

E PAEPAE KA PUKO'A
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Table of Contents

1. RECITALS

2. DEFINITIONS

 2.01 "Association"

 2.02 "Central Drainage Facilities"

 2.03 "Common Area"

 2.04 "Declarant"

 2.05 "Declaration"

 2.06 "Neighborhood" and "E Paepae Ka Puko'a"

 2.07 "Owner"

 2.08 "Plan"

 2.09 "Property" and "Lot"

 2.10 "Utility"

3. COVENANTS

 3.01 Residential Uses, Ohanas and Divisions of Ownership

 3.02 No Commercial Use

 3.03 Animals and Pets

 3.04 Vehicles and Parking

 3.05 Nuisances

 3.06 Maintenance of Structures, Properties and Drainage Areas

 3.07 Access Restriction and Maintenance of Laulea Place Frontage

 3.08 Hazardous Materials

 3.09 Antennas

 3.10 Refuse and Building Materials

 3.11 Clotheslines and Exterior Tanks

 3.12 Exterior Lighting

 3.13 Swimming Pools

 3.14 Grading and Drainage

 3.15 Completion of Construction and Landscaping

 3.16 Easement Areas

 3.17 Signs

 3.18 Utilities

 3.19 Building Height

 3.20 Sizes of Structures

 3.21 Reflective Material

 3.22 Setbacks

 3.23 Temporary Structures

 3.24 Compliance With Design Standards and Laws

 3.25 Water Conservation Measures

3.26	Damage to Common Areas	
3.27	Use and Restriction on Lot 19	
3.28	Park Lot 18	
3.29	Restrictions and Use of Open Space Lot 20	
3.30	Gate	
3.31	Landscaping	
4.	ARCHITECTURAL CONTROLS	
4.01	Purpose	
4.02	Restriction and Scope	
4.03	Composition of Architectural Design Committees	
4.04	Standards and Procedures of the Architectural Design Committee	
4.05	Responsibility	
4.06	Variances	
4.07	No Protection of Views	
4.08	Design Standards	
4.09	Enforcement	
5.	E PAEPAE KA PUKO'A ASSOCIATION, INC.	
5.01	Membership	
5.02	Government and Control of Common Areas	
5.03	Common Expenses	
5.04	Declarant's Control	
6.	EASEMENTS	
6.01	Easements Shown on Plan	
6.02	Encroachments	
6.03	Additional Easements	
6.04	Agricultural, Airport and Public Operations	
	(a) Agricultural Operations	
	(b) Airport Operations	
	(c) Public Operations	
7.	DEVELOPMENT OPERATIONS	
8.	ADMINISTRATIVE PROVISIONS	
8.01	Violations and Disputes	
8.02	Resolutions of Disputes Between Owners of Properties	
8.03	Right of Entry and Enforcement	
8.04	Duration of Covenants	
8.05	Amendment of Covenants	
8.06	Severability	
8.07	Perpetuities	
8.08	Notice of Sale or Transfer of Title	
8.09	Records of Ownership and Notices	

Exhibit A:	Description of Land
Exhibit B:	Design Standards
Exhibit C-1:	Conservation Easement
Exhibit C-2:	Unilateral Agreement
Exhibit D:	Dispute Resolution Procedures

Declaration of Covenants, Conditions and Restrictions

This Declaration is dated as of this _____ day of _____, 2006, and is executed by OLD STABLE LLC, a Hawaii limited liability company, whose principal place of business is 464 Laulea Place, Paia, Hawaii 96779 (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 in sixteen (16) residential lots, a road lot, a park lot, an open space/beach access lot, and an open space/drainage retention lot, all to be known as "E Paepae Ka Puko'a". 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 any road lot) 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 2.09 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 E Paepae Ka Puko'a 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 "Association" shall mean the Association more particularly described in Article 5 below.

2.02 "Central Drainage Facilities" are defined in Section 2.03(iii) below.

2.03 "Common Area" means (i) Road Lot 22, Kapukaulua Way, if and so long as such lot shall not have been dedicated to and accepted by the County of Maui; (ii) non-exclusive access rights over Old Stable Road, Road Lot 23, as set

forth in the Declaration of Easements; (iii) waterlines and sewerlines, if any, which are not owned by the County of Maui or others and which serve more than one lot or the subdivision as a whole; (iv) Park Lot 18; (v) Open Space/Drainage Lot 19 which contains, among other things, a drainage retention area and which shall be left in a natural state and used and maintained as drainage (collectively, the "Central Drainage Facilities") subject to a recorded conservation easement; (vi) Beach Access/Open Space Lot 19; (vii) the bike path Lots 25, 26 and 27, for public use and access; (viii) Landscaping Lot 24 and the 10-foot wide landscaping easement described in Section 3.31 below; (ix) all other areas within one or more Properties which may be designated by Declarant and which may comprise landscaping easements, drainage easements or utility easements for the benefit of one or more other Properties, the common areas or E Paepae Ka Puko'a as a whole or as may be required by governmental authorities; (x) 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. Declarant reserves the right to grant and convey title of any common area to the State of Hawaii, the County of Maui or any other governmental or public body, and upon said conveyance, the land so conveyed shall be deemed to be released from the encumbrance of this Declaration and from all rights and authority of the Association under this Declaration.

2.04 "Declarant" means Old Stable LLC, a Hawaii limited liability company, 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.

2.05 "Declaration" means this Declaration of Covenants, Conditions and Restrictions as it may be amended from time to time. "Declaration of Easements" means that certain Declaration of Easements, dated _____, recorded in the State of Hawaii Bureau of Conveyances as Document No. _____.

2.06 "Neighborhood" and "E Paepae Ka Puko'a" mean all Properties and all Common Areas (whether now or in the future designated as such) defined in Sections 2.09 and 2.03 hereof.

2.07 "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 and until a written notice of transfer is filed in the official

ownership records of the Association maintained by the Board of Directors.

2.08 "Plan" means the subdivision plat entitled "Ulmer Subdivision (E Paepae Ka Puko'a)" dated January 11, 2005, as revised through the date of this Declaration, prepared by Ken T. Nomura, and as approved by the County of Maui on _____, and as amended from time to time by Declarant.

2.09 "Property" and "Lot" means each of the sixteen (16) subdivided lots numbered 1 through 9, inclusive, and 11 through 17, inclusive, described on the Plan.

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

3. COVENANTS.

3.01 Residential Uses, Ohanas and Divisions of Ownership. Each Property shall be used for single family residential purposes only. Only one single family residence shall be permitted on each Lot. No second dwelling or accessory ("ohana") dwelling is permitted on any Lot. Condominium ownership shall not be permitted. No further subdivision of any Lot shall be permitted.

3.02 No Commercial Use. No Property shall be used for any commercial, professional, or business use, except the following:

(a) Reasonable sales activities on any Property for the purpose of selling such Property, including but not limited to reasonable placement of signs and advertising of the Property for sale.

(b) Declarant's activities in connection with the initial marketing and sale of any Properties in the Neighborhood; and

(c) If permitted by applicable zoning, work in a home office not visible from any other Property or the road and not involving visits to the Property by any customer, client or any other person, except on an incidental or occasional basis (provided that such use shall not violate applicable law).

No bed and breakfast or transient or vacation rental operations are permitted and no rental operations on a room by room or "boarding house" basis shall be permitted.

3.03 Animals and Pets. No livestock, poultry or other animals whatsoever shall be allowed or kept on any part of the Common Areas or streets or on any of the Properties, except as otherwise provided below and except that dogs, cats and other household pets (consisting of aquarium animals, caged birds, or other small caged animals kept indoors) may be kept in reasonable number by an Owner on the Owner's Property, but such dogs, cats and other household pets shall not be kept, bred or used therein for any commercial purpose nor allowed on any Common Areas or streets except in transit when carried or on leash. Notwithstanding any provision to the contrary contained herein, guide dogs, service animals and signal dogs (as defined herein below) (hereinafter collectively referred to as "specially trained animals") shall be permitted subject to the following restrictions:

- (i) such specially trained animals shall not be kept, bred or used by any Owner for any commercial purpose; and
- (ii) any specially trained animals shall be on leash while on the Common Areas and streets.

Any pet as described above and any specially trained animal causing a nuisance or unreasonable disturbance to any other Owner shall be promptly and permanently removed from E Paepae Ka Puko'a upon notice given by the Board of Directors of the Association; provided, however, that any such notice given with respect to a specially trained animal shall provide that before such animal must be removed, its Owner shall have a reasonable time to acquire a replacement specially trained animal unless the Association determines that such animal poses an imminent serious threat of physical harm to other occupants at E Paepae Ka Puko'a. The Board of Directors of the Association may from time to time promulgate such rules and regulations regarding the continued keeping of such pets and specially trained animals as the circumstances may then require or the Board of Directors of the Association may deem advisable.

The term "guide dog" shall mean "any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person" as defined in Section 515-3(8), Hawaii Revised Statutes, as the same may be amended from time to time in the future.

The term "service animal" shall mean "any animal that is trained to provide those life activities limited by the disability of the person," as defined in Section 515-3(8), Hawaii Revised Statutes, as the same may be amended from time to time in the future.

The terms "signal dog" shall mean "any dog that is trained to alert a deaf person to intruders or sounds," as defined in Section 515-3(8), Hawaii Revised Statutes as the same may be amended from time to time in the future.

3.04 Vehicles and Parking. Each dwelling shall have a garage with a minimum size sufficient for two cars.

There shall be no overnight parking of any vehicle on any street in the Neighborhood except for temporary parking of vehicles of guests and visitors. There shall be no parking of any boat, personal watercraft, all-terrain vehicle or trailer on any Property in a location which shall be visible from any other Lot or the street.

No vehicle of any kind which is inoperable may be kept or stored outside of an enclosed garage and any such vehicle must be removed from the property or placed within an enclosed garage.

All inoperable vehicles parked or stored outside of the enclosed garage shall be removed within 72 hours. For purposes of this section, a vehicle shall be considered "inoperable" if it is stored or is incapable of being driven on public roads for any reason, including but not limited to lacking valid current license plates and/or a valid current safety inspection sticker and/or a valid current no-fault insurance, or is physically incapable of operation regardless of whether it has such license plates, safety inspection sticker or no-fault insurance.

For purposes of this section, a vehicle shall be considered "stored" if it is parked, put up on blocks, jack stands, ramps, or other supporting devices or is covered with a tarpaulin, car cover, or similar protective material, and remains in such condition or is not driven on a public road for fourteen consecutive days.

Buses, trailers, heavy trucks (i.e. trucks for which a Class 4 driver's license or commercial driver's license of any category is required) and construction equipment shall not be parked on any street or Property except on a temporary basis in connection with construction or site work being conducted on said Property.

Any vehicle which is parked in violation of this Section may be towed by the Board of Directors at the expense of the owner thereof as provided by law.

3.05 Nuisances. No noxious or offensive activity shall be carried out upon any Property, nor shall anything be done or allowed 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 which cause unreasonable noise, dust or any violation of any applicable laws, rules or regulations. Without limiting the generality of the foregoing, all construction activities shall be conducted in a manner which controls the creation and dispersal of dust to the greatest extent possible, including but not limited to frequent watering of exposed soil and use of dust barriers between the construction site and neighboring properties.

3.06 Maintenance of Structures, Properties and Drainage Areas. 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. Each Owner will refrain from dumping grass clippings or debris in all drainage areas, easements and facilities on the Property and in any gulches or on adjacent land; and shall keep all drainage areas free of buildings, paving and obstructions which would reduce or interfere with their operation as drainage facilities.

3.07 Access Restriction and Maintenance of Laulea Place Frontage. The Declarant shall provide a berm and wall along the makai boundaries of Lots 1, 3, 5, 7, 8 and 9 to provide a degree of separation between the lots and Laulea Place (Lot 28). The owner of each such Property shall maintain, repair and replace the mauka side of said berm and wall if and to the extent they are located on his or her own Property at his or her expense.

Access to Laulea Place (Lot 28) from said Lots 1, 3, 5, 7, 8 and 9 by foot or vehicle is absolutely prohibited. This restriction may be enforced by legal action by one or more owners of TMKs (2) 3-8-2:6, 7, 8, 68, 47, 33 and 34 (collectively, the "Benefitted Lots"), as third party beneficiaries of this restrictive covenant. Notwithstanding anything to the contrary in this Declaration, this Section 3.07 may not be amended without the written consent or joinder of the Owners of all of the Benefitted Lots.

3.08 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.

3.09 Antennas. An exterior antenna or satellite dish is permitted provided that such apparatus is screened so as to be invisible from other Properties and from roads, but, with respect to television antennas and satellite antennas one meter or less in diameter, only to the extent allowed by the Telecommunications Act of

1996 (Pub. L. No. 104-104 §207, 110 Stat. 56, 114 (1996)), and the Federal Communication Commission's Over-the-Air Reception Devices Rule (47 C.F.R. §1.4000).

3.10 Refuse and Building Materials. Trash, garbage and other waste shall not be kept on any Property except in sanitary containers, stored inside the dwelling or enclosed garage and not visible from any street or other Property. 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.

3.11 Clotheslines and Exterior Tanks. There shall be no exterior clotheslines or above-ground storage tanks of any kind on any Property which shall be visible from any other Property or any road.

3.12 Exterior Lighting. All exterior lights shall be appropriately screened so as not to cause any unreasonable glare visible from adjoining Properties or roads.

3.13 Swimming Pools. There shall be no free standing or above-ground swimming pool on any Property, and each in-ground swimming pool will be installed with appropriate fencing and landscaping, in full compliance of all local, state and national codes, and only after obtaining a building permit as required by the County of Maui.

3.14 Grading and Drainage. All Property Owners must address drainage concerns in developing their Properties. 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. Existing drainage running across a Property from abutting land located uphill must be redirected around the location of any proposed home by grading or elevating the home, but the volume or velocity of runoff to the downhill abutting land may not be increased, nor may it be relocated in a manner which would adversely affect the use or development of said downhill abutting land. The drainage and finished grading plan for each Property shall be prepared by a qualified civil engineer and must be approved pursuant to Section 4.02 below. The County of Maui may require a drainage report and/or an NPDES permit with any building permit application.

3.15 Completion of Construction and Landscaping. "Completed dwelling" means completed and ready for occupancy, with the only remaining work being correction of minor items not affecting use and occupancy.

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 shall be completed not later than two (2) years from the date of commencement of construction. Each Property shall be landscaped and planted by its Owner, with an effective and operable landscape irrigation system in place not later than 12 months after completion of construction of the dwelling on said Property.

Without limiting the generality of the Association's enforcement power under Section 8.03 below, the Association may levy special fines and may require other remedies to (a) reduce the adverse impact on the Neighborhood resulting from a Lot Owner's failure to comply with this Section 3.15 and (b) to force or encourage compliance by the Property owner. Initially the fine shall be \$2,500 for each six months of non-compliance, prorated on a monthly basis, unless and until the Board of Directors shall establish a different schedule of fines, in its discretion.

3.16 Easement Areas. No buildings or other structures shall be built within any area labeled on the Plan as easements for utilities or drainage areas.

3.17 Signs. Signs shall be prohibited except (a) Declarant's signs in connection with the construction, promotion and sale of E Paepae Ka Puko'a, (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, (d) signs identifying contractors no larger than 8 square feet, and (e) signs identifying common areas and their access and uses, and signs indicating security systems, neighborhood crime watch and private property.

3.18 Utilities. All utilities within E Paepae Ka Puko'a and within each Property shall be underground.

3.19 Building Height. The height of each building or structure on each Property shall not exceed two stories, with the specific building height limit of 30 feet from the lower of natural grade or finished grade (as defined by the County of Maui under its zoning ordinance).

3.20 Sizes of Structures. A primary dwelling constructed on any Property shall contain a covered and enclosed floor area of not less than 2,000 square feet, exclusive of garage and exclusive of lanais or other open areas not enclosed on all four sides.

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

3.22 Setbacks. Setbacks are governed by the applicable provisions of Maui County Code.

3.23 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, except for storage sheds approved in accordance with Article 4 hereof and which shall not be visible from any other Property or any road.

3.24 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 from time to time and the approval requirements of Article 4 hereof (when applicable) 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.

3.25 Water Conservation Measures. The Owners of all Properties shall use all reasonable efforts to comply with water conservation measures and recommendations of the County of Maui Department of Water Supply which may be issued from time to time, including but not limited to the following:

(a) No air conditioner, freezer or commercial refrigerator shall contain a single-pass water cooled system. Said systems have been eliminated by Section 14.21.20 of the Maui County Code.

(b) Low flow water fixtures and devices in faucets, showerheads, urinals, water closets and hose bibs shall be used, as required by Maui County Code Section 16.20A.680. Also water conserving washing machines, ice makers and other units which are available shall be utilized whenever practicable or required by law.

(c) Each Owner shall conduct a simple, regular program of repair and maintenance to prevent the loss of water through leaks and defective facilities.

(d) All Property Owners shall consider using climate adapted and salt tolerant native plants in yard landscaping. Native plants adapted to the

area conserve water and further protect the watershed from degradation due to invasive alien species.

(e) Wherever practicable, rain sensors on all automated irrigation controllers shall be installed by each Owner.

3.26 Damage to Common Areas. During construction of improvements on a Property by its Owner or Owner's contractors, the roads, waterlines, sewer lines, roadside planted areas, sidewalks or other common areas may be damaged in the process. Each Owner who has caused such damage or whose contractors or agents have caused such damage, shall be responsible for promptly repairing such damage at its own expense and at no cost to the Association or to the Owners of any other Properties. In the event any Owner shall fail to repair such damage, the Association (or the Declarant on its behalf) may make said repairs and the cost thereof shall be assessed against the Property responsible for the damage and said assessment shall be secured by a lien on such Property as provided in Section 5.03 below.

Prior to commencing grading or construction on any Property, the Owner of said Property shall deposit the sum of \$1,500.00 with the Declarant as partial security against the Owner's payment and performance of its obligations under this section. Without limiting any other rights of enforcement hereunder, the Declarant shall have the right to apply said deposit towards the repair of any such damage. Construction or grading shall not commence until said security shall be so deposited.

3.27 Use of and Restriction on Lot 19. Lot 19 is designated as Common Area and shall be under the management and control of the Association; provided, however that the following covenants and restrictions shall apply to Lot 19 and shall govern its use, in perpetuity:

(a) An accessway has been constructed which begins on Kapukaulua Way (Road Lot 22) at the southwesterly corner of Lot 2 and runs in a straight line along the westerly boundaries of Lot 2 and Lot 1 and continues in a straight line along the westerly side of Lot 19 to the southwesterly corner of TMK (2) 3-8-2:8 and then continues in a northeasterly and northerly direction along the boundary of said TMK (2) 3-8-2:8 to the sea (herein called the "Beach Accessway"). The remainder of Lot 19, not included within the accessway, is called the "Lot 19 Open Space Area".

(b) The Beach Accessway shall be separated from the Lot 19 Open

Space Area by a fence which shall be constructed by Declarant at Declarant's option or by the owner of Lot 1 at its option, in order to prevent entry onto the Lot 19 Open Space Area by those persons using the Beach Accessway. Said fence shall be maintained by the owner of Lot 1 at its option, in good order and condition.

(c) The Beach Accessway shall be used by the owners of Properties in E Paepae Ka Puko'a only and their tenants, guests and licensees and shall be used as a pedestrian walkway and for golf carts and maintenance vehicles but by no other motorized vehicles.

(d) Except for the fence described in (b) above, no structures shall be erected within Lot 19 and no person shall enter upon or use Lot 19 for any purpose whatsoever, except for the purpose of maintaining the vegetation. Pursuant to the Declaration of Easements, the owner of Lot 1 shall have the exclusive right and authority to enter Lot 19, for the sole purpose of constructing, maintaining and replacing said fence and planting, removing, replacing and maintaining vegetation in order to perpetuate and enhance Lot 19 as a natural, open space area.

3.28 Park Lot 18. Park Lot 18 is established as a park for the use of the owners of Properties in E Paepae Ka Puko'a and their tenants, guests and licensees, as set forth in the Declaration of Easements. Its use shall be restricted to park and family recreational purposes. Lot 18 shall be graded and landscaped with grass, as well as trees and any other improvements in the Declarant's or the Association's discretion, and shall be maintained in perpetuity by the Association as a common expense. The park shall be subject to reasonable restrictions on use and access which may be exercised by the Declarant or by the Association from time to time, to protect the health, safety, privacy, security and well-being of the residents of E Paepae Ka Puko'a and their tenants, guests and licensees. For example, the Declarant or the Association may adopt restrictions closing the park during non-daylight hours, require noise, stereos and music to be reduced, regulate the use of bicycles, skateboards or other equipment in the park, and fencing, gating and closing the park to the general public.

3.29 Restrictions and Use of Open Space Lot 20. Open Space/Drainage Lot 20 shall be owned and maintained by the Association as a common expense, for the following purposes and subject to the following restrictions:

(a) Said lot is subject to (i) a perpetual conservation easement in favor of the Maui Coastal Land Trust and its successors in interest, a copy of which is attached hereto as Exhibit "C-1" and (ii) a Unilateral Agreement

in favor of the County of Maui, a copy of which is attached hereto as Exhibit "C-2". The Association and all owners, tenants, guests and licensees of Properties shall strictly observe and comply with all of the restrictions, terms and conditions of said easement and agreement.

(b) The Association shall, as a common expense, maintain the drainage facilities located on said lot as a general drainage area for the benefit of E Paepae Ka Puko'a and the roads and surrounding lands. Said maintenance shall include removing any vegetation, silt or other materials which may interfere with the operation of the drainage facilities as a viable and effective drainage management area.

(c) Traversing Lot 20 is a public accessway as required by the Unilateral Agreement described in subparagraph (a) above (the "Public Access"). The Public Access shall be maintained in perpetuity by the Association as a common expense. The standard of maintenance shall assure that the Public Access shall be reasonably passable and usable by the public, for beach access to Spreckelsville Beach and to TMK (2) 3-8-2:10. The Public Access shall be open to the public, subject to reasonable restrictions on use and access which may be exercised by Declarant or by the Association, at its sole discretion, from time to time, to protect the public health, safety and welfare including but not limited to the adoption and enforcement of restrictions closing the access during non-daylight hours, requiring noise, stereos and music to be reduced, and regulate such matters as vehicular speed, littering and other problems. The Association may in its discretion cooperate with state or county law enforcement agencies in connection with such restrictions and uses. The foregoing is subject to the rules and requirements of the County of Maui.

(d) All other areas within Open Space/Drainage Lot 20 shall be left forever wild, and without public or private access or use, and fenced to restrict access.

(e) The Association shall, as a common expense carry liability insurance to cover claims, losses, liabilities and expenses which may arise out of any personal injury or property damage occurring to the public and others using the Public Access and Open Space/Drainage Lot 20, with commercially reasonable coverages and amounts, which shall name the Association as an insured, if and to the extent reasonably available in the insurance market.

3.30 Gate. No gates shall be installed or maintained within any road in the

subdivision; including Lot 22, Kapukaulua Way.

3.31 Landscaping. As long as Lot 24 shall be managed by the Association as a common area, Lot 24 shall be maintained as a landscaping area, and all monkeypod trees shall be maintained for the enjoyment of the public using the bike path Lots 25 and 26. When said trees shall die, they shall be replaced by other monkeypod trees.

Also a 10-foot wide landscaping easement shall be maintained by the Association along the southerly boundary of Lots 11 through 18, in an attractive and landscaped manner, consistent with all requirements of the County of Maui. The easement shall include the right of ingress and egress by persons and equipment, and the right to plant, replant, trim and maintain the trees. To the extent that the branches or trunks of the trees extend beyond the 10-foot wide strip, the easement area shall include the areas of the trunks and branches.

4. ARCHITECTURAL CONTROLS.

4.01 Purpose. The purpose of the architectural controls set forth in this Article 4 is to give the Declarant and the Association the means to attempt in its discretion to avoid strange, jarring or inappropriate structures being initially developed within E Paepae Ka Puko'a which may be out of harmony with E Paepae Ka Puko'a as a whole. It is understood that Declarant's or the Architectural Design Committee's judgment in these matters may not be perfect or even consistent, and that some degree of taste and subjectivity will necessarily be involved. However, 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 initially exercised and delegated at Declarant's option only. Declarant may delegate this function to the Association's governance under Section 4.03 below. Declarant or its designee shall have no legal obligation to exercise or delegate the architectural controls and shall have no liability to any buyer or owner if Declarant or its designee shall elect not to exercise said controls or shall fail to enforce said controls as to some or all of the Properties or if Declarant or its Designee exercises said controls in whole or in part in a manner which a buyer or Owner of any Property feels is inappropriate, inconsistent or otherwise objectionable.

4.02 Restriction and Scope. No structure which is or will be visible from a road or from any other Property may be constructed and no grading or material alternation of topography which would affect drainage shall occur without the prior written approval of the Architectural Design Committee (defined below); 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 Architectural Design Committee. The Owners of each Property shall comply with and abide by all proposals, plans and specifications submitted to and approved by the Architectural Design 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 Architectural Design Committee under this Article 4: (a) the grading or alteration of any topography of any Property by Declarant or the construction, remodeling or change of any structure by the Declarant (or any successor as developer of all or part of E Paepae Ka Puko'a) as part of the development or initial sale of E Paepae Ka Puko'a; (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 designee) 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 (or any separate committee appointed for that purpose by the Board of Directors) shall act as the Architectural Design Committee.

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 may (but is not required to) engage one or more architects, engineers or other professionals 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 with the rest of E Paepae Ka Puko'a. 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 E Paepae Ka Puko'a 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.

Each request for variance shall be submitted to the Architectural Design Committee in writing, on such form and with such detail as the Committee may prescribe.

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.

4.08 Design Standards. The Design Standards attached hereto as Exhibit "B" are hereby adopted by the Declarant as the Design Standards for E Paepae Ka Puko'a. 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 (or the Board of Directors after the Architectural Design Committee function has been delegated to the Board by Declarant under Section 4.03 above) 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 8.05 below). The Declarant (or Board) shall give notice of all proposed amendments to all lot owners (as shown on the records of the Association) and shall give them a reasonable opportunity to comment, all in accordance with reasonable procedural rules implemented by the Architectural Design Committee from time to time.

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.

4.09 Enforcement. Reference is made to Sections 8.01 and 8.03 below providing for the Association's enforcement of the provisions of this Article 4 and the Design Standards. If the Board of Directors of the Association shall fail to enforce any violation of this Article 4, the Design Standards or the terms and conditions of any Architectural Design Committee approval, the Architectural Design Committee is authorized to and may proceed to take any and all enforcement actions on behalf of the Association.

5. E PAEPAE KA PUKO'A ASSOCIATION, INC.

5.01 Membership. The Owners of each Property shall automatically be members of the E Paepae Ka Puko'a Association, Inc., a Hawaii non-profit corporation, a non-profit planned community association organized and existing pursuant to Chapter 421J, Hawaii Revised Statutes (the Hawaii Planned Community Associations Act), and Chapter 415B, Hawaii Revised Statutes (the Hawaii Nonprofit Corporations Act) (herein called the "Association"), and such membership will be mandatory. Said membership 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". In the event that the Association as a corporate entity is dissolved (whether voluntary or involuntarily) or otherwise ceases to exist, then, in every such case, an unincorporated nonprofit association organized and existing pursuant to Chapter 421J, Hawaii Revised Statutes, and Chapter 429, Hawaii Revised Statutes (the Hawaii Uniform Unincorporated Nonprofit Associations Act), and governed by the Bylaws shall forthwith and without further action or notice be formed and shall succeed to all of the rights, duties, privileges, assets, benefits and obligations of the corporation unless otherwise provided in a resolution and plan of distribution adopted pursuant to Part V of Chapter 415B, Hawaii Revised Statutes, or any successor statute. Those persons who are serving as directors and officers of the corporation at the time of any such dissolution shall, upon such dissolution, become directors and officers of the unincorporated Association and shall continue to serve as such until their successors are duly elected in accordance with the

Bylaws.

5.02 Government and Control of Common Areas. The 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: DECLARANT INTENDS THAT KAPUKAULUA WAY (i.e. ROAD LOT 22) SHALL REMAIN PRIVATE.

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 private 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 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 Association or 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.

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 E Paepae Ka Puko'a 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. Said easements may be for the benefit of E Paepae Ka Puko'a or other lands adjacent to or nearby E Paepae Ka Puko'a owned by Declarant or others; 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 or any abutting land or roadway or any other land within the vicinity of E Paepae Ka Puko'a, the Declarant reserves for itself, the Association, and the designees of each (which may include, without limitation, Maui County and any utility provider) 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, 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 the Plan. 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 or landscaping 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.

6.04 Agricultural, Airport and Public Operations.

(a) Agricultural Operations. All Owners and occupants of Properties are hereby notified that certain lands nearby or abutting E Paepae Ka Puko'a are in active agricultural operations and that the Owners and occupants may be subject to noise, dust, odors, emissions, traffic and other nuisances, day and night, in connection with such operations. Declarant (and its respective officers, directors, employees and agents of each (and the owners and operators of said agricultural activities) shall not have any liability or responsibility for any such noise, dust, odors, emissions and nuisances. Each Owner of a Property, by taking title to said Property, thereby waives all such rights and claims against Declarant and others whose activities shall be creating or exacerbating such conditions.

(b) Airport Operations. All Owners of Properties are hereby notified

that the Property is next to Kahului Airport. The airport is a busy commercial airport with traffic and noise associated with airport use. Owners and occupants of Properties shall be subject to the noise, dust, odors, emissions, traffic and other nuisances, day and night, in connection with such operations. Declarant (and its respective officers, directors, employees and agents of each) shall not have any liability or responsibility for any such noise, dust, odors, emissions and nuisances. Each Owner of a Property, by taking title to said Property, thereby waives all such rights and claims against Declarant and others whose activities shall be creating or exacerbating such conditions.

(c) Public Operations. All Owners and occupants of Properties are hereby notified that the Properties are hereby notified that the subdivision abuts an area dedicated to public recreational use and that Owners and occupants of E Paepae Ka Puko'a may be subject to noise, crowds, beach use, vehicles and other nuisances in connection with such uses. Declarant (and its respective officers, directors, employees and agents of each) shall not have any liability or responsibility for any such noise, dust, odors, emissions and nuisances. Each Owner of a Property, by taking title to said Property, thereby waives all such rights and claims against Declarant and others whose activities shall be creating or exacerbating such conditions.

7. DEVELOPMENT OPERATIONS. All owners and occupants of the Properties are hereby notified that any or all of the Properties may be subject to noise, dust, emissions, traffic and other nuisances resulting from site grading, road building and construction on any Property, in the roads or Common Areas or on adjacent or nearby lands owned by Declarant or its successors or to owners or occupants of Lots within the E Paepae Ka Puko'a or their successors. The Declarant and others performing such work shall not have any liability to the Owners and occupants of any Property for damages and inconvenience resulting from said operations. Each Owner of a Property, by taking title to said Property, thereby waives all such rights and claims.

8. ADMINISTRATIVE PROVISIONS.

8.01 Violations and Disputes.

(a) If any person or entity shall violate, attempt to violate or threaten to violate any of the covenants herein contained, any rules or regulations of the Association or any ruling of the Architectural Design Committee, the Association, by and through the Board of Directors (or by and through the Architectural Design Committee as provided in Section 4.09 above), or any Owner of any Property (or the Declarant in its discretion, but without having any

affirmative duty to do so) may, in addition to and not exclusive of any other remedies available to the Association and such Owners or the Declarant, 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 attempted or threatened violation, or both. Said damages may expressly include a judgment for all of the plaintiff's costs of suit, including reasonable attorneys' fees. This subparagraph (a) is subject to the dispute resolution procedures set forth on Exhibit "D" attached hereto.

(b) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

(i) Collecting any delinquent assessments against any Property or the Owner of any Property;

(ii) Foreclosing any lien on any Property; or

(iii) Enforcing any provision of the Association documents or Chapter 421J, Hawaii Revised Statutes, against an Owner, occupant, tenant, employee of an Owner, or any other person who in any manner may use the Property;

shall be promptly paid on demand to the Association by such person or persons; provided that if the Association is not the prevailing party, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the actions of the Association, shall be promptly paid on demand to the person by the Association. The reasonableness of any attorneys' fees paid by a person or by an Association as a result of an action pursuant to subsection (b)(ii) shall be determined by the court.

(c) If any Owner is the prevailing party in an action against an Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Association documents or this chapter, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the Owner shall be awarded to the Owner; provided that no such award shall be made in any derivative action unless:

(i) The Owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue an enforcement action; or

(ii) The Owner demonstrates to the satisfaction of the

tribunal that a demand for enforcement made to the Board of Directors would have been fruitless.

If an Owner is not the prevailing party in any action against the Association, any of its officers or directors, or its Board of Directors, to enforce any provision of the Association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless the action was filed in small claims court, or, prior to filing the action in a higher court, the Owner has first submitted the claim to mediation pursuant to Section 421J-13, Hawaii Revised Statutes, and made a good faith effort to resolve the dispute under any of those procedures.

(d) The unpaid amount of any expenses, costs, or attorneys' fees owed to the Association by an Owner shall constitute a lien against the Owner's Property which may be foreclosed by action or by non-judicial or power of sale foreclosure procedures as set forth in Chapter 667, Hawaii Revised Statutes.

(e) Dispute Resolution Procedures: The procedures and requirements set forth in Exhibit "D" hereto shall apply to disputes and legal actions, as set forth in more detail therein.

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 (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.

8.03 Right of Entry and Enforcement.

(a) The Association's Board of Directors and its agents and representatives shall have the irrevocable power and right at any time and from time to time and without liability to any Owner or Owners for trespass, damage or otherwise, to enter upon any Property in the Neighborhood and any improvements thereupon to: (i) inspect such Property and improvements for the purpose of

ascertaining whether this Declaration and the Architectural Design Standards are being complied with; (ii) enforce any of the provisions of this Declaration or the Architectural Design Standards; or (iii) to maintain and repair the Property and improvements if for any reason whatsoever the Owner thereof fails to maintain any portion of a Property or the improvements thereon as required by this Declaration. No such entry shall be made until the Owner is provided with at least 48 hours written notice and an opportunity for a hearing before the Board regarding any alleged failure to maintain and repair the Property or improvements, except in emergencies which threaten the life or safety of other occupants of the Neighborhood or the public or damage to other Properties, in which case entry may be made without such notice or hearing. All expenses or costs incurred by the Association with respect to any such maintenance or repair shall be paid to the Association by the Owner promptly upon demand. The unpaid amount of any such expenses or costs shall constitute a lien against the Owner's Property which may be foreclosed by action or by non-judicial or power of sale foreclosure procedures as set forth in Chapter 667, Hawaii Revised Statutes.

(b) In addition to any other enforcement rights described in this Declaration, the Architectural Design Standards, and the Association's Bylaws or authorized by law, the Association's Board of Directors may take any or all of the following actions against any person or entity whose acts or failures to act violates or threatens to violate any provision of this Declaration, the Association's Bylaws, or the Architectural Design Standards: (i) suspend voting rights in the Association; (ii) impose reasonable fines and penalties; and (iii) prohibit or restrict the use of the Common Areas.

(c) Until and unless the Board of Directors shall adopt a different schedule of fines, a penalty of \$100.00 per day shall apply for any violation of this Declaration, the Bylaws, the Design Standards, or any rules and regulations adopted by the Board of Directors if such violation is not corrected within thirty (30) days of the date notice thereof is mailed to the Owner at the Owner's address as shown in the Association's records, or such shorter time as may be specified in the notice of violation. The amount of such penalty may be increased by the Board of Directors or the Board may commence legal action as provided hereinabove at any time after the expiration of the aforesaid periods.

8.04 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 in E Paepae Ka Puko'a, 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.

8.05 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 eight Properties in E Paepae Ka Puko'a, except as otherwise provided by applicable law, this Section 8.05 or Section 6.01A(e). Any such 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 eight Properties in E Paepae Ka Puko'a 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 in E Paepae Ka Puko'a or by the proper officers of the Association.

Notwithstanding the foregoing, Sections 3.07, 3.15, 3.27, 3.28, 3.29, Article 4, 5.04, 6.03, 6.04, 6.07, Article 7 and this Section 8.05 may not be amended in any event, or at any time, without Declarant's written consent until expiration or relinquishment of the Declarant's control of the Association as provided in Section 5.04 hereof or as otherwise set forth in this Section 8.05.

Notwithstanding the foregoing, the Declarant acting unilaterally may amend these covenants at any time within ten years from the date these covenants are recorded in the Bureau of Conveyances of the State of Hawaii. Also, during said 10-year period no amendment by the Owners will be effective without the Declarant's written consent (unless before the end of said five years Declarant shall be dissolved, shall be declared bankrupt, or shall in its sole discretion elect to relinquish said approval right by written notice signed by Declarant and duly recorded in the State of Hawaii Bureau of Conveyances).

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, 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.

(d) to clarify or improve any provision consistent with the original spirit and intent of this Declaration.

The Declarant's rights reserved under this Section 8.05 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.

8.06 Severability. In addition to any one or more of these covenants by judgment or court order shall not affect any of the other provisions hereof.

8.07 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.

8.08 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.

8.09 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 8.08 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.

OLD STABLE LLC

By: _____

Its: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this ____ day of _____, 2006, before me personally appeared _____, 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.

Notary Public, State of Hawaii
Printed Name: _____
My Commission Expires: _____

EXHIBIT "A"

The lands included in, and governed by, this Declaration are the following parcels of land within the E Paepae Ka Puko'a Subdivision, as shown on the subdivision map entitled "Ulmer Subdivision (E Paepae Ka Puko'a), dated January 11, 2005, prepared by Ken T. Nomura:

- Residential Lots numbered 1 through 9, and 11 through 17, inclusive
- Road Lot 22
- Park Lot 18
- Access and Open Space Lot 19
- Open Space and Drainage Retention Lot 20
- Access Easement over Lot 23
- Landscaping Lot 24

The following lots are not governed by or encumbered by this Declaration:

- Lot 10
- Lot 21
- Lots 25 through 28, inclusive

END OF EXHIBIT "A"

EXHIBIT "B"
DESIGN STANDARDS
FOR
E PAEPAE KA PUKO'A

Use of Owner's Lot: Compliance With Declaration and Bylaws

(A) Use and Site Development Restrictions and Requirements

- (i) Utilities
- (ii) Individual Lot Plot Plans
- (iii) Easements
- (iv) Grading
- (v) Lot Drainage
- (vi) Temporary Structures and Surplus Materials
- (vii) Fire Hazard
- (viii) Pavement and Play Areas
- (ix) Vehicles
- (x) Vehicle Repair
- (xi) Flood Zone

(B) Architectural Standards

- (i) Architectural Character
- (ii) Buildable Area
- (iii) Building Footprint
- (iv) Finish Floor Elevation
- (v) Building Envelope
- (vi) Building Height
- (vii) Minimum Dwelling Size
- (viii) Garage
- (ix) Roof Materials, Pitch and Overhand
- (x) Building Surfaces
- (xi) Exterior Lighting
- (xii) Driveways
- (xiii) Air Conditioning System and Mechanical Equipment
- (xiv) Solar Energy, Heat Pumps and Energy Savings Program
- (xv) Swimming Pools and Water Features
- (xvi) Refuse Storage
- (xvii) Antennas and Flagpoles
- (xviii) Mailboxes
- (xix) Exterior Walls/Other Materials/Color
- (xx) Fences, Walls, Hedges and Enclosures
- (xxi) Laundry Facilities
- (xxii) Signs

- (C) Landscape Standards
 - (i) Landscape Plans
 - (ii) Required Landscaping
 - (iii) Size of Plant Material
 - (iv) Top Soil
 - (v) Front Yard Grassing

- (D) Construction Standards
 - (i) Prior Notice to Committee
 - (ii) Performance: General Contractor
 - (iii) Materials and Quality
 - (iv) Foundations
 - (v) Ground Termite Standards
 - (vi) Abandoned Construction
 - (vii) Utility Lines

- (E) Construction Requirements
 - (i) Blasting
 - (ii) Construction Signs
 - (iii) Refuse Disposal Bins
 - (iv) Site Preparation
 - (v) Portable Toilets
 - (vi) Contractor's Acknowledgment

- (F) Approval Procedures and Requirements
 - (i) Consultation Services: Approval of Owner's Architect
 - (ii) Architectural Controls
 - (iii) Procedures for Submitting Plans
 - (iv) Applicable Laws
 - (v) Performance of Work

- (G) Reservations and Limitations
 - (i) Variance and Amendments
 - (ii) Delegation of Authority
 - (iii) Non-Liability
 - (iv) Consolidation and Subdivision

Introduction.

The following Design Standards are hereby established and adopted for E Paepae Ka Puko'a. All terms herein shall have the same meaning as set forth in the Declaration. "Declaration" means the Declaration of Covenants, Conditions and Restrictions to which these Design Standards are attached as Exhibit "B". "Subdivision" and "E Paepae Ka Puko'a" mean E Paepae Ka Puko'a. "Committee" means the Architectural Design Committee.

If there is any conflict or inconsistency between these Design Standards and the Declaration, the Declaration shall control.

Use of Owner's Lot: Compliance With Declaration and Bylaws.

(A) Use and Site Development Restrictions and Requirements.

Each owner and occupant of a Lot in the Subdivision shall at all times comply with all applicable laws, and with all of the provisions of the Declaration. Each owner and occupant of a lot in the Subdivision shall be responsible for insuring that the architect, engineer, general contractor and all subcontractors also comply with all applicable laws and with all of the provisions of the Declaration. In addition, each owner and occupant shall at all times comply with and observe each of the following provisions; provided, however, that in the event of any conflict between or among the provisions set forth below, the provisions of the Declaration and applicable laws, codes or ordinances, the most restrictive provisions or law, code or ordinance shall control.

(i) Utilities.

Except for propane gas and trash collection, utility services shall be provided to the boundary of each Lot in a completely underground distribution and/or collection system. Propane gas must be kept underground or within an enclosure, screened from view, approved by the Committee and gas supplier. Trash receptacles shall be screened from view of adjacent properties and roadways.

(ii) Individual Lot Plot Plans.

(a) Plot Plans for individual Lots will be furnished to the original owners approximately designating:

- (1) utility locations,
- (2) lot contours
- (3) building setbacks
- (4) sightline setbacks
- (5) building height limits

All information indicated thereon are approximate and subject to verification by the owner, prior to start of construction.

(b) The Declarant, Association, Board and Committee make no representation and assume no responsibility for the accuracy of the information set forth in the individual plot plans which is approximate and subject to verification by the owner.

(iii) Easements.

Easements for the installation and maintenance of utilities and drainage facilities are as set forth in or are as reserved as shown on the deed conveying the Lot to the initial owner of the Lot, and/or the Plot Plan for each Lot.

No improvements, roof eaves or overhangs, or major planting shall be placed on, below or above these easements without the prior consent of the Committee and, if

applicable, the entity utilizing the easement or to whom the easement has been granted.

(iv) Grading and Filling.

The owner shall accept the condition of his or her Lot in "as is" condition. All subsequent site work performed by the owner shall be in strict compliance with plans as approved by the Committee.

(v) Lot Drainage.

(a) The flow of surface and/or subsurface drainage onto, across or from each Lot, shall not be obstructed. Such run-off shall be managed in a manner which will prevent erosion and damage to adjacent property and will conform to the requirements of law, the Declaration and any NPDES Permit. The design for Lot drainage facilities shall be prepared by an architect or civil engineer registered in the State of Hawaii and shall be subject to the prior approval of the Committee. The design shall incorporate points of acceptance and points of discharge from the individual plot plans.

Drainage designs which, in the Committee's opinion, are impractical or do not adequately consider the possible adverse effects on adjoining property, will be disapproved. Drainage plans which are later proven to be ineffective shall be modified by the owner's consultant and submitted for re-approval to the Committee for reconstruction by the owner's contractor at the owner's expense.

The Committee shall not review the drainage plan for adequacy of engineering technical data or computation. The Committee shall not be responsible for any damage to adjacent property resulting from inadequate or improper drainage and grading, regardless of the Committee's approval of the Lot's drainage plans.

(b) Certain Lots must accept and/or discharge drainage at specific locations along the Lot boundaries. In addition, the Plot Plans for the Lots may indicate any specific required drainage locations.

(vi) Temporary Structures and Surplus Materials.

Subject to written approval by the Committee, temporary structures, trailers and construction materials may be placed on a Lot only at the commencement of construction and are to be completely removed from the Lot no later than thirty (30) days from the "date of completion" as that term is defined in Section 507-43, HRS. Temporary structures, trailers and construction materials shall be placed on the Lot and not on an adjacent lot or common area without the written approval of the landowner, Board and Committee.

(vii) Fire Hazard.

Each Lot and all improvements located thereon, shall be maintained by the owner thereof in good condition and repair, and in such manner as to not create a fire hazard, all at owner's expense. It shall be the responsibility of each individual homeowner to maintain front yard landscaping to the acceptable standards of the Committee. Rear and side yard landscaping shall be maintained free of rubbish, trash, weeds and/or offensive plants or material. If owner fails to comply, the association shall have the right to have the work performed and to assess the cost to the owner as a special assessment.

(viii) Pavement and Play Areas.

The aggregate surface area of all impervious paved surfaces, including swimming pools, on a Lot shall not exceed thirty percent (30%) of the land area of the Lot. The driveway portion of a flag lot shall not be part of the aggregate area of the impervious surface. Areas covered by building structures are not considered part of the pavement and play areas. Paved play areas shall not be permitted within setback areas, and all play areas must be adequately screened by landscaping or other acceptable architectural means.

(ix) Vehicles, Trailers and Boats.

Vehicles shall not be parked continuously, overnight or regularly on roadways within the Subdivision. Only occasional parking by guests or by vehicles servicing a Lot shall be permitted on such roadways.

Subject to Section 3.04, boats, trailers, personal watercraft (jet skis) and all-terrain vehicles parked on any lot shall not be visible from any adjacent property or roadway and shall not be parked on any roadway.

(x) Vehicle Repair.

No vehicle, boat or other equipment, may be dismantled, repaired or serviced on any Lot so as to be visible from adjoining or neighboring lots or from any roadway.

(xi) Flood Zone.

All or a portion of a Property may be located in the Flood Zone under the Maui County zoning ordinance. Special design and construction requirements may apply.

(B) Architectural Standards.

(i) Architectural Character.

Architectural character of all buildings shall be of a contemporary Hawaiian style featuring generous overhangs, lanais, trellises and building siting oriented to take advantage of prevailing tradewinds for ventilation. Tudor, colonial, Georgian and French provincial styles are prohibited. Also, pole houses and structures with "A-frame" roof lines, shall not be placed on any lot.

The Committee may prohibit other architectural styles, without liability or limitation, when the architectural character of a building is not harmonious and/or detracts from the intended architectural character of the subdivision.

Each home shall be aesthetically designed and shall not be an eyesore; including but not limited to each home which is visible from any roadway or any other Property.

(ii) Buildable Areas.

The buildable area shall consist of all the area defined by the building setback lines. Buildable areas have been established to reasonably protect open space corridors and to respond to existing topography. All improvements must be confined solely to the buildable areas of each Lot, and may not be located on or encroach on any setback areas.

(iii) Finished Floor Elevations.

It is the general intent to balance cut and fill volumes. To avoid massive retaining walls on street elevations and to control the height of improvements to reasonably protect open space and views, grading, cutting and filling shall be limited as follows:

- (a) Maximum finished pad elevations shall be limited as shown on the individual Plot Plans for each Lot. Cuts of greater than 1 foot or fills of greater than 2 feet shall require a plan prepared by a civil engineer duly registered as such by the State of Hawaii.
- (b) Cutting and filling shall be kept to a minimum. Grading shall be contoured, with no cut or fill banks greater than thirty percent (30%), unless specifically approved by the Committee to meet unusual site conditions. Pads for homes shall utilize stepped foundations to avoid massive cuts or fills. Cut or fill greater than 1,000 cubic yards shall require special written Committee approval, and will not be permitted except under unusual circumstances. Verification of the amount of cut and fill must be provided by the owner's civil engineer as part of the preliminary design submittal.

(iv) Building Height.

Roof elevations shall be measured at the highest point of a structure's roof (but exclusive of the structure's chimney). No structure shall be placed or constructed upon any Lot in excess of the maximum building heights set forth in Section 3.19. No chimney shall extend more than four (4) feet above the highest point of the roof of the dwelling.

A story is that portion of a residence included between the upper surface of any floor and the upper surface of the next floor or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six (6) feet above grade for greater than fifty percent (50%) of the total perimeter or is more than twelve (12) feet above grade at any point, such space shall be considered a story.

(v) Minimum Dwelling Size.

Refer to Section 3.20.

(vi) Garage.

On each Property, a garage for at least two (2) cars containing not less than four hundred (400) square feet of parking area under roof shall be provided, which may be attached to or detached from the dwelling. All garages shall be fully enclosed with garage doors. It is encouraged that garage door designs break up the door massing by various means such as detailed articulation, use of custom doors or separate door for each vehicle. Carports shall not be permitted. It is also encouraged to include at least 100 square feet of storage in the garage.

(vii) Roof Materials, Pitch and Overhang.

(a) Roof Materials

Roofs shall have the appearance of heavy cedar shakes or better (e.g. monier, clay or other tile or slate). A sample shall be submitted for Committee approval as to color, style and texture.

The following roof materials are not permitted: asphalt roofing, corrugated metal steel or aluminum, rolled roofing, fiberglass, plastic and rubber membrane.

Skylights are to be designed as an integral part of the roof system, utilize safety or tempered glass, and be of a non-reflective color or tint. No mechanical equipment shall be placed on a roof.

Roof material colors are limited to earth tones with shades of browns, grays, blues and greens, and shall be only those colors specifically approved by the Committee.

(b) Roof Pitch

Roof pitch shall be a minimum of 5:12 (vertical:horizontal) for single pitched roofs. Double pitched roofs shall have a minimum pitch of 3:12 on the lower portion of the roof and a minimum pitch of 5:12 on the upper portion of the roof. Mansard roofs are not permitted.

(c) Flat Roofs

The area of flat roof shall not exceed twenty-five percent (25%) of the total roof area. Only flat roofs of exceptional design and quality will be considered for approval.

The flat roof surface above the second story shall not be utilized as a roof terrace.

(d) Overhangs

Roof overhangs, as measured horizontally, shall not extend more than three feet into any building setback area, unless prohibited by County of Maui rules and regulations.

(viii) Building Surfaces.

Articulation of building surfaces is encouraged to soften their appearances and reduce mass. Articulation should be achieved by utilizing various architectural elements including:

- Projections and recesses to provide shadows and depth
- Lanais
- Sunshading devices such as trellises
- Staggering of wall planes
- Articulated doors, windows and wall openings

Any architectural element used shall be approved by the Committee.

(ix) Exterior Lighting.

There shall be no exterior lighting of any type, either installed or maintained, the light source of which is visible from neighboring property, except as permitted by the Committee. Security lights activated by movement may be installed with approval of the Committee. Colored lights (non-white), fluorescent, high intensity discharge exterior lights, flashing, exposed bulbs and flood lamps on roof eaves are not permitted.

(x) Driveways.

- (a) Driveway aprons shall be paved. Pavement material shall be approved by the Committee. Recommended materials are asphaltic concrete, textured concrete, brick or concrete pavers, bomanite or grasscrete. Driveways with a slope of twelve percent (12%) or more shall be paved with concrete.
- (b) Driveways shall be constructed by the owner following County standards prior to any other work being done, and shall be used during construction to prevent damage to existing concrete gutters, curbs, sidewalks, sprinkler systems and underground utility lines. Any damage caused by the owner or the owner's contractors, employees or agents shall be the responsibility of the owner, and shall be immediately and completely repaired to the original condition.

(xi) Air Conditioning System and Mechanical Equipment.

Prior to the installation of an air-conditioning system, swimming pool filter pump unit(s) or other mechanical equipment, the owner shall secure the written approval of the Committee as to the location and type of system. Such air-conditioning,

swimming pool filter pump unit(s) or other mechanical equipment system shall be sound treated to prevent noise nuisance.

The level of noise or sound pressure emanating from any Lot shall not exceed the maximum level permitted for single-family residential districts under the County ordinances or the following Noise Guidelines, whichever is more restrictive.

To assist in maintaining the tranquil conditions in the subdivision and to minimize the likelihood of complaints from neighboring residents, the level of sound or noise emanating from air conditioning and other mechanical equipment on any Lot shall not exceed 40 dBA (decibels) at any point on the property line of the Lot.

Special attention to noise control measures is required during the design process to ensure compliance with a 40 dBA property line criterion. Suitable measures would normally include, but not necessarily be limited to, the following:

- (a) Selecting the quietest available equipment, ideally the equipment sound rating of 7.2 bels (10 decibels = 1 bel) or lower.
- (b) All exterior mounted air conditioning equipment and housing shall be enclosed and located within the buildable area.
- (c) Locating the equipment as far as possible from neighboring noise sensitive areas (such as bedrooms, patios, etc.) with a minimum twenty (20) foot setback from the closest property line of the Lot; provided, however, that the Committee in its sole discretion may permit the placement of such equipment closer to the property line than said twenty (20) foot setback on a case by case basis, regardless of noise.
- (d) Providing partial (three or four sided) equipment enclosures, comprised of masonry walls at least four (4) to six (6) feet high with durable sound absorptive treatment applied to the interior surface of the walls. The enclosure design shall allow for adequate access and clearance for maintenance purposes, as well as permitting sufficient airflow.

All designs shall be reviewed by the Committee. If the proposed noise mitigation measures appear to be insufficient, the Committee may request more information justifying the adequacy of the proposed measures, or the incorporation of additional treatment.

All said systems shall comply with the Maui Electric Company, Ltd. (MECO) Energy Star Program, referred to in Attachment 1 hereto and shall be approved by MECO under said program.

Notwithstanding the above, should complaints occur after start-up, the Committee may, without liability or limitation, restrict or prohibit the operation of any air-conditioning or mechanical equipment found to be generating property line noise

levels exceeding 40 dBA, until additional noise mitigation measures are provided by the owner and approved in writing by the Committee.

In no event shall mechanical equipment be roof mounted and no such equipment shall be visible from a road or any other Property. All such equipment shall be enclosed or screened.

(xii) Solar Energy, Heat Pumps and Energy Savings (EPA Energy Star Program).

The design of all exterior installations and equipment proposed for solar energy, heat pumps, and other energy savings devices shall require the prior written approval of the Committee and be part of the design submittals and shall be subject to the Design Standards.

E Paepae Ka Puko'a is participating in the Energy Star program sponsored by Maui Electric Co., Ltd. to promote energy savings. Any person building or remodeling a home in E Paepae Ka Puko'a shall comply with the "Hawaii Energy Star Equivalency Program Summary" attached to these Design Standards as Attachment 1 and shall install a solar energy system approved by Maui Electric Company, Ltd. (MECO) and installed by a MECO participating contractor.

(xiii) Swimming Pools and Water Features.

Swimming pools and water features design shall be submitted as part of the preliminary and final plans. No more than fifty percent (50%) of the swimming pool shall be allowed beyond the buildable area. Swimming pools and swimming pool decks shall have a minimum ten foot setback from property lines, except where stated or delineated on the individual plot plans. Swimming pool equipment and housing shall be enclosed and contained within the buildable area. Water features, its equipment and housing shall be contained within the buildable area.

Noise mitigation factors shall be utilized to address noise generated by water features. Swimming pools and water features shall be kept operable in accordance with the rules and regulations of the Department of Health. If abandoned or if a pool or water feature becomes a nuisance, the owner shall demolish, remove the pool or water feature, and , insofar as practicable, restore the land to a condition approximating that which existed prior to the construction of the pool or water feature, and properly landscape and maintain the restored area. The method of demolishing the pool or water feature shall be subject to prior written Committee approval. Pool equipment rooms shall be sound treated to prevent noise nuisance in accordance with noise control guidelines.

All pool, pumps and related equipment must be designed to drain into the street upon which the Lot has access. No drainage onto adjacent lots is permitted.

(xiv) Refuse Storage.

Refuse receptacles are to be located within the buildable area of the Lot. The refuse receptacles must be covered and screened completely from view of adjoining lots and common areas either by landscaping or other screening material which is

compatible in design and color with the main structure. Such receptacles shall be designed to accommodate the sorting of recyclable products.

(xv) Antennas and Flagpoles.

Except as otherwise permitted in the Declaration, no visible antennas, television, radio or otherwise are allowed, and miniature satellite dishes not to exceed 24" in diameter may be permitted only after specific written approval of the Committee. One flag pole per lot shall be allowed within the buildable area. Pole height shall not exceed twenty feet (20') nor extend beyond the building envelope. No commercial flags shall be allowed.

(xvi) Mailboxes.

All mailboxes shall be designed per postal regulations and specifications established by the Committee. House number and name signs shall be of an attractive and superior quality design and installed flush with wall surfaces where possible, and shall in no event exceed an aggregate of one square foot in size.

Mailboxes may be clustered in a location required by the Declarant or the Board.

(xvii) Exterior Walls/Other Materials/Color.

All materials shall be either stucco, stone, cast concrete, board and batten, fiberglass, wood shingles or shiplap siding. All wood siding shall be clear redwood, cedar, douglas fir, or an approved cement fibrous material such as "Hardie Plank" suitable for a stain grade quality finish or better. Samples of the siding shall be submitted as part of the preliminary plan application. No vinyl, pre-finished metal siding, plain surfaced or grooved plywood panels, composite or presswood siding are permitted.

All exterior wall materials must be continued down to within six (6) inches of finish grade so that unfinished foundation walls will not be exposed.

Subtle "earth" colors and tones are permitted with complementary accent colors for architectural features, but in each case a color sample in the form of a brushed out wood sample must be submitted to the Committee for review and prior written approval. All flashing, sheet metal, vent and pipes shall be finished to match or complement building surfaces. No garish, reflective, stark white or fluorescent colors shall be allowed on any exterior surface. Light reflectance value (gloss) in the exterior paint shall not exceed a range of forty four percent (44%) to sixty nine percent (69%).

Light reflectance value (gloss) in the exterior trim elements shall not exceed a range of twelve percent (12%) to sixty eight percent (68%).

(xviii) Fences, Walls, Hedges and Enclosures.

Fences, walls and hedges located along side property lines shall not exceed three (3) feet in height from the original grade, except the berm and fence along Laulea

Place which shall be approximately six (6) feet in height in the aggregate. The retaining wall portion of a wall along side property lines shall not exceed three (3) feet in height from the original grade.

Retaining walls and foundations of more than three (3) feet in height or where placed upon embankments of filled areas, shall be designed by an architect or civil or structural engineer duly registered as such by the State of Hawaii. The maximum height of any exposed face of any retaining wall shall be three (3) feet as measured from the finished grade on either side at the wall's base.

All walls shall be constructed of lava rock, blue rock, concrete or concrete block. Wall finishes shall be lava rock, blue rock or stucco. No exposed concrete or concrete block walls shall be permitted.

All other walls, fences and incidental garden structures shall be designed so as to be attractive from all viewable sides, and shall have a height limit of six (6) feet as measured from finished grade level.

Exposed cement mortar for rock walls shall be of standard gray or charcoal color. No white or other coloring agents shall be applied or mixed with the exposed cement mortar. If a wall is located at the street frontage or rear yard frontage, the area between the wall and the property line shall be attractively landscape irrigated and maintained.

Highly detailed wood or Ameristar fences are permitted whenever appropriate. The wood fence shall be of an attractive design, have a high quality finish and must be approved in writing by the Committee. Fencing shall be designed to be equally attractive from both sides. A plain board fence, chain link fence or vinyl fence is not permitted.

Property line fences shall be developed in common with adjacent property owners to eliminate double fencing, wherever possible.

(xix) Laundry Facilities.

Laundry facilities and any service or utility area, including any area for hanging clothes, must be screened from view from any adjacent Property and roadways.

(xx) Signs.

Except as otherwise permitted by the Declaration, no signs whatsoever shall be erected or maintained upon any lot; except:

- (a) Such signs as may be required by legal proceedings.
- (b) Such signs as Declarant may erect or maintain for a lot prior to sale and conveyance.
- (c) Such signs as required for house numbers and name signs in accordance with item (xvi) (mailbox) above, provided that such signs shall not exceed one square foot maximum.
- (d) Real Estate "for sale" signs on the lot being sold.

- (e) A construction sign not larger than 2' x 4'.
- (f) Any sign which does not comply with the above must obtain specific written approval of the Committee and the Board.

(xxi) Setbacks.

No structure shall be located closer than 15 feet from the road front lot line nor 6 feet from side and rear lines.

(xxii) New Materials.

All construction materials must be new. No used or second hand lumber shall be allowed unless approved by the Committee.

(C) Landscape Standards.

(i) Landscape Plans.

Landscape plans are required and must be approved in writing by the Committee.

(ii) Required Landscaping.

Each lot owner shall be responsible to landscape all yards. Basic front yard landscaping shall be initially provided by the Declarant. The Owner of each Property shall maintain all landscaping in neat, attractive, irrigated and trimmed condition. Refer also to Sections 3.06 and 3.07.

(iii) Top Soil.

Top or fill soil material brought to the site by the owner shall be free of clay, termites and/or other deleterious matter.

(iv) Street Frontage.

The Owner of each Property shall install, maintain and operate irrigation to maintain the landscaping in the sidewalk and planted area within the road right of way fronting said Property in green and attractive condition. Appropriate irrigation sleeves shall be installed to protect irrigation lines crossing the driveway or driveway apron.

(D) Construction Standards.

(i) Prior Notice to Committee.

The owner shall give the Committee two (2) weeks advance written notice of the owner's intent to commence any construction or site improvements whatsoever. Prior to commencement of construction, the owner will deposit a copy of the County building permit with the Committee together with the cash deposit required under Section 3.26. Additional items which must be submitted to the Committee are described below.

(ii) Performance: General Contractor.

All work to or upon a Lot shall be expeditiously and with due diligence prosecuted to completion. All work must be performed by a contractor duly licensed to perform such work under the laws of the State of Hawaii. No unlicensed owner-builders will be allowed.

(iii) Materials and Quality.

The materials used for structures shall be new and of a quality consistently associated with that used on superior quality custom-designed homes. No used materials are permissible except where specifically approved in writing by the Committee to achieve a desired aesthetic effect.

All lumber shall be pressure treated against termite infestation and shall be guaranteed in writing against such infestation for a period of five (5) years. All field cuts of lumber and materials shall be field treated.

(iv) Foundations.

The owner and owner's architect, engineer and contractor shall give due consideration to the design of the foundation systems of all structures (home, walls, swimming pools, etc.). It is the owner's responsibility to conduct an independent soils engineering investigation. The Committee may request that the owner submit an independent soils engineering report as part of the design review process.

(v) Ground Termite Standards.

- (a) Soil under all concrete slabs on the ground and under all building floors, whether on ground or over air space, and under all footings and masonry foundation walls, shall be treated against subterranean termites by a reliable, established and duly licensed termite control company.
- (b) Treatment shall be guaranteed in writing by said company against termite infestation for a period of three (3) years. The guarantee shall include annual inspection and re-treatment of infested areas. A copy of this guarantee shall be delivered to the Committee.
- (c) Chemicals used outside of the dwelling or in accessible spaces under the dwelling shall be applied in a safe manner to mitigate exposure to humans, plants and pets.

(vi) Abandoned Construction.

If construction of a dwelling is at any time abandoned, the Lot owner shall cause the Lot to be cleared and landscaped so as to present a neat appearance, and shall thereafter so maintain the Lot until the re-commencement of construction. "Abandonment" shall mean the cessation of substantial construction activity for a period of sixty (60) consecutive days.

(vii) Utility Lines.

All utility lines, including but not limited to electrical, telephone, sewer and television service shall be underground. Meters and service panels shall be screened from public view.

(E) Construction Requirements.

(i) Blasting.

All blasting must be performed by a licensed contractor. Twenty-four hours prior written notice must be given to the Committee and all owners and occupants of property within a radius of five hundred (500) feet from the property line of the Lot on which the blasting is to occur.

(ii) Construction Signs.

Construction signs (i.e., signs identifying the name of the contractor) are permitted subject to Subsection (B)(xx)(e) above.

(iii) Refuse Disposal Bins.

A refuse disposal bin shall be placed on a Lot only at the commencement of construction and are to be completely removed from the Lot no later than thirty (30) days from the "date of completion", as that term is defined in Section 507-43, HRS. The refuse disposal bin shall not be placed on an adjacent lot or common area without approval of the landowner, Board and Committee.

(iv) Site Preparation.

Driveway curb cuts must be made, and the grade of the driveway apron to the property line must be completed prior to the start of construction. All irrigation lines within the medial strip must be sleeved and reburied, and all associated irrigation leads moved as necessary.

(v) Portable Toilets.

A portable toilet in fully operating condition must be maintained on the construction site at all times during construction and serviced in accordance with applicable State Department of Health and County Sanitation standards.

(vi) Contractor's Acknowledgment.

Each owner shall be required to have his or her contractor contact the Committee prior to commencing any construction or work upon the owner's Lot. The contractor shall be provided with a copy of the applicable design and construction requirements and shall be required, prior to commencing any construction or work, to acknowledge in writing the contractor's receipt of, agreement to comply with, such requirements. The owner's contractor may be required to place a refundable cash

bond to the association in addition to that required by Section 3.26 to cover potential damages to the Association's common areas.

(F) Approvals, Procedures and Requirements.

(i) Consultation Services: Approval of Owner's Architect.

Before the preparation of preliminary drawings, the owner's architect may arrange for consultation with a representative of the Committee for suggestions as to the location and design of the improvements to be constructed on, and the landscaping of, the Lot, and assistance in interpretation of the requirements imposed under this Declaration and the master Declaration. The owner will use a reputable architect duly registered in the State of Hawaii.

(ii) Architectural Controls.

No structure or other improvement shall be erected, placed or altered on any Lot and no grading or filling shall occur until (a) the preliminary and final construction plans and specifications referred to in subparagraph (iii) below, prepared under the immediate and direct supervision and stamped by the Approved Architect, have been submitted to and approved by the Committee, (b) the landscape plans for the Lot have been submitted to and approved by the Committee, and (c) the owner submits to the Committee a written acknowledgment (the form of which shall be prepared or approved by the Committee) from both the owner and the Owner's general contractor that they have received a copy of, and agree to abide by, this Declaration. It is recommended that the approvals described above be obtained before any materials are ordered or purchased for such structure or improvement on the Lot.

In the event the proposed improvement or alteration is for repainting (decorating the exterior of any structure in a manner affecting only the exterior color thereof), it shall only be necessary to obtain written Committee approval of the color scheme prior to the commencement of such work.

The approval of the Committee, in its sole discretion, may be withheld without limitation or liability, upon any of the following grounds:

- (a) The work of construction or alteration shown on the plans and specifications and other materials submitted, fail to comply with the conditions, covenants and restrictions set forth herein or in the Declaration or in any other applicable document which is administered by the Committee.
- (b) The improvements shown on the plans and specifications and other materials submitted are deemed unsatisfactory in location, design, exterior design or color, or would not be in harmony with the Subdivision.
- (c) The proposed work does not comply with the Declaration, these Design Standards or spirit and intent of all other relevant documents as applied by the Committee.

The approval of any plans, specifications or variances shall not be deemed to waive the right of the Committee to object to the same or similar plans or specifications or any feature or element embodied therein, if and when the same or similar plans, specifications, features or elements are submitted for approval for use on other Lots in the Subdivision.

(iii) Procedures For Submitting Plans.

Each owner shall have the Approved Architect submit to the Committee not less than the following items for the Committee's review and approval prior to commencing any construction or other work upon the owner's Lot:

(a) Preliminary Plans (2 bound sets)

Preliminary plans must include but are not limited to the following:

- (1) One 1/8" scale floor plan.
- (2) Four 1/8" scale exterior elevations with materials indicated.
- (3) Two 1/8" scale site/building cross sections, elevations and roof height elevations noted.
- (4) One 1/8" scale site plan showing building placement, roof overhangs, building square footage, vehicle access, percentage of allowable buildable area covered, finish floor elevations with adjacent exterior corner grade elevations, drainage design, existing and proposed preliminary grades, conceptual landscape plan, compass, tradewinds and solar orientations, driveway, retaining walls, fences, lanais, decks, patios, easements and building setbacks, existing street tree locations, utility hookups, all site dimensions and lot number, swimming pools, spas, equipment rooms, mail boxes and any other information which may be requested by the Committee.
- (5) Calculations on building square footage, percentage of buildable area covered, floor area ratio, cut and fill volumes, any other calculations which may be required by the Committee.
- (6) Topographic survey of the existing contours at two foot intervals.
- (7) Samples of proposed exterior finishes, if known.
- (8) Proposed construction schedule.
- (9) Variance requests, in writing, for any nonconforming portion of the plan. Any variance requested shall be discussed with the Committee prior to submittal of the preliminary plans.
- (10) List of consultants including, but not limited to, the architect, engineers and landscape architect.

- (11) A Design Review fee in an amount designated by the Architectural Design Committee.

Approval shall be in compliance with the standards and restrictions set forth herein. The review should consider:

- (1) Compliance with all relevant documents and regulations;
- (2) Siting and orientation of the house structure;
- (3) Setback lines and height restrictions;
- (4) Building shapes;
- (5) Architectural character; and
- (6) Drainage and site engineering construction

- (b) Final Plans (2 bound sets)

Final plans must include but are not limited to the following:

- (1) Final working drawings.
- (2) Landscape and irrigation plans.
- (3) Specifications.

Upon securing the Committee's written approval of all of the above, the owner shall submit a copy of the building permit and a letter of intent to begin construction at least two (2) weeks prior to beginning any work whatsoever.

- (iv) Applicable Laws.

The owner or the owner's architect, engineer, contractor or other professionals shall be responsible for all submissions to the appropriate state and county agencies and for complying with all applicable laws, regulations, ordinances and codes, and shall acquire all permits necessary before commencement of any construction.

- (v) Performance of Work.

All construction, alterations and landscaping performed or placed on the Lot shall be performed or place in strict compliance and conformity with the final plans and specifications therefore approved by the Committee and any deviation from such plans and specifications shall require the prior written approval of the Committee.

All construction, alterations and landscaping performed or placed on the Lot shall be performed or placed in compliance and conformity with the guidelines of this document and those of the Declaration.

Work must commence within one hundred twenty (120) calendar days of final approval or approval shall be automatically revoked without notice. In the event final approval is revoked, the owner must resubmit the plans for final approval and obtain final written approval prior to commencing construction. The Committee shall not be bound by decisions made by prior approvals.

Work must be completed within twelve (12) months of the date of final approval. The owner shall provide a Certified Survey As-Built Plan indicating all improvements, roof heights and setbacks.

(G) Reservations and Limitations.

(i) Variances and Amendments.

The Committee shall have the right at any time in its sole discretion to amend, modify, waive, grant variances to or not enforce any of the provisions and requirements herein specified with respect to any Lot or Lots without any liability whatsoever to the owners or occupants of the lot to which the waiver, variance or non-enforcement applies, or to the owners or occupants of any other lots, or to any other person, and without impairing or otherwise affecting the application or enforcement of such requirements with respect to all other lots. See Section 4.06 of the Declaration.

(ii) Delegation of Authority.

The Committee shall have the right to delegate the administration (including the right to approve or reject designs, colors, plans and specifications) and/or enforcement of all or any part of the provisions and requirements of those standards to any other person, including Declarant. The written decision or disposition of any such delegatee shall be binding upon the Committee.

(iii) Non-Liability.

No review or approval by the Committee of any item submitted to the Committee pursuant to this Declaration or any recorded instrument shall in any manner constitute the Committee's (or any Committee member's), Declarant's, the Board's or the Association's representation, warranty or agreement that such item (1) has been prepared free of defects or is of good workmanship or design, or will result in improvements which are readily marketable or free of design or construction defects, or (2) complies with any or all applicable laws (including building code requirements), or (3) will result in any government entity's or any other person's approval of the same. Neither Declarant nor the Committee nor any director, officer, employee, agent or member of Declarant or the Committee shall be liable to the Association, or to any owner, or to any other person, for any damage, loss or prejudice suffered or claimed on account of (i) the approval or rejection of, or the failure to approve or reject any plans, drawings and specifications or other request submitted by an owner pursuant to this Declaration whether or not defective, and whether or not in compliance with the provisions and requirements of this Declaration, (ii) the construction of any improvement or performance of any work, whether or not such construction or performance complies with this Declaration, or the terms of any approval of the Committee, (iii) the development or manner of development of any other lot or land within the Subdivision, (iv) the erroneous execution of an estoppel certificate, (v) the failure of any plans, drawings, specifications or other item approved by the Committee to comply with the provisions and requirements of this Declaration or applicable laws, regulations, ordinances or codes, (vi) the Committee's failure to require the owner's or owner's

architect or contractor to comply with the provisions and requirements of this Declaration, or (vii) any other matter, decision, act or omission; provided that such director, officer, employee, agent or member shall have acted in the belief that such actions or omissions were in the best interests of E Paepae Ka Puko'a (or the Declarant, in any case where action is taken by Declarant acting as the Committee).

END OF EXHIBIT "B"

EXHIBIT "C-1"

[Deed of Conservation Easement Including Development Rights]

EXHIBIT "C-2"

[Unilateral Agreement and Declaration For Conditional Zoning]

EXHIBIT "D"

Dispute Resolution and Limitation on Litigation

I. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors and committee members; all persons subject to this Declaration; and any person not otherwise subject to this Declaration who agrees to submit this Exhibit "D" (collectively "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), and agrees to submit such Claim to the alternative dispute resolution procedures set forth in Section II below.

(b) As used in this Exhibit "D", the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application or enforcement of this Declaration; or

(ii) the rights, obligations, and duties of any Bound Party under this Declaration; or

(iii) the design or construction of improvements within the Community, other than actions of the Architectural Design Committee which shall not be subject to review under Section 4.02.

(c) The following shall not be considered "Claims" pursuant to this Exhibit "D" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section II below.

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration or the Design Standards;

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration;

(iv) any suit in which any indispensable party is not a Bound Party;
or

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section II below, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may be reasonably necessary to comply with this Exhibit "D".

II. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

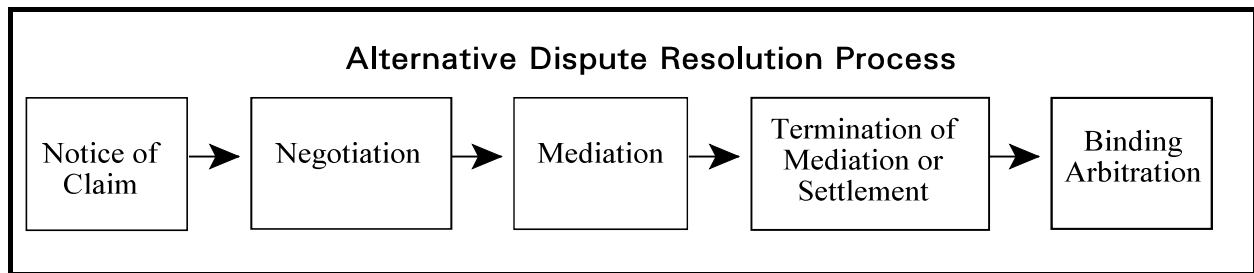
(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice described in Section (a) above (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Maui.

If the Claimant does not submit the Claim to mediation within such time, or fails (without reasonable and unforeseeable cause approved by the mediator) to appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not to third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings, indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to initiate arbitration proceedings on the Claim, as provided in Section (e) below.

Each party shall bear its own costs of the mediation, including attorney's fees, and each party shall share equally all fees charged by the mediator.



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney's fees and court costs.

(e) Mandatory Arbitration. Any parties that have failed to reach the settlement of a Claim through negotiation and mediation as provided by this Exhibit "D" may submit the Claim to arbitration. The party, or parties, that desire to submit a Claim to arbitration shall promptly so notify the other party in writing. Any Claim submitted for arbitration shall be submitted to arbitration to Dispute

Prevention and Resolution, Inc. ("DPRI") or such other dispute resolution agency as the parties to the dispute may mutually select ("Arbitrator").

The Arbitrator shall be selected and the arbitration conducted in accordance with the commercial arbitration rules then in effect for DPRI unless otherwise agreed by the parties. The decision of the Arbitrator shall be final, conclusive and binding on the parties to the arbitrator. All proper costs and expenses of the arbitration including, without limitation, witness fees, attorney's fees, and the fees of the Arbitrator shall be allocated among the parties in such amounts as the Arbitrator shall determine at the time of the award. In the event of a failure or refusal of an Arbitrator to act, a new Arbitrator shall be appointed in such Arbitrator's stead by DPRI.

The arbitration award shall be binding in all aspects and shall be subject to the provisions of Chapter 658, Hawaii Revised Statutes, as the same may be amended from time to time. In the resolution of any dispute or controversy as set forth in this section, each party hereby irrevocably waives the right to a jury trial and any right and claim to the exemplary or punitive damages in any jurisdiction. Any documents of assignment, lease, or conveyance of any Property or other interest in Kulamalu shall be deemed to incorporate the provisions for arbitration of disputes as set forth in this section, as if the same were fully set forth in any such document. Any person who is injured by reason of the fact that a dispute, subject to the terms of this arbitration provision, is resolved other than by arbitration, may recover as damages the cost and expense incurred by reason of the fact that the dispute was not submitted to arbitration for resolution. Any arbitration proceedings under this section will be submitted to arbitration in the County of Maui, State of Hawaii. Discussions and communications in settlement negotiations and in the mediation process shall not be admissible as evidence in the arbitration.

END OF EXHIBIT "D"