
	3.01 Legally Permitted Uses	-3-
	(a) State Law Provisions	-3-
	(b) Limitation on Restrictions	-6-
	(c) Maui County Code Provisions Under Maui County Code Section 19.30A.050B	-6-
	3.02 Vehicles and Parking	-7-
	3.03 Hazardous Materials	-7-
	3.04 Refuse and Building Materials	-7-
	3.05 Exterior Lighting	-8-
	3.06 Landscaping, Structures, Grading and Drainage	-8-
	3.07 Signs	-8-
	3.08 Septic	-8-
	3.09 Further Divisions of Properties	-9-
	3.10 Timeshares	-9-
	3.11 Applicable Laws and Setbacks	-9-
	3.12 Limitation on Tall Trees	-9-
	3.13 No Protection of Views	-10-
	3.14 Setbacks	-10-
4.	ASSOCIATION	-10-
	4.01 Membership	-10-
	4.02 Government and Control of Common Areas	-11-
	4.02A Management of Drainage Facilities	-11-
	4.03 Common Expenses	-12-
	4.04 Rules and Regulations	-12-
	4.05 Declarant's Control	-13-

5.	EASEMENTS	-13-
	5.01 Easements	-13-
	5.02 Encroachments	-14-
	5.03 Additional Easements	-14-
6.	ROADS	-15-
	6.01 Conveyance to the County	-15-
7.	NUISANCES AND RISKS FROM OPERATIONS AND PUBLIC ACCESS ..	-16-
	7.01 Nuisances From Agricultural and Other Operations ..	-16-
8.	ADMINISTRATIVE PROVISIONS	-16-
	8.01 Right to Abate Violations	-16-
	8.02 Resolution of Disputes Between Owners of Properties	-16-
	8.03 Duration of Covenants	-17-
	8.04 Amendment of Covenants	-17-
	8.05 Severability	-18-
	8.06 Perpetuities	-18-
	8.07 Notice of Sale or Transfer of Title	-18-
	8.08 Records of Ownership and Notices	-19-
	8.09 Act 5 as an Overriding Rule	-19-

Exhibit A: Land Description
Exhibit B: Operation and Management Plan for Drainage
Facilities at Peahi Hui Subdivision

PEAHI HUI SUBDIVISION
Declaration of Covenants, Conditions and Restrictions

This Declaration is dated this 25th day of September, 2013, and is executed by PEAHI HUI LLC, a Hawaii limited liability company, whose principal place of business is at 305 E. Wakea Avenue, Suite 100, Kahului, Hawaii 96732 ("Declarant").

1. RECITALS.

The lands to which this Declaration apply are the lands described in Exhibit "A" attached hereto and made a part hereof. This land has been subdivided into sixteen (16) agricultural lots described on the Plan (defined below) as Lots 3-A through 3-H, inclusive, Lots 3-J through 3-N, inclusive, and Lots 3-P through 3-R, inclusive, and also road lots, a utility/drainage lot, and other areas.

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 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 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 Peahi Hui 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 "Common Area" means (a) each of Roadway Lots 3-T, 3-U, 3-V and 3-W and Utility/Drainage Lot 3-S, if and so long as said roads and lot shall not have been dedicated to and accepted by the County of Maui; (b) the Drainage Facilities; (c) 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 Peahi Hui Subdivision as a whole or as may be required by governmental authorities; and (d) 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).

2.04 "Association" shall mean the Peahi Hui Association, to be established as an unincorporated association or a Hawaii non-profit corporation, as more particularly described in Article 4 below, and any other association referred to in Section 4.01.

2.05 "Drainage Facilities" shall mean the drainage basins and drainageways shown as Easements D-1, D-2, D-3 and D-4 on the Plan, Easements D-3A and D-3B not shown on the Plan, and all improvements therein, for the purpose of transporting, holding, releasing and managing storm water runoff.

2.06 "Property" and "Lot" means each of the agricultural Lots numbered 3-A through 3-H, 3-J through 3-N and 3-P through 3-R, described on the Plan; and any other Properties which may be created under Section 3.09 below or added to this Declaration by Declarant in its discretion.

2.07 "Neighborhood" and "Peahi Hui Subdivision" mean the subdivision described on the Plan as it may be altered or enlarged from time to time, 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 subdivision plat entitled "Peahi Hui Land Subdivision", dated February 1, 2012, revised June 23, 2012, June 18, 2013 and July 9, 2013, prepared by Austin, Tsutsumi & Associates, Inc., as approved by the County of Maui on September 25, 2013, and any future amendments.

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

3. COVENANTS.

3.01 Legally Permitted Uses. Peahi Hui Subdivision is an agricultural subdivision and shall be subject to the Hawaii Right to Farm Act, HRS Chapter 165. Under the law, all lots may be used only for agricultural uses including farm dwellings, orchards, crops, ranching and other productive agricultural pursuits, all as permitted by the County of Maui Zoning Ordinance and the State of Hawaii Land Use Law, HRS Chapter 205, as amended from time to time. All buildings and structures shall comply with all applicable County of Maui codes and regulations. (Additional use restrictions shall apply as set forth in subparagraph (c) below.)

(a) State Law Provisions. The specific requirements of HRS 205-4.5 as they exist on the date of this Declaration are as follows:

Section 205-4.5 Permissible uses within the agricultural districts. Within the agricultural district all lands with soil classified by the land study bureau's detailed land classifications as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

(1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;

(2) Game and fish propagation;

(3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;

(4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry; Farm dwellings as used in this paragraph means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

(5) Public institutions and buildings which are necessary for agricultural practices;

(6) Public and private open area types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs and overnight camps;

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;

(8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;

(9) Roadside stands for the sale of agricultural products grown on the premises;

(10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the abovementioned uses and are permitted under section 205-2(d);

(11) Agricultural parks; or

(12) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.

Under the law, uses not expressly permitted as set forth above shall be prohibited, except the uses permitted as provided in HRS Sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless the said A and B lands within the subdivision shall be made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition as prescribed in this section which restriction and condition shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or the lessee from obtaining mortgage financing from any of the mortgage lending agencies set forth hereinbelow, and said requirement is the sole reason for failure to obtain mortgage financing, then such requirement of encumbrances shall, insofar as such mortgage financing is so

jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that such conditional waiver shall thereafter become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies mentioned hereinabove are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and other federal, state or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

Within the agricultural district all lands, with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

Notwithstanding any other provision of HRS Chapter 205 to the contrary, golf courses and golf driving ranges approved by a county before July 1, 2005, for development within the agricultural district shall be permitted uses within the agricultural district. [However no golf course driving range was approved by the County of Maui before July 1, 2005, and no such facility would be permitted in any event under Maui County Code Ch. 19.30A.]

(b) Limitation on Restrictions. HRS Section 205-4.6 provides that private restrictions and covenants on agricultural uses and activities are prohibited. Any such restrictions shall be voidable subject to special restrictions enacted by the County of Maui by ordinance pursuant to HRS Section 46-4, except that restrictions taken to protect environmental or cultural resources shall not be void or voidable.

(c) Maui County Code Provisions Under Maui County Code Section 19.30A.050B. The following is a summary of the use restrictions established by the Maui County Code. Dwellings on agriculturally zoned land are limited to "Two farm dwellings per lot, one of which shall not exceed 1,000 square feet of [enclosed living area]." Under HRS Section 205-4.5 "Farm Dwellings" are limited to those dwellings which are single family dwellings "used in connection with a farm" or "where agricultural activity provides income to the family occupying the dwelling."

Section 19.04.040 defines "farm" as "a lot on which the majority of the land is used for and the predominant activity is agriculture and/or agricultural land conservation."

The term "agriculture" under Maui County Code Section 19.04.040 means "the production of plant and animal life for food and fiber, and for raw materials for proposed products. Agriculture includes but is not limited to fruit, vegetable, and flower growing; forestry; aquaculture; bee keeping; grazing and dairying; and their accompanying services and facilities."

The term "agricultural land conservation" under Maui County Code Section 19.04.040 means "the planting of self-nourishing plants and trees to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration."

3.02 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. Overnight parking is prohibited in the roadways and Common Areas.

Notwithstanding anything herein to the contrary, this Section 3.02 shall not apply to or restrict the placement, parking, use, repair, storage, maintenance or holding of tractors or any other types of agricultural vehicles or equipment.

3.03 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; provided, however that this section shall not restrict the use of any agricultural chemicals in connection with agricultural activities on any Property.

3.04 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. 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.

3.05 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.

3.06 Landscaping, Structures, 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. All structures located on each Property shall be kept in attractive condition, in good order and repair, and free from visible deterioration. All grass and vegetation on each Property (whether vacant or improved with a dwelling) will be kept neatly trimmed and hedges and other vegetation pruned. The Owner of each Property will maintain and keep trimmed and in neat condition each Drainage Facility located on the Property (but not including any culverts, headwalls, basins or other physical drainage structures, all of which shall be maintained by the Association as part of the Common Areas as provided in Section 4.02A below) in accordance with all County of Maui requirements. Each Owner will refrain from dumping grass clippings or debris in all drainage areas, easements and facilities on the Property and shall keep said area free of buildings, paving and obstructions which would reduce or interfere with its operation as a Drainage Facility.

3.07 Signs. Signs shall be prohibited except (a) Declarant's signs in connection with the construction, promotion and sale of Peahi Hui Subdivision; (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 identifying commercial agricultural operations.

3.08 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 (or other system as required by applicable law) shall be required for all systems located within one thousand feet (1000') of a well.

3.09 Further Divisions of Properties. No Property shall be further resubdivided into smaller parcels except by condominium conversion into not more than two (2) condominium units on any Property. Each condominium unit shall be deemed to be a separate Property hereunder and its owner(s) shall be a member (or members) of the Association; but each unit shall have a vote equal to 50% of the vote which was applicable to the entire Property before condominium conversion and each unit shall be responsible for the common area expenses equal to 100% of the obligation which was applicable to the Property before condominium conversion, so that each unit will be deemed a separate "Property" for purposes of Section 4.03 below and Article XI, Section 1 of the Bylaws.

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

3.11 Applicable Laws and Setbacks. All structures, grading, landscaping and other ground-altering activities shall comply with all applicable setbacks, laws, rules and regulations. Where requirements in this Declaration or its Exhibits are more stringent than applicable laws, rules and regulations, the requirements in this Declaration shall govern.

3.12 Limitation on Tall Trees. There shall be not more than three (3) Tall Trees on any lot. "Tall Trees" means any tree which exceeds twenty-five (25) feet in height measured vertically between the surface of the ground and any part of the tree; but "Tall Trees" shall not include coco palms. If the number of Tall Trees on any Property (the "Offending Property") exceeds three (3) in number and if the owner of another lot (the "Complaining Owner") whose mountain or ocean view is interrupted by said tree or trees desires to reduce or eliminate said interruption of view, the Complaining Owner shall have the right to notify the owner of the Offending Property requesting reduction in the height thereof, by pruning or cutting, in order to eliminate the branches and features of each such tree, the height of which causes said tree to be a "Tall Tree" as defined above (referred to herein as the "Corrective Action"). If the owner of the Offending Property shall not voluntarily and

promptly take Correction Action at his own expense, the Complaining Owner may enter the Offending Property and may (with men and machines), at his or her own expense and at his or her own risk, take Corrective Action provided that: (a) prior to said entry, the Complaining Owner shall have notified the owner of the Offending Property in writing at least ten (10) days before said work shall commence; and (b) in all events the Corrective Action shall not affect and impair the Offending Property owner's right to have and maintain, three (3) Tall Trees on said property, free from any Corrective Action. Corrective Action by a Lot owner in accordance with this Section 3.12 is the sole remedy against the Offending Property owner for his violation of this restriction on Tall Trees, and neither the Association or any other lot owner shall have any other right to enforce this restriction on Tall Trees, by Corrective Action or otherwise.

3.13 No Protection of Views. Except as provided in Section 3.12 above, 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, unless a formal written view easement shall have been specifically granted by the Owner(s) of any Property in favor of the applicant by the owner of the encumbered land and said easement shall have been recorded in the Bureau of Conveyances of the State of Hawaii.

3.14 Setbacks. No structure or building shall be constructed closer to the boundary line of Ho'okili Road than forty (40) feet. Said setback shall not, however, apply to building or structures on Lot 3-B or any Property not abutting Ho'okili Road. In all other instances, setbacks shall be governed by the applicable provisions of the Maui County Code.

4. ASSOCIATION.

4.01 Membership. The Owners of each Property shall automatically be members of the Association and said membership will be mandatory.

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."

4.02 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, the State of Hawaii or other governmental authority or any regulated public utility and upon the dedication thereof the land or facility so dedicated shall be deemed released from, and no longer subject to or encumbered by, this Declaration. NOTE: NEITHER THE STATE OF HAWAII NOR THE COUNTY OF MAUI HAS 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.

(The scope of the Association's authority over the easements defined in Section 2.03, may be more particularly defined in any existing or future document establishing each such easement or addressing such authority.)

4.02A Management of Drainage Facilities. The Association shall be responsible for overseeing, managing and controlling Drainage Facilities in accordance with applicable laws, regulations and prevailing reasonable drainage management practices consistent with the operation and management plan set forth in Exhibit "B" attached hereto and made a part hereof.

Without limiting the Association's said authority, the owner of each Lot containing a Drainage Facility shall have the right to plant and maintain landscaping of the land within the Drainage Facility and to use said land for the owner's own uses, provided that the operation and function of said Drainage

Facility to manage storm water drainage shall not be impaired or diminished.

If the Association is unable or fails to carry out its maintenance responsibility to preserve and manage the condition of the Drainage Facility on any Lot as needed to effectively manage and control drainage, then the Owner(s) of each Property shall assume the responsibility of maintaining that portion of the Drainage Facilities located within the boundaries of said Property, including repair of any storm-related erosion that may pose a threat to the safety or stability of buildings and other permitted structures erected along the drainage channel. Said Owner(s) shall be entitled to receive reimbursement from the Association of all costs incurred in performing said work, as a common expense of the Association.

In all events dumping of clippings, vegetative waste and fill in the Drainage Facilities by any Owner is strictly prohibited.

4.03 Common Expenses. Each Property (including any property created by condominium conversion as stated in Section 3.09 above), shall be subject to the obligation to pay an equal share, with every other Property, of 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 and record a notice of pending litigation against the delinquent Property or its owners.

Said lien or notice, 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.

4.04 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 3.12 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.

4.05 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 five (5) 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 5-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.

5. EASEMENTS.

5.01 Easements. The Plan and other legal documents applicable to Peahi Hui specifically describe 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, including but not limited to the drainage, utility, access and roadway easements. 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. Certain Easements shall confer the right to the benefited 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.

Said easements are non-exclusive and Declarant reserves the right to grant to others the rights to use the Easement Areas for such purposes as Declarant may determine. Also, if it is necessary or appropriate for all or any portion of said easement to be dedicated and transferred to the County of Maui or the State of Hawaii (in connection with the dedication of roadways under Section 5.03 below, or otherwise) Declarant shall have the authority, without the consent of the Association, to convey to the County of Maui any easement or legal title to all or any part of said Easement Area. Upon said transfer becoming effective, all rights and easements referred to herein shall automatically terminate if and to the extent required by the County of Maui or the State of Hawaii.

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.

5.02 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.

5.03 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 Peahi Hui Subdivision 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; for establishing any necessary drainage structures or areas; and for establishing and governing archaeological sites, species preservation areas, and cultural preservation areas as may be required by law or governmental authority; 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 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 Property 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. Also, no such easement shall unreasonably interfere with the reasonable use and enjoyment of any Property or cause any diminution in value thereof.

6. ROADS.

6.01 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 or any utility easement within Peahi Hui Subdivision. If, after Declarant's control shall have ceased as provided in Section 4.05 and title to any road shall not 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 this Declaration encumbering said road, shall automatically terminate.

7. NUISANCES AND RISKS FROM OPERATIONS AND PUBLIC ACCESS.

7.01 Nuisances From Agricultural and Other Operations. All owners and occupants of properties are hereby notified that lands within the agricultural zoning district are used for agricultural purposes as well as construction and site work on individual Properties and the Common Areas. Owners, residents and other users of such property or neighboring properties may be subject to inconvenience, discomfort and the possibility of injury to property and health arising from normal and accepted agricultural practices and other operations. Such normal and accepted agricultural practices and operations include but are not limited to noise, odors, dust, smoke, the operation of machinery of any kind, and the storage and disposal of manure and the use of pesticides, herbicides and other agricultural chemicals. Owners, occupants and users of such property or neighboring properties shall be prepared to accept such inconveniences, discomfort, and the possibility of injury from normal agricultural and other operations. The Declarant, and its respective officers, directors, employees, and agents of each, shall not have any liability or responsibility for any such noise, dust, emissions and nuisances.

8. ADMINISTRATIVE PROVISIONS.

8.01 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, 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.

8.02 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 non-binding arbitration. 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 preempt 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.

8.03 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.

8.04 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 nine (9) 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 nine (9) 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 three 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 4.05 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 ten 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; or

(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.

The Declarant's rights reserved under this Section 8.04 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.

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

8.06 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: Queen

Elizabeth II of England, and all descendants of such persons living on the date of this Declaration.

8.07 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.

8.08 Records of Ownership and Notices. The Declarant and the Association shall be entitled to rely conclusively on the records of ownership of the Properties provided to the Association pursuant to Sections 8.07 and 2.08 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 and the Association 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.

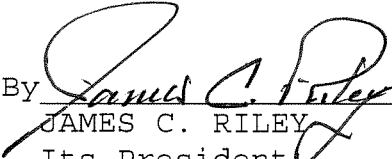
8.09 Act 5 as an Overriding Rule. On July 8, 2003, Act 5 was enacted by the Legislature of the State of Hawaii, which invalidates all restrictions on "agricultural uses and activities defined in Sections 205-2(d) and 205-4.5(a) [of Hawaii Revised Statutes] on lands classified as agricultural." All restrictions, rules and regulations contained in this Declaration, and amendments hereto, and any rules adopted by the Board of Directors under Section 5.04 shall be subject to Act 5 as an overriding rule and shall control in the event of any conflict. If it shall be determined that any restriction shall violate Act 5 said restriction shall be deemed void, anything in this Declaration to the contrary notwithstanding. The determination as to whether a violation exists shall be binding upon all owners and occupants of all Properties when made by any administrative agency having jurisdiction, the attorney for the Association, the board of directors, any arbitrator, or any regulatory body or court of law having jurisdiction.

If any provision of this Declaration shall be determined to be void or voidable under Act 5, that determination shall not render any other provision of this Declaration void or voidable.

Executed the day and year first above written.

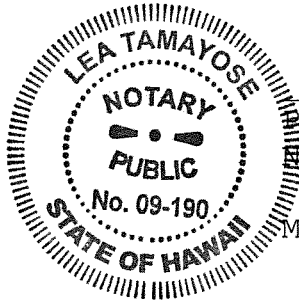
PEAHI HUI LLC

By WEST MAUI LAND COMPANY, INC.
Its Member

By  _____
JAMES C. RILEY
Its President

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 24th day of JULY, 2013, before me personally appeared JAMES C. RILEY, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Lea Tamayose
Print Name: LEA TAMAYOSE
Notary Public, State of Hawaii.

My commission expires: 17 MAY 2017

Date of Doc: <u>undated</u>	# Pages: <u>30</u>
Name: <u>Lea Tamayose</u>	Second Circuit
Doc. Description: <u>Peahi Hui Subdivision</u> <u>Declaration of Covenants, Conditions and</u> <u>Restrictions TMK: (2) 2-8-5:114</u>	
<u>Lea Tamayose</u> Notary Signature	
NOTARY CERTIFICATION	

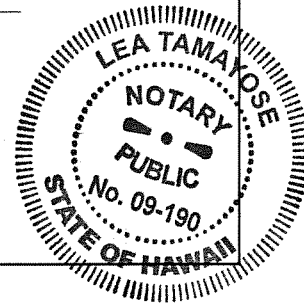


EXHIBIT "A"

All of that certain parcel of land known as LOT 3 of the consolidation and resubdivision of Lots 34, 35, 36 and 47 of Peahi Hui Partition, being portion of Royal Patent Grant 160 to Charles R. Bishop, as subdivision on file with the Department of Public Works and Waste Management (LUCA File No. 2.2350), situate at Peahi, Hamakualoa, Island and County of Maui, State of Hawaii, and more particularly described as follows:

Beginning at a point at the southeast corner of this parcel of land and along the north side of Kekoanui Place, the coordinates of said point of beginning being:

North 4,259.01 feet
East 1,886.48 feet

referred to Government Survey Triangulation Station "KAPUAI" and thence running by azimuths measured clockwise from true South (meridian of said "KAPUAI"); thence

1. 112° 48' 160.18 feet along the north side of Kekoanui Place to a point, thence
2. 103° 43' 283.37 feet along the same to a point, thence
3. 116° 48' 44.18 feet along EMI Ditch to a 1/2 inch pipe, thence
4. 283° 43' 157.33 feet along Lot 2 of this subdivision to a 1/2 inch pipe, thence
5. Along the same on a curve to the left with a radius of 30.00 feet and a central angle of 113° 13', the chord azimuth and distance being:

227° 06' 30" 50.10 feet to a 1/2 inch pipe, thence
6. 170° 30' 481.66 feet along same to a 1/2 inch pipe, thence

7. Along the same on a curve to the left with a radius of 30.00 feet and a central angle of 90° 00', the chord azimuth and distance being:
- 125° 30' 42.43 feet to a 1/2 inch pipe, thence
8. 80° 30' 170.00 feet along the same to a 1/2 inch pipe, thence
9. 350° 30' 467.23 feet along the same to a 1/2 inch pipe, thence
10. 116° 48' 108.56 feet along EMI Ditch to a 1/2 inch pipe, thence
11. 113° 16' 378.90 feet along the same to a 1/2 inch pipe, thence
12. 182° 13' 15" 262.53 feet along the same to a 1/2 inch pipe, thence
13. 162° 26' 15" 258.52 feet along the same to a 1/2 inch pipe, thence
14. 93° 08' 30" 263.56 feet along the same to a 1/2 inch pipe, thence
15. 98° 07' 54.24 feet along the same to a 1/2 inch pipe, thence
16. 144° 23' 197.80 feet along the land owned by EMI (TMK: (2) 2-8-02:18) to a 1/2 inch pipe, thence
17. 123° 56' 101.35 feet along the same to a 1/2 inch pipe, thence

Along the same and following the top of pali for the next two (2) courses:

18. 203° 30' 135.00 feet to a point, thence
19. 275° 54' 15" 358.04 feet to a 1/2 inch pipe, thence

20. 238° 07' 100.00 feet along the same to a 1/2 inch pipe, thence

Along the same and following the top of pali for the next two (2) courses:

21. 148° 07' 369.44 feet to a point, thence

22. 223° 10' 30" 160.25 feet to a point, thence

23. 320° 16' 20" 58.40 feet to a 40 feet wide right of way Government Road Remnant to a point, thence

24. Along the same on a curve to the left with a radius of 63.00 feet and a central angle of 150° 01' 30", the chord azimuth and distance being:

245° 15' 45" 121.71 feet to a point, thence

25. 170° 15' 130.00 feet along same to a point, thence

26. Along the same on a curve to the right with a radius of 70.00 feet and a central angle of 58° 41', the chord azimuth and distance being:

199° 35' 30" 68.60 feet to a point, thence

27. 228° 56' 184.90 feet along the same to a 1/2 inch pipe, thence

28. Along the same on a curve to the right with a radius of 267.00 feet and a central angle of 49° 02', the chord azimuth and distance being:

243° 27' 134.05 feet to a 1/2 inch pipe, thence

29. 257° 58' 143.50 feet along same to a found 3/4 inch pipe, thence

30. 347° 58' 720.32 feet along same to a found 3/4 inch pipe, thence
31. 252° 56' 20.07 feet along same to a found 3/4 inch pipe, thence
32. 167° 58' 718.57 feet along same to a found 3/4 inch pipe, thence
33. 257° 58' 91.55 feet along the same to a point, thence
34. Along Hana Highway on a curve to the right with a radius of 2,824.79 feet and a central angle of 5° 01' 44", the chord azimuth and distance being:
- 291° 27' 56" 247.85 feet to a point, thence
35. 2° 38' 587.76 feet along Lot 37 of Peahi Hui Partition to a found 3/4 inch pipe, thence
36. 272° 38' 400.00 feet along Lots 37 and 38 of Peahi Hui Partition to a found 3/4 inch pipe, thence
37. 13° 59' 799.87 feet along Lots 39, 40, 41 and 42 of Peahi Hui Partition to a found 3/4 inch pipe, thence
38. 73° 12' 75.00 feet along Lot 43 of Peahi Hui Partition to a 1/2 inch pipe, thence
39. 350° 30' 131.91 feet along Lot 43 of Peahi Hui Partition to a 1/2 inch pipe, thence
40. 80° 30' 205.00 feet along Lot 1 of this subdivision to a 1/2 inch pipe, thence
41. 350° 30' 353.48 feet along the same to a 1/2 inch pipe, thence

42. Along the same on a curve to the left with a radius of
30.00 feet and a central angle of
66° 47', the chord azimuth and
distance being:
- 317° 06' 30" 33.02 feet to a 1/2 inch pipe, thence
43. 283° 43' 61.05 feet along the same to a 1/2 inch
pipe, thence
44. 292° 48' 154.65 feet along the same to a 1/2 inch
pipe, thence
45. 350° 30' 11.83 feet along Lot 45 of Peahi Hui
Partition to the point of
beginning and containing an area
of 38.490 acres, more or less.

END OF EXHIBIT "A"

EXHIBIT "B"

OPERATION AND MANAGEMENT PLAN FOR
DRAINAGE FACILITIES AT PEAHI HUI SUBDIVISION

To implement Sections 4.02 and 4.02A of the Declaration, the Association shall oversee, manage and operate the Drainage Facilities in accordance with applicable governmental rules and reasonable drainage management standards, including the following:

1. The Association shall check each drainage basin for sediment buildup, not less frequently than annually and shall remove sediment buildup if and to the extent it shall impair the efficient operation of the Drainage Facility.

2. The Association shall keep reasonable records of its maintenance actions.

3. If the owner of a property on which a Drainage Facility is located shall dump or place clippings, debris or other material in any Drainage Facility the effect of which would be to impair the Facilities' efficient operation, the Association may remove all such materials and clean the Facility and shall have the authority to levy a special assessment for the cost thereof against the property owner to reimburse the Association for the cost thereof.

4. Neither the Association nor any officer, director or employee of the Association shall be liable for any claim, loss, damage or expense which the owner or occupant of any Property may suffer or incur as a result of any storm water runoff, drainage or failure of any Drainage Facility to adequately manage drainage regardless of whether said claim, loss, damage or expense shall have been caused by any acts or omissions of the Association or any officer, director, agent or contractor of the Association or the failure of the Association to manage, maintain or operate the Drainage Facilities in accordance with this Plan.

END OF EXHIBIT "B"