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Declaration of Covenants, Conditions, Easements and Restrictions
for
MAHANA ESTATES

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**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS**
for
MAHANA ESTATES

This Declaration is made effective September 25, 2018, by SMC MAHANA LLC, a Hawaii limited liability company, whose principal place of business is 636 Laumaka Street, Honolulu, Hawaii 96819 (the **Declarant**).

1. THE PROPERTY.

1.01 Property Subject to this Declaration. Declarant is the owner in fee simple of **LOTS 1 THROUGH 63, INCLUSIVE**, as shown on **FILE PLAN NUMBER 2513** filed in the Bureau (the **Property**) as more particularly described on Exhibit A. Declarant believes that it is in the best interest of the Property that certain covenants encumber and run with the land, which covenants are intended to be binding upon all persons from time to time acquiring any right, title or interest in the Property or occupying any improvements on the Property. Declarant desires to declare certain conditions, covenants and restrictions upon and subject to which all of the Property hereafter shall be held, improved, conveyed and used. These restrictions burden only the Property and shall not be deemed or construed to burden any other lands of Declarant.

1.02 Withdrawal. Declarant, from time to time, may withdraw any portion of the Common Areas (the **Withdrawn Property**) from the operation of this Declaration with the concurrence of the fee simple owner of such property. Withdrawal shall be accomplished by the recording in the Bureau of a document executed by Declarant and the concurring landowner that contains a legal description of the Withdrawn Property and specifically effects such withdrawal. Upon such filing, the Withdrawn Property shall be withdrawn from and no longer subject to this Declaration or entitled to the benefits hereof and the term Mahana Estates shall exclude the Withdrawn Property.

2. ESTABLISHMENT OF RESTRICTIONS. Declarant hereby declares that the Property is now held, and subject to annexations and withdrawals as provided in this Declaration, hereafter at all times shall be held, improved, conveyed and used upon and subject to the conditions, covenants and restrictions herein set forth, which are for and shall inure to the benefit of Mahana Estates, its owners and occupants from time to time; provided, however, that the right to enforce this Declaration shall be limited as set forth herein.

3. PURPOSES OF DECLARATION; PERSONS BOUND. The purposes of this Declaration are to provide for development and use of the property within Mahana Estates; to prevent the construction on the Property of Improvements (defined below) of inferior or objectionable design, location or materials; to encourage the construction of attractive Improvements at appropriate locations; to provide for the maintenance of Common Areas (defined below); to provide a common development plan for Mahana Estates; and to foster a tranquil and harmonious residential community. This Declaration shall be liberally construed towards those ends. This Declaration shall be binding upon every Owner, Occupant, all agents, and any and all others having or claiming any estate, right, title or interest in or to the Property, including but not limited to Mortgagees, lienholders, tenants, subtenants, licensees and permittees.

4. **DEFINITIONS.** The following terms shall have the following meanings:

4.01 Affected Lot shall mean the Lot within which a Subdivision Easement is located.

4.02 Applicable Law shall mean any and all federal, state or local statutes, laws, ordinances, regulations, orders and directives, judicial orders and decisions, administrative requirements and governmental environmental and health standards (including, without limitation, access for disabled persons under the Americans With Disabilities Act, as amended) now or hereafter applicable to Mahana Estates, to any Improvements thereon, to the development, use, possession, occupancy and enjoyment of Mahana Estates and to operations in Mahana Estates.

4.03 Association shall mean the Mahana Estates Homeowners' Association, a Hawaii non-profit corporation, as more particularly described in Article 7 below.

4.04 Benefited Lot shall mean the Lot or other specified lot that is benefited by a Subdivision Easement or to which a Subdivision Easement is appurtenant, as set forth herein.

4.05 Benefited Party shall mean any person, entity or other party, including without limitation, the Association, Owners, Occupants, Governmental Entities, or utility companies, in whose favor, or for whose benefit, a particular Subdivision Easement is stated to run in this Declaration.

4.06 Board shall mean the Board of Directors of the Association.

4.07 Bureau means the Bureau of Conveyances of the State of Hawaii.

4.08 Common Area means any real property, including, without limitation, interests in real property such as easements and licenses for utilities, drainage, landscaping or otherwise, whether within the Property or outside of the Property, held by the Association and any areas, structures and facilities, whether in existence or proposed that are designated as Common Area by Declarant or transferred to or acquired by the Association. Without limiting the generality of the foregoing, Common Areas may include areas, structures and facilities designated for access, communications, drainage, landscaping, traffic and pedestrian safety, and utility supply. The Common Area includes, without limitation, Lots 52-63 of the Plan.

4.09 Declarant means SMC Mahana LLC and its successors, assigns or designees who may be identified as such in an instrument executed by Declarant (or a successor or assign of Declarant), to be recorded in the Bureau.

4.10 Declaration means this Declaration of Covenants, Conditions, Easements and Restrictions for Mahana Estates, as it may be amended from time to time.

4.11 Declaration of Additional Restrictions shall mean that certain Declaration of Obligations and Restrictions dated September 25, 2018, and recorded in the Bureau as Document No. A-

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4.12 Design Guidelines shall mean the standards for design, landscaping, and aesthetics adopted pursuant to Article 6 of this Declaration, as they may be amended from time to time.

4.13 Design Review Committee shall mean the committee more particularly described in Section 6.03.

4.14 Design Rules shall have the meaning set forth in Section 6.04.

4.15 Drainage shall mean the swales, drains, ditches, gulches, channels, culverts and bridges.

4.16 Dwelling shall mean a room or group of rooms connected together constituting an independent housekeeping unit and containing a single kitchen.

4.17 Easement Area shall mean the area comprising each respective Subdivision Easement.

4.18 Excavation means any disturbance of the surface of the land (except to the extent reasonably necessary for planting and irrigation of vegetation), including any trenching which results in the removal of earth, rock, or other substances from a depth of more than twelve inches below the natural surface of the land or any grading of the surface.

4.19 Fill means any addition of earth, rock or other materials to the surface of land, which increases the existing elevation of such surface.

4.20 Governing Documents shall mean this Declaration, the Association's articles and bylaws, the Association rules, the Design Guidelines, the Design Rules, and any resolutions of the Board of Directors of the Association, each as they may be amended from time to time.

4.21 Governmental Entity shall mean the County of Maui, State of Hawaii, United States of America and/or any agency, department, subdivision or instrumentality thereof.

4.22 Hazardous Materials shall mean any and all flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of hazardous substance, hazardous wastes, hazardous materials, or toxic substances.

4.23 Hazardous Materials Laws shall mean any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Owner's Lot and improvements thereon, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any state

and local laws and ordinances and the regulations now or hereafter adopted, published and or promulgated with respect to Hazardous Materials.

4.24 Height shall mean the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade, whichever is lower. Height for buildings with basements shall be measured from the lowest exterior natural or finished grade. Height for buildings with underground parking areas shall be measured from the lowest exterior natural or finished grade, excluding the area used for vehicle access.

4.25 Improvement shall mean any changes, alterations or additions to a Lot, including Excavation, Fill, dwelling units, buildings, roads, driveways, parking areas, walls, retaining walls, fences, stairs, patios, courtyards, landscaping, poles, signs, construction or other trailers, and temporary or permanent structures of any type or kind.

4.26 LUC Conditions means the conditions and restrictions applicable to Mahana Estates pursuant to that certain Declaration of Conditions dated July 20, 2004 and recorded in the Bureau as Document No. 2004-153381.

4.27 Lot means each of Lots 1 to 51 inclusive as shown on the Plan, or any new lots resulting from the consolidation or subdivision of any of them. Except when clearly contrary to the context, Lot shall include all Improvements thereon.

4.28 Mahana Estates shall mean the Property, including without limitation all Lots and all roads and other Common Areas (whether now or in the future designated as such).

4.29 Mortgagee shall mean the holder of a mortgage lien or liens recorded at the Bureau, or any successor thereto, against any Lot and the Subdivision Easements created herein.

4.30 Occupant shall mean all invitees, guests, renters or other occupants of an Owner and/or a Lot.

4.31 Owner of a Lot means any person (including Declarant) who owns a fee simple interest in such Lot, 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 such Lot for a period in excess of 5 years, or (c) an agreement of sale which transfers all rights of possession and occupancy; provided, however, that in each such case the transferee of said rights will not be recognized as an Owner by the Association unless a written notice of transfer is filed in the official ownership records of the Association.

4.32 Plan means the subdivision plat for the Mahana Estates Subdivision filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 2513.

4.33 Property shall mean Lots 1 to 63, inclusive, as shown on the Plan, and any portion of the Property or any lot.

4.34 Subdivision Easement shall have the meaning ascribed to in Article 9 below.

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

5. REGULATION OF OPERATIONS AND USES.

5.01 Permitted Uses. Mahana Estates is zoned as part of the Rural Residential subdistrict of West Maui Project District No. 2 (Kapalua Mauka) as set forth in Maui County Code Section 19.92.050, and is subject to the LUC Conditions and the Declaration of Additional Restrictions. Lots may be used for the following uses permitted under Maui County Code Chapter 19.92.050: Single-family dwellings; private, non-commercial gardens and horticultural activities; and Home occupations (as defined in Maui County Code Chapter 19.04.040). All other uses are prohibited, including without limitation, plant nurseries and horticultural activities (except private, non-commercial gardens and horticultural activities are expressly permitted); equestrian facilities and trails; growing and harvesting agricultural crops. Owners shall comply with all applicable conditions and restrictions set forth in the LUC Conditions and the Declaration of Additional Restrictions. An Owner may at the Owner's expense apply for waivers or modifications of the LUC Conditions or variances from Maui County Code Chapter 19.92.050, but so long as Declarant owns any Lot in Mahana Estates, any such application shall require Declarant's prior written approval.

5.02 One Dwelling Per Lot. As set forth in the Declaration of Additional Restrictions, only one Dwelling may be constructed, placed or maintained on each Lot. Accordingly, Accessory Dwellings as defined in Maui County Code Chapter 19.35 and guest houses are not permitted on any Lot. If two Lots are consolidated into a single Lot, two Dwellings may be constructed on the consolidated Lot if permitted by Applicable Law. No Dwellings may be constructed on the Common Areas.

5.03 Animal Control. Domestic dogs and cats are permitted; provided, however, all such pets must be kept indoors and when allowed outdoors must be confined to the borders of their Owner's Lot and shall be controlled so as not to disturb any occupant of Mahana Estates. All other animals, including but not limited to roosters and horses, are strictly prohibited anywhere in Mahana Estates.

5.04 Vehicles and Parking. All vehicles located on any Lot must be currently registered and licensed to the extent possible under Applicable Law. Vehicles that become inoperable and outside of an enclosed garage must be removed from the Lot or promptly placed within an enclosed garage within two weeks of becoming inoperable. Heavy trucks and heavy equipment (that is anything weighing over 5,000 pounds) shall not be parked on any Lot except on a temporary basis in connection with construction or site work being conducted on such Lot. Boats, trailers, and other recreational vehicles shall only be parked within an Owner's Lot. Vehicles shall not be parked overnight on roadway lots and no parking is allowed at all in other Common Areas. Guest vehicle parking is permitted so long as guest vehicles are not parked overnight.

5.05 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to any occupants of Mahana Estates, including but not limited to activities which cause unreasonable noise, dust, or odors or unreasonably violate privacy or violate any Applicable Laws. Examples of prohibited activities under this Section 5.05 include, but are not limited to, allowing dogs to bark excessively, firing guns, or operating cars, trucks, motorcycles or motor bikes that produce abnormally loud noise.

5.06 Maintenance of Structures, Landscaping, Properties and Drainage Reserves. All Improvements located on each Lot shall be kept in attractive condition, in good order and repair, and free from visible deterioration. Each Owner shall maintain, landscape and irrigate their Lot (whether vacant or improved with a Dwelling) and any area lying between any Lot boundary and the curb of any public or private right-of-way (Right of Way Landscaping Area) and keep the same green with healthy vegetation consistent with sound and prudent soil maintenance practices. Except for Drainage maintained by the Association pursuant to Section 9.02, the Owner of each Lot shall maintain any Drainage on the Lot free and clear of debris, vegetation or improvements that would impair its function. Placement of soil, green waste, debris or other obstructions in Drainage is prohibited. Green waste must be properly disposed of and may not be dumped in Common Areas or Drainage Areas. Each Owner shall at all times indemnify, defend and hold harmless the Association and Declarant from and against all claims, demands, liability, loss, or expense (including all court costs and attorneys' fees) arising out of or related to (a) injury to person or damage to or loss of property occurring in the Right of Way Landscaping Area or elsewhere on the Property if caused by or through such Owner, (b) the use of the Right of Way Landscaping Area by or through such Owner, and (c) the failure of such Owner to comply with its obligations set forth in this Section 5.06.

5.07 Refuse and Building Materials. Trash, garbage and domestic waste shall not be kept on any Lot except in containers, stored inside the dwelling, enclosed garage, or properly screened and not visible from any street or other Lot. No new or used building materials shall be stored on any Lot except during active construction and all construction waste shall be removed promptly after construction is complete. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste.

5.08 Grading and Drainage. Without the prior written approval of the Design Review Committee, no Owner of any Lot will construct, maintain, permit or allow any fence or any other Improvement, or otherwise alter the grade or topography of any Lot, in a manner that may increase, retard or obstruct the flow or change the location or direction of the flow of any natural or existing drainage of surface or sub-surface waters onto the Lot from any adjoining Lot, or from the Lot to any adjoining Lot. Each other Lot shall be graded and improved so as to contain surface water runoff within the boundaries of the Lot or to direct it into the roadway adjoining the Lot.

5.09 Landscape Maintenance. Owners shall regularly maintain all lawns and other landscaping within their Lots in a well-maintained and attractive condition. Grass shall not be allowed to grow in excess of four inches in height, and all trees, plants and shrubs shall be kept neatly pruned and maintained. Dead and diseased plants shall be promptly removed. All green waste shall be either composted in fenced location on the Lot not visible from neighboring Lots, or properly disposed of offsite at County or private green waste facilities.

5.10 Temporary Structures. No temporary buildings or structures, sheds, tents or trailers of any kind shall be erected or permitted to remain on any Lot except during periods of active construction and only to the extent incidental to such construction and approved in advance in accordance with the Design Guidelines.

5.11 Further Divisions of Properties. No Lot shall be further subdivided and Lots may not be submitted to condominium property regimes. Two or more adjacent Lots may be consolidated.

5.12 Rezoning. No Lot may be rezoned.

5.13 Timeshares. Use of dwelling as a time-share, vacation club or similar arrangement by which use and occupancy of the dwelling rotates among different owners is prohibited.

5.14 Community Gate. An entry gate may be installed within Lot 56 shown on the Plan (the main access road in Mahana Estates), at Declarant's option or at the option of the Association. If installed by the Association, the decision to install and maintain (or cease the use of and remove) such gate shall be approved by the affirmative vote or written consent of the majority of the Owners of Lots. Said gate, if so installed, shall be maintained and operated by the Association as a common expense.

5.15 Exterior Lighting. All exterior lights shall be appropriately screened so as not to cause any unreasonable glare visible from adjoining Lots or roads, and shall otherwise comply with all Applicable Laws.

5.16 No Direct Access to Old Honoapiilani Highway. No direct access is permitted to Honoapiilani Highway from Lots 52 and 53.

5.17 Use of Certain Lots for Open Space Purposes. Subject to the terms of this Declaration, Lots 52 to 55, inclusive, 62, and 63 shall be used and improved only for open space purposes; provided, however, that the owner of such Lots reserves the right to use and improve such Lots in a manner that does not unreasonably interfere with the use of the Lots for open space purposes.

5.18 No Build Area. No building or structure shall be constructed or installed on in the area marked as no building restriction on the File Plan, which affects portions of Lots 36, 37 and 38. In no event shall such restriction prevent the respective Owner(s) of Lots 36, 37 and 38 from landscaping such no build area, subject to the terms and conditions set forth herein.

5.19 Limitation on Spigots and Faucets on Non-Potable Waterlines. Water for the non-potable system is supplied from surface water sources in the West Maui Mountains, and is not filtered or chlorinated to meet safe drinking water standards. The quality and quantity of water available from the potable and non-potable system may be affected by a variety of factors, including natural events and government action. Water from the non-potable lines may only be used for irrigation. Installation of spigots and faucets on the non-potable lines is strictly prohibited.

6. DESIGN AND CONSTRUCTION STANDARDS.

6.01 Purpose. The purpose of the architectural and construction standards set forth in this Article 6 is not to regulate all details of an Owner's construction and landscaping activity, but to give the Association the means to attempt in its discretion to develop and perpetuate an attractive residential community that will harmonize and conform to the existing environment. The power to exercise these controls is reserved to the Declarant and the Association and may be exercised and delegated at their option only.

6.02 Restriction and Scope. The Design Guidelines for Mahana Estates contain general provisions applicable to all of Mahana Estates as well as specific provisions that vary among uses, housing types, or locations within Mahana Estates. All Improvements shall be made, constructed or installed in accordance with the Design Guidelines adopted pursuant to this Article 6, as they may be amended from time to time. No Improvement may be constructed without the prior written approval of the Design Review Committee; and no such Improvement once built, may be externally remodeled, or otherwise visually altered to any material extent without the prior written approval of the Design Review Committee as further set forth in the Design Guidelines. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval. The Owners of every Lot shall comply with and abide by all proposals, plans and specifications submitted to and approved by the Design Review Committee with respect to such Lot.

Notwithstanding the foregoing, the following shall not require prior written approval of the Design Review Committee under this Article 6: (a) the construction, remodeling or change of any Improvement by Declarant as part of the development or initial sale of Mahana Estates; or (b) the construction, remodeling or change of any Improvement by the Association of any Common Area facilities; or (c) the repair or reconstruction of a damaged structure in accordance with plans most recently approved for the original structure or the repainting of a structure in accordance with the most recently approved color and color scheme.

Any dwelling constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Declarant or its designee in its sole discretion otherwise approves. Dwellings and other Improvements within Mahana Estates shall also be constructed using water conservation measures, such as low-flow showers and low-flush toilets, or any other conservation measures as Maui County may require. Water conservation measures and other conservation device standards are set forth in greater detail in the Design Guidelines.

Approval under this chapter is not a substitute for any approvals or reviews required by Maui County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

6.03 Composition of Design Review Committee. Declarant, or any person or persons whom Declarant in its sole discretion may designate from time to time, shall serve as the Design Review Committee until the date on which the Declarant shall notify the Association that Declarant assigns the Design Review Committee's function to the Association. Declarant shall give

such notice no later than the date on which its Class B membership ends as set forth in Section 7.03. Thereafter, the Design Review Committee shall consist of the Board of Directors of the Association or the Board's designees. Unless and until such time as the Declarant assigns the Design Review Committee's function to the Association, the Association shall have no jurisdiction over architectural matters. In reviewing and acting upon any request for approval, the Declarant and its designees act solely in the Declarant's interest and owe no duty to any other person.

6.04 Standards and Procedures of the Design Review Committee. All proceedings by the Design Review Committee shall be in accordance with this Declaration. Prior to construction of any Improvements an Owner shall provide the Design Review Committee with one half-size hard copy and one electronic copy of its constructions plans as filed or to be filed with the County of Maui building permit application, together with such supplemental documentation or information as the Committee may request. The Design Review Committee shall review and approve or disapprove the plans within thirty (30) days of the Owner's complete submission. If the Design Review Committee fails to respond to an Owner's request to approve or disapprove plans within such thirty (30) day period, the plans shall be deemed approved. Any approval or disapproval shall be in writing and any disapproval shall detail the reasons for disapproval. All Improvements shall be constructed in strict compliance with the plans approved by the Design Review Committee, any conditions on such approvals, and this Declaration and the Design Guidelines. Construction of all Improvements must be completed with twenty-four (24) months of the date on which the Owner starts construction. The Design Review Committee may in its discretion adopt or amend reasonable rules and regulations to govern its procedures and requirements as it may deem appropriate from time to time including requirements that applicants pay reasonable fees for the Committee's review of applications, and that applicants cover all expenses reasonably incurred by the Committee in performing its duties (including reasonable costs incurred in having professionals review any application) (**Design Rules**).

Initial Design Guidelines dated May 2017 have been adopted.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. **The Design Guidelines are not the exclusive basis for the Design Review Committee's decisions, and compliance with the Design Guidelines does not guarantee approval.**

The Design Review Committee shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Section 15.02 or judicial review so long as they are made in good faith and in accordance with required procedures.

As part of any approval, the Design Review Committee may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work

shall be completed within two years after commencement unless otherwise specified in the notice of approval or unless the Design Review Committee, in its discretion, grants an extension in writing.

6.05 Liability. The members of the Design Review Committee shall not be personally liable, and the Design Review 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 absent fraud or intentional misconduct.

Declarant, the Association, the Board of Directors, the Design Review Committee (the agents, officers, members or affiliates of any of them) shall not be liable for: (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board of Directors, the Design Review Committee, and the members of each, as provided in the Association's bylaws.

6.06 Non-Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring approval of the Design Review Committee under the Declaration shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter.

6.07 No Protection of Views. No Lot shall have any vested rights or easements for the protection of any view from such Lot and Declarant makes no warranties or representations of any kind to the buyer, Owner or occupant of any Lot concerning the extent, attractiveness or protection of any view over any Lot or Common Area from any other Lot or Common Area. The Design Review 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 Lot in favor of the applicant before the Design Review Committee and said easement shall have been recorded in the Bureau and a true copy delivered to the Design Review Committee with the application. However, the Design Review Committee shall have the unilateral right, in its sole discretion, to consider views in approving proposed Improvements, including structures, topographical changes, landscaping and trees.

6.08 Enforcement. The Design Review Committee shall have the right to inspect work on any Lot for compliance and to issue written notice of violations. Violation of the construction rules in the Design Guidelines must be corrected as soon as possible and in any event within twenty-four (24) hours. All other violations must be corrected as soon as practicable, and in any event within thirty (30) days from the notice of violation. If an Owner fails to correct a violation by the specified deadline, the Design Review Committee may:

- (a) assess the Owner an assessment of \$1,000.00 for each day that the violation continues thereafter (which amount shall be adjusted every five (5) years to reflect inflation). This assessment shall be a lien on the Lot as provided in Article 8;
- (b) require removal of the non-compliant Improvements, regardless of the availability or adequacy of any other remedy; and
- (c) pursue any and all remedies.

6.09 Relationship between the Design Guidelines and Applicable Law. Declarant makes no representation, express or implied, that the requirements set forth in this Declaration or the Design Guidelines will be consistent with the minimum requirements of Applicable Law. It is the sole responsibility of anyone undertaking Improvements in the Mahana Estates to assure compliance with all provisions of Applicable Law.

6.10 Variances. The Design Guidelines shall apply to all Lots except where variances were expressly granted by the Design Review Committee. In the event specific designs, plans, or specifications cannot or do not comply with the Design Guidelines, the Owner may apply in writing to the Design Review Committee for a variance. Each application will be considered on a case-by-case basis on its architectural merit and contribution to or conflict with the overall purpose of the Design Guidelines. The Design Review Committee may, upon finding good cause and no other practical alternative being available, grant and approve a variance in writing from the Design Guidelines. A variance granted in any one case shall not be considered as precedent or grounds requiring approval of subsequent similar requests in any other cases.

6.11 Amendments. The Declarant shall have sole and full authority to amend the Design Guidelines until it notifies the Association that Declarant assigns the Design Review Committee's function to the Association pursuant to Section 6.03. Upon such assignment, the Design Review Committee may amend the Design Guidelines with the Board's consent. Amendments to the Design Guidelines shall apply prospectively only. No amendment to the Design Guidelines or the rest of this Article 6 shall apply to any Improvement that shall have been previously approved by the Design Review Committee and the construction or placement of which (in accordance with said approval) commenced prior to the amendment or is commenced by the Owner within eighteen (18) months of the date of the amendment; provided, however, any new work on such Improvements must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.

7. ASSOCIATION.

7.01 Organization. The Association is charged with the duties and empowered with the rights set forth in this Declaration, the Association's articles and bylaws, and in Hawaii Revised Statutes Chapters 414D and 421J.

7.02 Membership. The Owners of each Lot shall automatically be members of the Association, each of whom shall remain a member of the Association until such time as such member is no longer an Owner.

7.03 Voting. Initially, the Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all the Owners other than the Declarant. Each Class A member shall have one (1) vote for each Lot owned by such member. If more than one person or entity owns a Lot, any one of said persons or entities may exercise the vote allocated to the Lot on behalf of all the Owners of the Lot unless the Association is notified in writing that the Owners of the Lot disagree as to how the vote should be cast, in which event the vote for the Lot shall be not counted unless the Owners of such Lot unanimously agree.

(b) Class B. The sole Class B member shall be the Declarant. The Class B member shall be entitled to five (5) votes for each Lot it owns. The Class B membership shall cease to exist when the Declarant has sold and conveyed all of the Lots, or when the Declarant notifies the Association's Board that it is voluntarily relinquishing its Class B membership. Thereafter, Class A membership shall be the only class of membership, and Declarant shall be deemed a Class A member as to any Lots it still owns. Within sixty (60) days of the date Declarant becomes a Class A member the Association shall hold an annual or special meeting at which Directors shall be elected for all seats on the Board.

If two or more Lots are consolidated, the voting interests of the consolidated lot shall equal the total voting interest of the individual Lots prior to their consolidation. Common Area Lots have no votes.

7.04 Association Duties & Powers. The Association shall accept, hold, control, manage, maintain and operate, as a common expense, all Common Areas, 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 engage a managing agent and enter into other contracts for, or otherwise to implement, the maintenance, operation, repair, replacement and sale of such Common Area; (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 Common Areas. 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 Entity or any regulated public utility. **THE COUNTY OF MAUI HAS NOT AGREED TO ACCEPT ANY SUCH ROADS, LINES OR FACILITIES, AND DECLARANT DOES NOT WARRANT OR REPRESENT THAT ANY SUCH ACCEPTANCE WILL OCCUR IN THE FUTURE.**

7.05 Documents of the Association. The Association shall maintain its documents and records and make them available to Owner in accordance with the Hawaii Planned Community Associations Act, Chapter 421J, Hawaii Revised Statutes.

8. FUNDS AND ASSESSMENTS.

8.01 Operating Fund; Reserves. The Association shall create and maintain an operating fund into which shall be deposited all monies received by the Association whether from maintenance assessments, special assessments, dues, user fees, fines, income attributable to the fund itself or any other rents, charges or fees levied by the Association. The fund shall comprise the working capital of the Association out of which the Association shall make all disbursements and discharge all liabilities in the performance of its duties and obligations and the exercise of its rights and powers under this Declaration and its bylaws. The Association shall also establish and fund one or more reserve accounts for reserves against expected expenses of maintaining, repairing and replacing the Improvements in the Common Areas.

8.02 Common Expenses. Each Lot shall pay all assessments for common expenses assessed to such Lot by the Association in accordance with this Declaration. At least sixty (60) days prior to the commencement of each calendar year, the Board shall prepare an estimate of the costs and expenses to be incurred by the Association during such calendar year in performing its functions, duties and obligations and in paying all fees and expenses of the Design Review Committee. Except in the first year after Declarant's completion of the roads serving the Lots, the Board shall also estimate the amount of reserves necessary for contingencies and replacements; plus any additional reserves as may be required to comply with any requirements of any Governmental Entity. From said estimate, the Board shall subtract an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) of the operating fund at the start of the upcoming calendar year that is attributable to maintenance assessments from the preceding calendar year; the difference shall constitute the basis for determining maintenance assessments for the upcoming calendar year. All Lots existing at the time the Board determines the amount of assessments for common expenses shall be subject to equal per Lot assessments that shall be paid in twelve (12) monthly installments, or as determined by the Board. If any two (2) or more Lots are consolidated, the assessments for common expenses attributable to the resulting Lot shall be equal to the amount that would have been assessed against the Lots that were consolidated.

If at any time during any calendar year, the maintenance assessment proves inadequate for any reason, including but not limited to the inability to collect any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owner in the manner set forth above. At the time of such additional levy, the Board will provide to the Owners a reasonably detailed summary of the reasons for the increased assessments.

The obligation to pay assessments shall commence as to each Lot on the first day of the month following: the month in which the Board first determines a budget and levies assessments pursuant to this Article. The first annual assessment levied on each Lot shall be adjusted according to the number of months remaining in the calendar year at the time assessments commence on the Lot. Assessments shall be paid in monthly installments to the Association on such dates as prescribed by the Board. The Board may require advance payment of assessments at closing of conveyance of the title to a Lot and impose special requirements for Owners with a history of delinquent payment.

Notwithstanding anything to the contrary contained herein, until Declarant's Class B membership terminates, the following provisions shall apply with respect to all assessments under this Article 8: (a) At Declarant's option, Declarant shall be excused from payment of its share of assessments related to its Lots, and in such event, Declarant shall be responsible to pay any operating expenses and reserves that exceed the assessments receivable from other Owners and other income of the Association. In the event such option is exercised by Declarant, Declarant may, at any time, elect to terminate such option, in which event Declarant's Lots shall be assessed in the manner otherwise set forth herein; and (b) In addition, at Declarant's option, in the event that the Association does not have sufficient cash available to meet its expenses, the Board is authorized to borrow money from Declarant which may, in its sole discretion, loan money to the Association for such purposes. Any such loan evidenced by a promissory note executed by the Association, bearing a reasonable interest rate, and other terms as mutually agreed by Declarant and Association.

8.03 Financial Records. The Association shall keep detailed financial records. All financial and other records shall be made reasonably available for examination by any Owner and their authorized agents, with the exception of confidential records such as employee files, nonpublic litigation files and privileged communications. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles.

8.04 Exemption from Assessments. Anything herein to the contrary notwithstanding, the Association shall be exempt from the assessments provided for in this Article 8 (with respect to any Lots the Association owns), and the property owned by it shall be excluded from the total area of Mahana Estates when calculating the Owners' pro rata shares of expenses.

8.05 Fines; Default in Payment of Assessments of Fees. Each assessment of expenses by the Association or the Board shall be a separate, distinct and personal debt of the Owners of each Lot (or in the case of multiple Owners of a Lot, each Owner jointly and severally) against which the same is assessed. If the Owner shall fail to pay the Owner's assessment when due, then said Owner shall pay an additional assessment of \$50.00 (or such other fine or fines adopted by the Board from time to time) for each such failure and all delinquent assessments shall bear interest at the rate of one and one-half percent (1½%) per month from the assessment due date (or the highest rate permitted by Hawaii law, if such highest rate is less than one and one-half percent (1½%) per month).

The Association 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 Lot obligated. Such lien may be enforced by judicial foreclosure or power of sale in the same manner as a mortgage is enforced under Hawaii law, as amended from time to time. The Association may file a notice of such lien in the Bureau, but said filing shall not be a prerequisite to the perfection of such 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. Such 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 the Bureau prior to the date the Association's notice of lien, attachment or pending litigation is recorded.

8.06 Special Assessments. The Board shall levy a special assessment against the Owner for its acts or failure or refusal to act or otherwise to comply with this Declaration, Design Rules, Design Guidelines or Applicable Law that causes the Association to incur any expense that otherwise would not have been incurred by the Association in the performance of its duties and obligations. Such assessments shall be in the amount of the extraordinary expense incurred and shall be due and payable to the Association when levied. Such extraordinary expenses shall be deemed to include, without limitation, engineers', architects', attorneys', accountants' and consultants' fees when reasonably incurred by the Association.

9. **EASEMENTS.** In order to enhance Mahana Estates and to facilitate the usefulness and enjoyment of Mahana Estates by the Owners and Occupants of the Lots, Declarant declares and reserves various easements for various purposes, including, without limitation, access, utilities, drainage, and other purposes (each such easement, including without limitation, Access Easements, Utility Easements, Drainage Easements, Landscaping Easements, and the Civil Defense Easement as those terms are defined in this Declaration, are individually called a Subdivision Easement and collectively called the collectively, **Subdivision Easements**), in favor of the Association and/or various Lots, other specified lots and Benefited Parties.

9.01 Declaration of Access Easements. Declarant hereby declares and grants a perpetual, non-exclusive easement for the following purposes only, over, upon, across and through the following easements (**Access Easements**) affecting the following Affected Lots, in favor of and appurtenant to the following Benefited Lots, to the extent expressly provided herein, upon and subject to the terms and conditions set forth in this Declaration:

| Area | Affected Lot (Access Easement covers entire Lot) | Benefited Lots | Purpose(s) |
|--------------|---|----------------|--|
| 12.096 acres | 56 | 1-63 | Pedestrian and vehicular ingress and egress. |
| 1.475 acres | 57 | 1-63 | Pedestrian and vehicular ingress and egress. |
| 1.821 acres | 58 | 1-63 | Pedestrian and vehicular ingress and egress. |
| 0.506 acres | 59 | 1-63 | Pedestrian and vehicular ingress and egress. |
| 0.508 acres | 60 | 1-63 | Pedestrian and vehicular ingress and egress. |
| 1.309 acres | 61 | 1-63 | Pedestrian and vehicular ingress and egress. |

(a) Specific Terms and Conditions Applicable to All Access Easements.

i. Use of the Access Easements shall be subject to reasonable speed limits, parking limits, and other rules and regulations as Declarant or the Association (through its Board of Directors) may establish from time to time.

ii. From and after the date on which each Access Easement or related Common Area is available for use by the Owners and Occupants of the Benefited Lots (regardless of whether or not it shall have been conveyed to the Association) or such later date as Declarant may determine in its sole discretion, the Association will assume all responsibilities and liabilities

with respect to its use, operation, maintenance and improvement. All costs and expenses will be assessed to and paid by all Lot Owners as common expenses as provided in Section 8.02.

9.02 Declaration of Drainage Easements. Declarant hereby declares and grants the Association perpetual easements for the following purposes only, over, upon, across, under and through the following easements (collectively, **Drainage Easements**) affecting the following Affected Lots, to the extent expressly provided herein, together with a perpetual, nonexclusive easement to enter, cross over and upon the Affected Lot to the Drainage Easement area for the purposes of obtaining access to the Drainage Easement and transporting to and from the Drainage Easement area such vehicles, personnel, materials and equipment as are reasonably necessary for the purposes of the rights granted in this Section 9.02, upon and subject to the terms and conditions set forth in this Declaration:

| Easement (as shown on the Plan) | Area | Affected Lot(s) | Purpose(s) |
|--|----------------|------------------------|-------------------|
| A | 26,155 sq. ft. | 53 | Drainage |
| C | 40,124 sq. ft. | 53 | Drainage |
| E | 4,575 sq. ft. | 20, 21 | Drainage |
| J | 2,034 sq. ft. | 17 | Drainage |
| K | 21,180 sq. ft. | 35-38, 40 | Drainage |
| P | 12.014 acres | 53 | Drainage |
| S | 17.715 acres | 56-61 | Drainage |
| U | 1,795 sq. ft. | 52 | Drainage |
| X | 5,317 sq. ft. | 25, 26 | Drainage |
| Y | 4,940 sq. ft. | 32, 33 | Drainage |
| Z | 3,483 sq. ft. | 46 | Drainage |
| CC | 2,887 sq. ft. | 40 | Drainage |
| DD | 12,231 sq. ft. | 35 | Drainage |
| EE | 7,551 sq. ft. | 36 | Drainage |
| FF | 4,086 sq. ft. | 37 | Drainage |
| GG | 2,917 sq. ft. | 38 | Drainage |

All Drainage Easements listed in this table are non-exclusive easements, meaning that Lot Owners may use those areas so long as such use does not interfere with or impair the function of the Drainage.

(a) Specific Terms and Conditions of Use of Drainage Easements. The Drainage Easements described in this Section 9.02 are subject to and upon the following terms and conditions:

i. The Drainage Easements are easements in gross in favor of the Association, and are not appurtenant to any particular lands owned by the Association.

ii. The Association shall be responsible for maintaining any Drainage improvements located in the Drainage Easements.

iii. No dirt, green waste or other debris shall be deposited in Drainage Easements, and no fences, walls or other landscaping or Improvements of any kind that would impair their function are permitted.

iv. The Association shall check any drainage basins and channels in the Subdivision for sediment buildup, not less frequently than annually and shall remove sediment buildup if and to the extent it shall impair the efficient operation of the Drainage Easements or drainage basins and channels. The Association shall keep reasonable records of its maintenance actions. If the owner of a property on which a Drainage Easement is located shall dump or place clippings, debris or other material in any Drainage Easement the effect of which would be to impair the Drainage Easement's efficient operation, the Association may remove all such materials and clean the Drainage Easement and shall have the authority to levy a special assessment for the cost thereof against the property owner to reimburse the Association for the cost thereof. Neither the Association nor any officer, director or employee of the Association shall be liable for any claim, loss, damage or expense which the owner or occupant of any Property may suffer or incur as a result of any storm water runoff, drainage or failure of any Drainage Easement or any drainage basin in the Subdivision to adequately manage drainage regardless of whether said claim, loss, damage or expense shall have been caused by any acts or omissions of the Association or any officer, director, agent or contractor of the Association or the failure of the Association to manage, maintain or operate the Drainage Easements or any drainage basin in accordance with this Section.

v. Without limiting the Association's said authority, the Owner of each Affected Lot containing a Drainage Easement shall have the right to plant and maintain landscaping on the land within such Drainage Easement and to use said land for the Owner's own uses, provided that the operation and function of the applicable Drainage Easement to manage drainage shall not be impaired or diminished. Otherwise, Owners and occupants of the Lots in which a Drainage Easement is located may not enter or use the land in which the Drainage Easement is located, and no improvements may be installed in the Drainage Easements.

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

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

9.03 Reservation of Signage Easements. Declarant reserves to itself and the Association an easement over the Common Area to place monument signs with the name Mahana Estates or other name or information designated by Declarant, including the right to install, light, repair and replace the signs and landscape such easement areas.

9.04 Easements for Maintenance, Emergency, and Enforcement. The Declarant grants to the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.04 and its enforcement rights under this Declaration. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

9.05 General Easement Terms and Conditions Applicable to All Subdivision Easements.

(a) Responsibility. Each Benefited Party and Owner of a Benefited Lot shall and shall cause all of its respective Occupants or its guests, tenants and licensees, to: (a) use due care and diligence in the use of the Subdivision Easements; (b) observe and perform all Applicable Laws now or hereafter imposed by any Governmental Entity, which are applicable to the Benefited Party's or the Benefited Lot Owner's or Occupant's use of the Affected Lot and the Easement Area; (c) not at any time make or suffer any strip or waste or unlawful, improper or offensive use of the Affected Lots; (d) not exercise the easement rights granted herein in such a manner that unreasonably interferes with the use of the Affected Lots by the Owners and Occupants thereof; (e) not permit the Affected Lot to be used for any purposes other than those expressly permitted above; and (f) complete the construction and installation of any improvements made by such Benefited Party or Owners of the Benefited Lot within the Affected Lot promptly, with due care and diligence, in compliance with all Applicable Laws and free and clear of all liens.

(b) Condition of Easement Area. Declarant makes no warranty or other representation as to the condition of the Easement Areas or its adequacy for the intended use by the Benefited Parties or the Owners and Occupants of the Benefited Lots.

(c) No Structures Within Subdivision Easements. No buildings or other structures shall be built by an Owner within the Subdivision Easements, including without limitation, any areas labeled on the Plan as easements for landscaping, setbacks, water, drainage, electricity, telephone, or other utilities.

(d) Indemnification. The Owners and Occupants of the Benefited Lots and all Benefited Parties shall at all times indemnify and hold harmless Declarant and Owners of the Affected Lots from and against all:

i. Loss or damage to the property of such Owner, Occupant, such Benefited Party or of others occurring in the Easement Area or arising out of or as a result of the use of the Easement Area by the Owner or Occupant of a Benefited Lot or the Benefited Party; and

ii. Liability for injury or death of any person or persons arising out of or as a result of the use of the Easement Area by the Owner or Occupant of a Benefited Lot or a Benefited Party, or by the failure of such Owner, Occupant or Benefited Party to comply with their respective obligations with respect to the Easement Area hereunder; provided, however, that such indemnified party shall not have acted or failed to act fraudulently or in bad faith or as a result of gross negligence.

(e) Condemnation. In case at any time or times during the term of this Declaration, the Affected Lot over which the Easement Areas are then located, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, any and all damages awarded or payable for or on account of any land or water or improvements thereon shall be payable to and be the sole property of the Owner of such Affected Lot so condemned or taken. The Benefited Parties and Owners and Occupants of a Benefited Lot shall not by reason thereof be entitled to any claim against Declarant for compensation; provided, however, that a Benefited Party, Owner and Occupant of a Benefited Lot may claim and recover from the condemning authority full compensation for any severance or other damages to its rights granted herein. In every such case the estate and interest of the Benefited Party and Owners and Occupants of a Benefited Lot in the premises so taken or condemned shall cease and be determined upon the taking of possession thereof by the condemning authority.

(f) 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 shown on the Plan or other applicable easement map, 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.

9.06 Reserved Right to Deal with the Property and Designate and Grant Easements. The Declarant reserves for itself and its respective successors, assigns, designees, the Association, and all utility providers, perpetual non-exclusive easements throughout the Property (but not through a structure) to the extent reasonably necessary to: (i) install utilities, security and similar systems, drainage systems, and other infrastructure to serve the Property; (ii) install walkways, pathways and trails, street lights, and signage on property the Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat; (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and (iv) access and read utility meters. Notwithstanding the above, the Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

The Declarant also reserves the non-exclusive right and power to designate, grant, and record from time to time easements and rights-of-way over, under, and across the Property for access, utilities, cable television, internet and other communications services, landscaping, preservation, signage, monuments, sanitary and storm sewers, drains, and such other uses and purposes as Developer deems necessary or appropriate for the development, subdivision,

conveyance or use of the Property, the Project, any one or more of the Lots, or any parcel adjoining or near the Property, together with the right to amend, relocate, realign or cancel such easements and rights-of-way, and the right to subordinate this Declaration to such easements. The Declarant reserves the right and power to designate, grant, and record easements with no material and adverse impact without Owner approval. Otherwise, the location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned. All such easements and rights of way may be in favor of one or more Lot Owners, the Association, Declaration, any governmental entity, any public or private utility company, any owner of lands adjacent to or near the Property or any interest therein, or any other person or entity, and may be on such terms and conditions as the Declarant may determine in Declarant's reasonable discretion, provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Lot.

10. **NO DRILLING OF WELLS.** Drilling wells is prohibited without the prior written consent of the Declarant.

11. **RESERVATION OF TRADEMARK AND TRADENAME RIGHTS.** Declarant reserves all rights to the name Mahana Estates and any variation thereof.

12. **CONSTRUCTION ACTIVITIES.** Declarant is or will be undertaking various construction activities within Mahana Estates. Other buyers of Lots within Mahana Estates will be undertaking construction activities as they develop their lots. Governmental Entities and utility companies also may be undertaking construction activities. In connection with such construction activities:

12.01 Declarant reserves and is hereby granted the right and an easement to enter upon the Property both before and after closing for the purpose of constructing the onsite and offsite improvements which directly or indirectly benefit the Property, or which are required to be constructed by governmental requirements, and to create noise, dust and other nuisances in connection with such construction activities. Upon request, Owner agrees promptly and for no additional consideration to execute and deliver future instruments confirming Declarant's right and easement.

12.02 Each Owner acknowledges that construction activities by Declarant and others in the vicinity of the Property will or may result in noise, dust, vibration and other nuisances, disturbances or hazards to Owner and to persons and property on or within the Property, and may temporarily impede Owner's access to Mahana Estates and the Property.

12.03 Each Owner acknowledges that Declarant makes no representations or warranties concerning plans, or the absence of plans, by Declarant or others for future development of adjacent or nearby properties, and any plans for the future development of adjacent and nearby properties by Declarant are subject to change in the sole and absolute discretion of the Declarant or its successors and assigns.

13. **UTILITY AND OTHER EFFECTS.** Each Owner acknowledges that the Property is subject to or may be located adjacent to or in the vicinity of electric, water and other utilities (including, without limitation high-powered electrical transmission lines) and public roads and thoroughfares, and irrigation ditches and hydroelectric facilities which may result in, among other things, electromagnetic fields, nuisances, noise, dust, disturbances or hazards to persons and to property on or with the Property, and each Owner agrees to assume all risks of impairment of Owner's use and enjoyment of the Property, loss in market value and property damage and personal injury arising from such utilities, public roads and thoroughfares, irrigation ditches and hydroelectric facilities.

14. **NUISANCES AND OTHER DISCLOSURES.** Mahana Estates may be subject to various nuisances and other disclosed items, including those set forth below. Each Owner assumes all risks relating to the nuisances and disclosed items, releases Declarant and its affiliates from all claims of damages relating to the nuisances and disclosed items, waives any right to require Declarant to take any action regarding the nuisances and to indemnify Declarant for any claims arising out of injury or damage occurring on a Lot and as a result of a nuisance or a disclosed item.

14.01 Golf Course Impacts. Lots 9 through 16 are directly adjacent to the Plantation Golf Course. Each Owner who acquires a Lot acknowledges and accepts the following:

(a) *Errant Golf Balls.* Each Owner acknowledges that ownership of property adjacent or in proximity to a golf course results in certain foreseeable detriments and risks, including, without limitation, the risk of damage or injury from errant golf balls, that some Lots due to location will experience a greater volume of errant golf than other Lots, and that an Owner's use and enjoyment of his or her Lot may be limited as a result. Each Owner accepts the detriments and expressly assumes the risks of owning property adjacent or in proximity to a golf course and agrees that the Declarant, the Association, or any of their successors or assigns shall not be liable to the Owner or to anyone claiming any loss, damage, or personal injury; destruction of property; trespass; or any other alleged wrong or entitlement to remedy based upon or arising out of the location or proximity of the Owner's Lot to a golf course.

(b) *Golf Tournaments.* Each Owner acknowledges the possibility that golf tournaments will, from time to time, impact the use and enjoyment of his or her Lot and accepts and assumes the risk of such activity.

(c) *Pesticides and Fertilizers.* Pesticides, fertilizers, and other chemicals were in the past used on lands within Mahana Estates, and will be utilized in connection with the golf course and other recreation facilities in and around Mahana Estates, and the Owners acknowledge, accept the use of, and assume the risk of such pesticides, fertilizers, and chemicals.

(d) *Overspray.* Owners of Lots, particularly Owners of Lots abutting any golf course, may experience overspray from the golf course irrigation system, and the Owners acknowledge, accept, and assume the risk of such overspray. Water used to irrigate any golf course may be treated effluent or untreated irrigation water, and may include pesticides, fertilizers, and herbicides.

(e) *Noise and Light.* Owners, particularly Owners of Lots in proximity to any clubhouse, sales office, welcome center, recreational facility, or maintenance facility, may be exposed to lights, traffic, noise, or activities resulting from use of the clubhouse for dining and entertainment and use of the parking lot, and the Owners acknowledge, accept, and assume the risk of such light, noise, or activities.

(f) *Maintenance.* Golf courses require daily maintenance, including mowing, irrigation, and grooming, during early morning and evening hours, as well as on holidays and weekends, including without limitation, the use of tractors, blowers, pumps, compressors, and utility vehicles. A golf course maintenance road passes through the Subdivision above Lot 21 and below Lot 24, and there is a golf maintenance facility in the valley below Lots 3 to 8 and 12-20. Owners, particularly Owners of Lots in proximity to any golf course, will be exposed to the noise and other effects of such maintenance, and the Owners acknowledge, accept, and assume the risk of such noise and effects (including the use of pesticides).

14.02 Public Access. Certain facilities and areas within Mahana Estates may be open for use and enjoyment of the public, including other members of the Kapalua Resort Community. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, and medians. Use of the trails by the public may result in noise, loss of privacy, and other inconveniences.

14.03 No Guarantee of Safety and Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Mahana Estates. The Association may, but shall not be obligated to, maintain or support certain activities within Mahana Estates designed to promote or enhance the level of safety or security that each person provides for himself or herself and his or her property. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within Mahana Estates, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Mahana Estates, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Lot, that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within Mahana Estates assumes all risks of personal injury and loss or damage to property, including the Lots and the contents of the Lots, resulting from acts of third parties.

14.04 Changes in Development Plan. Each Owner acknowledges that Mahana Estates is a master planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within Mahana Estates, or (b) changes in development plan as it relates to property outside Mahana Estates, without the Declarant's prior written consent.

14.05 View Impairment. Neither the Declarant nor the Association guarantee or represent that any view over and across the property within or adjacent to Mahana Estates will be preserved without impairment. The Association (with respect to Common Area) shall have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

14.06 Notices and Disclaimers as to Community-Systems. Each Owner acknowledges that interruptions in cable television and other utility systems and services will occur from time to time. The Declarant, Declarant's affiliates, or any of their respective successors or assigns shall not be liable for, and no utility system or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in the utility systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

14.07 Ongoing Construction Activities. Construction activity by the Declarant or other Owners may continue within Mahana Estates, as well as on properties adjacent to and within Mahana Estates. The Declarant may do such things as may be reasonably required in connection with the construction activity, including, but not limited to, grading; excavating; depositing fill material; vertical construction; installing drainage systems; and installing sewer, water, electrical, gas, telephone, and or community systems.

14.08 Natural Hazards. Each Owner and the Association acknowledge that Mahana Estates is located within an area that is subject to natural occurring conditions, hazards and/or disasters such as volcanoes, hurricanes, tsunamis, earthquakes, flash floods, blustery or windy conditions and high surf. Each Owner acknowledges, accepts, and assumes the risk of natural occurring conditions, hazards and/or disasters associated with use and enjoyment of the location and ownership of his or her Lot. In addition, each Owner acknowledges that warning sirens and devices used for notification of natural hazards may be located within Mahana Estates.

14.09 Blasting and Other Activities. All Owners, Occupants, and users of Lots are hereby placed on notice that the Declarant, Declarant's affiliates, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within Mahana Estates. By the acceptance of title to a Lot or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or Mahana Estates generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree: (a) that such activities shall not be deemed nuisances or noxious or offensive activities under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that the Declarant, any Declarant's affiliate, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential or otherwise), injuries, or deaths arising from or relating to such activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) that this acknowledgment and agreement is a material inducement to the Declarant or any Declarant's affiliates to sell, convey, lease, and/or allow the use of Lots within Mahana Estates.

14.10 Aircraft Noise. Commercial and other aircraft using Kapalua West Maui Airport will, from time to time, produce noise, possible vibration, and other attributes of overflight. All owners acknowledge this possibility and accept and assume the risk of such noise, vibration, and other effects of overflight.

14.11 Resort Activities. Each Owner understands and agrees that his or her Lot is adjacent to or near resort facilities and that resort-related activities, including, without limitation, tournaments, luaus, and concerts, may be held within Mahana Estates. Each Owner acknowledges that the location of his or her Lot within Mahana Estates may result in nuisances or hazards to persons and property on the Lot as a result of normal resort-related activities. Each Owner covenants for itself, its heirs, successors, successors-in-title and assigns that it shall assume all risks associated with such location, including, but not limited to, the risk of property damage or personal injury arising from actions incidental to such resort-related activities and shall indemnify and hold harmless the Association and the Declarant from any liability, claims, or expenses, including attorneys fees, arising from such property damage or personal injury.

14.12 Agricultural Activities. Each Lot and the Improvements thereon, may be affected by conditions created by or attributable to surrounding agricultural and other non-residential uses and activities, including, but not limited to: (a) harvesting and tending, as well as fertilization and pest and weed control; (b) growing, harvesting, and processing of agricultural products; (c) cattle and other livestock grazing, and (d) irrigation of any and all surrounding lands with reclaimed water, treated effluent, or other non-potable water sources. All Owners should be aware that the Hawaii Right To Farm Act (Chapter 165 of the Hawaii Revised Statutes) and Hawaii law limit the circumstances under which farming operations surrounding Mahana Estates may be deemed to be a nuisance.

14.13 Civil Defense Siren. A civil defense siren has been installed pursuant to LUC Conditions within Mahana Estates and will used for monthly testing and during emergencies.

15. ADMINISTRATIVE PROVISIONS.

15.01 Right to Abate Violations. If any person or entity shall violate or attempt to violate any of the covenants herein contained, any rules or regulations of the Association or any ruling of the Design Review Committee, the Owner of any Lot, the Association or Declarant in its discretion, but in any case without having any affirmative duty to do so may commence legal action at law or in equity against such person or entity, either to prevent or abate such violation or to recover damages caused by such violation, or both. In addition to, and without limiting, the foregoing, the Association, through its Board, may impose reasonable monetary fines for violations of this Declaration, the Association's bylaws, or Association rules in accordance with procedures set out in the Association's bylaws.

15.02 Dispute Resolution.

(a) Agreement to Be Bound By Dispute Resolution Procedures. Each Owner, by acquiring any interest in a Lot, agrees that certain disputes shall be resolved in accordance with this Article.

(b) Association Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding, and the Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in any lawsuit or administrative proceeding (collectively hereinafter referred to as a **Proceeding**) in its own name, but only on matters affecting or pertaining to Mahana Estates and as to which the Association is a proper party in interest. Each and any exercise of such power(s) shall be subject to full compliance with the compliance with this Article.

(c) Association Approval to Commence Proceedings; Exception for Operational Proceedings. Except with respect to an Operational Proceeding, and subject to the provisions below relating to Development Controversies (as defined below), no Proceeding shall be commenced or prosecuted by the Board or the Association unless approved at a meeting of the Association called for such purpose, by the affirmative vote of not less than sixty-seven percent (67%) of the Owners. For purposes of this Section, an Operational Proceeding means any Proceeding brought by the Association: (i) to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens), or (ii) for the imposition and/or collection of assessments from Unit Owners; or (iii) involving appeals of or challenges to real property or ad valorem taxation, or (iv) to protect against any matter which imminently and substantially threatens the health, safety and welfare of all of the Owners, or (v) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of the Association's business, or (vi) by way of counterclaim in a Proceeding instituted against the Association, or (vii) for money damages where the total amount in controversy for all matters arising in connection with the action is not likely to exceed Twenty Five Thousand Dollars (\$25,000.00) (which amount shall be automatically adjusted every five years after the date of this Declaration to reflect the percentage change in the Cost of Living Factor over that 5-year period). Subject to the provisions of this Article relating to Development Controversies, the Board from

time to time may cause an Operational Proceeding to be commenced and prosecuted without first securing the affirmative vote of not less than sixty-seven percent (67%) of the Owners.

(d) Development Controversies. Any Proceeding involving one or more Owners, the Association and/or the Board against the Declarant or its agents or contractors, or any officer, director, member, partner or shareholder of Declarant or its agents or contractors (collectively and severally referred to in this Section as **Development Parties**) arising from or otherwise relating to the Declaration, the Association's bylaws, issues involving the design, construction or development of Mahana Estates, the adequacy of reserves, or any other matter, of whatever nature, involving Mahana Estates (excepting, however an Operational Proceeding brought against Declarant solely in its capacity as a Lot Owner) shall be referred to herein as a **Development Controversy**. Strict compliance with the following provisions of this Section shall be mandatory with regard to any and all Development Controversies:

(i) Negotiation. The parties to any Development Controversy shall first participate in a period of good faith negotiation (the **Negotiation**) to resolve the Development Controversy. The claimant shall give written notice to the Development Parties describing the nature of all claims against them (the **Dispute**) and a description of what the claimant believes ought to be done to resolve the Dispute. The claimant shall also propose a date and time for a conference, which date must fall on a business day between fifteen and twenty days after the date the claimant sends the foregoing notice to the Development Parties (the **Conference**), unless mutually extended by the parties. The Conference shall be held at a mutually agreed upon location. Within five business days of the Conference notice, Declarant shall provide a follow-up notice to the claimant confirming the time of the Conference and stating the name and title of the Development Parties' representative(s) to the Conference. Prior to the Conference, the claimant will, in good faith, discuss with the Declarant's representative and consider possible resolutions of the Dispute. At the Conference, the claimant and Development Parties' representative(s) shall confer together to resolve the Dispute for a maximum period of two hours, although the parties may extend or adjourn the meeting by mutual agreement. If, as a result of the Conference, the Dispute or certain issues in the Dispute have been resolved, the parties shall jointly state in writing the issues that have been resolved and the issues, if any, that remain unresolved and will require Mediation (as defined below).

(ii) Mediation. In the event that the parties have completed the Negotiation as required by the preceding paragraphs but have failed to resolve the entire Dispute, then, if either of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be resolved, if possible, by mediation conducted with the assistance of a single mediator in accordance with the Arbitration Rules, Procedures, and Protocols of Dispute Prevention and Resolution, Inc. (**DPRI**) then in effect (the **Mediation**). Any Mediation shall be conducted in Honolulu on the Island of Oahu, and shall be governed by the laws of the State of Hawaii. The parties shall share equally the expense of the mediator.

(iii) Dispute Resolution. Any Development Controversy and any other dispute by or between the Declarant and the Association, the Board and/or any Owner or Owners arising out of or incident to the development or management of the Mahana Estates or any other aspect of the relationship between Declarant and the Association, the Board, and/or Owners regarding Mahana Estates shall be resolved in accordance with this Section. Except for Disputes

already mediated under Section 15.02(d), any such disputes shall first be submitted to mediation through DPRI, or such other dispute resolution agency as the parties may mutually select, in the County of Maui, Hawaii, in accordance with DPRI's Mediation Rules, Procedures and Protocol then in effect. If necessary, claims not resolved by mediation shall be decided by arbitration through DPRI, or such other dispute resolution agency as the parties may mutually select, which, unless the parties mutually agree otherwise, shall be in accordance with DPRI's Arbitration Rules, Procedures & Protocol then in effect. Any person that desires to submit any issue or dispute to arbitration shall promptly so notify the other party in writing. The demand for arbitration shall be filed in writing with the other party to the dispute and with DPRI or another mutually-acceptable dispute resolution organization. The arbitration shall be heard and determined by three arbitrators selected in accordance with DPRI's Arbitration Rules, Procedures & Protocols unless the parties agree on a single arbitrator. All proper costs and expenses of such arbitration including, without limitation, witness fees, attorney's fees and the fees of the arbitrators shall be charged to the party or parties in such amounts as the arbitrator or arbitrators shall determine at the time of the award. This agreement to arbitration shall be governed by and interpreted under the Federal Arbitration Act (9 U.S.C. §1, ET SEQ.) (FAA) to the exclusion of any inconsistent Hawaii state law, including the Hawaii Arbitration Act, Chapter 658A, Hawaii Revised Statutes. The FAA and not the Hawaii Arbitration Act shall apply to and be used to interpret DPRI's Mediation Rules, Procedures & Protocols and DPRI's Arbitration Rules, Procedures & Protocols. THE MEDIATION AND ARBITRATION AWARD SO RENDERED SHALL BE BINDING IN ALL ASPECTS AND SHALL BE GOVERNED BY AND INTERPRETED UNDER THE FAA, AS IT MAY BE HEREAFTER AMENDED TO THE EXCLUSION OF ANY INCONSISTENT STATE LAW, REGULATION OR JUDICIAL DECISION. THE AWARD OF THE ARBITRATOR SHALL BE FINAL AND BINDING AND MAY BE ENTERED AS A JUDGEMENT IN ANY COURT OF COMPETENT JURISDICTION. The parties further agree that any documents of assignment, lease or conveyance of a Lot shall contain a provision substantially in the form set forth above, requiring the assignee, lessee or grantee to arbitrate any and all disputes concerning the Lot, provided that failure to include such a provision shall not relieve the assignee, lessee or grantee of the obligation to mediate and arbitrate hereunder. Further, Declarant, the Association, and each Owner shall indemnify, defend and hold harmless the other from and against any and all damage occurring as a result of the resolution of any such dispute other than by arbitration due to the actions of such person. Any arbitration proceedings under this Section will be submitted to arbitration in the County of Maui, Hawaii, unless the parties otherwise agree.

(iv) Funding of Proceedings. In no event shall any Association reserve fund or working capital fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Development Controversy) other than an Operational Proceeding unless such use has been approved by a majority of Lot Owners. Association reserve funds and working capital funds are to be used only for the purposes specified therein or therefor, and for no other purpose whatsoever.

(v) Amendments of this Section. Any amendment of this Section shall require the written consent and joinder of Declarant, together with such other applicable approval requirements set forth in Section 15.04.

(vi) Severability. All provisions of this Section 15.02 are severable. If any provision of this Article is determined to be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provision of this Article.

15.03 Duration of Covenants. These covenants shall be binding for a period of ninety-nine (99) years from the date this instrument is recorded in the Bureau. 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 99-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 67% of all Lots, evidenced by an instrument recorded in the Bureau that (a) is signed by two officers of the Association, (b) contains a certification that it was approved by the Owners of not less than 67% of all Lots.

15.04 Amendment of Covenants. These covenants may be amended or terminated at any time by the affirmative vote or the written consent of the Owners of not less than 67% of all of the Lots that are subject to this Declaration at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Declaration, giving the substance of the proposed amendment or indicating the provisions to be repealed, as the case may be. Any amendment to this Declaration shall be effective as of the date the amendment is recorded in the Bureau that (a) is signed by two officers of the Association, and (b) contains a certification that it was approved by the Owners of not less than 67% of all Lots. Notwithstanding the foregoing, this Declaration may not be amended in any event, or at any time, without Declarant's written consent as long as Declarant owns any Lots, unless Declarant is dissolved, declared bankrupt, or in its sole discretion elects to relinquish such approval by right of written notice signed by Declarant and duly recorded in the Bureau.

Notwithstanding the foregoing, the Declarant acting alone may from time to time amend these covenants unilaterally without the consent of any Owner or Mortgagee of any Property during the ten (10) year period from the date of this Declaration, for any of the following purposes:

- (a) To correct any drafting or typographical error;
- (b) To comply with (i) any Applicable Law, (ii) any requirement or condition of any Governmental Entity, or (iii) any governmental approval, permit or order affecting the subdivision;
- (c) To qualify some or all of the Lots 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 annex to this Declaration additional property or Common Areas that may be developed in the future in lands abutting or near Mahana Estates; and
- (e) To exercise the rights reserved to Declarant in this Declaration.

The Declarant's rights reserved under this Section 15.04 may be released by Declarant in its discretion at any time upon Declarant's voluntary relinquishment of said rights by written release recorded in the Bureau.

15.05 Notice of Sale or Transfer of Title. Each Owner shall promptly file a copy of its ownership document with the Board, which shall maintain a record of ownership of all Lots. If an Owner shall mortgage its Lot or any interest therein, or lease its Lot for a period in excess of five (5) years, the Owner shall notify the Board in writing of the name and address of the mortgagee or occupant and also of any release of such mortgage or lease; the Owner shall notify the Board whether voting rights have been assigned to the mortgagee or occupant with respect to the Owner's interest in the Association; and the Board shall maintain all such information in the record of ownership.

15.06 Records of Ownership and Notices. The Declarant, the Association and the Design Review Committee shall be entitled to rely conclusively on the records of ownership of the Properties provided to the Association pursuant to Section 15.05 and 4.31 above, for all purposes, including, without limitation, 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 Design Review 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.

15.07 Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability or any other provision hereof.

15.08 Interpretation; No Waiver. The provisions hereof shall be construed and enforced under the laws of the State of Hawaii and be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of Mahana Estates. Failure to enforce any provision hereof shall not constitute a waiver of the right to thereafter enforce said provision or to enforce any other provision hereof. No acceptance of any assessment paid by any Owner shall be deemed to be a waiver of any breach by such Owner of any provision of this Declaration or a waiver of any rights of Declarant or any other person under this Declaration, or be construed as any agreement or representation by Declarant that such Owner is in compliance with the provisions of this Declaration. No remedy herein reserved is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to any remedy given hereunder or now or hereafter existing at law or in equity.


15.09 Attorneys' Fees. In any action for the enforcement of the provisions of this Declaration or for damages or any other form of relief, the prevailing party in such action shall be entitled to recover from the losing party all of the prevailing party's costs, expenses and reasonable attorneys' fees.

15.10 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.

[Remainder of page intentionally left blank; Signatures on following page]

Executed the day and year first above written.

SMC MAHANA LLC,
a Hawaii limited liability company

By: 

Name: Nan Chul Shin
Its: Manager

Declarant

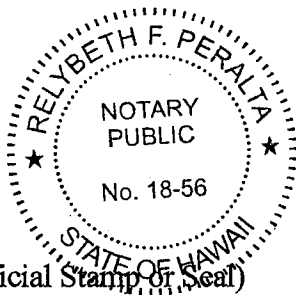
STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 25th day of September, 2018, before me personally appeared **Nan Chul Shin**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Relybeth F. Peralta
Notary Public, State of Hawaii

Printed Name: RELYBETH F. PERALTA

My commission expires: 02/25/2022



(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

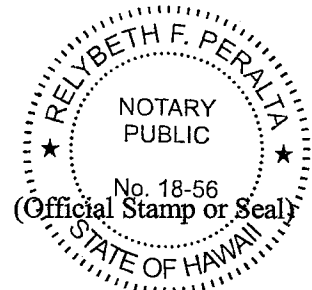
Document Identification or Description: Declaration of Covenants, Conditions, Easements, and Restrictions of Mahana Estates

Doc. Date: undated or Undated at time of notarization.

No. of Pages: 39 Jurisdiction: First Circuit
(in which notarial act is performed)

Relybeth F. Peralta 09/25/2018
Signature of Notary Date of Notarization and Certification Statement

RELYBETH F. PERALTA
Printed Name of Notary



(Official Stamp or Seal)

Exhibit A
Property Description

All of those certain parcels of land situate at Honokahua, Lahaina, Island and County of Maui, State of Hawaii, being the Lots 1 through 63, inclusive, as described below, all as shown on File Plan Number 2513, filed in the Bureau of Conveyances of the State of Hawaii, and containing the respective areas as shown below.

| Lot No. | TMK No. (2) 4-2-010: | Area (acres) |
|---------|-------------------------|-----------------|
| 1 | 01 | 1.302 |
| 2 | 02 | 1.019 |
| 3 | 03 | 1.414 |
| 4 | 04 | 1.114 |
| 5 | 05 | 1.593 |
| 6 | 06 | 0.874 |
| 7 | 07 | 1.045 |
| 8 | 08 | 1.191 |
| 9 | 09 | 1.447 |
| 10 | 010 | 0.706 |
| 11 | 011 | 0.767 |
| 12 | 012 | 0.818 |
| 13 | 013 | 0.854 |
| 14 | 014 | 1.057 |
| 15 | 015 | 0.744 |
| 16 | 016 | 1.033 |
| 17 | 017 | 1.211 |
| 18 | 018 | 1.076 |
| 19 | 019 | 1.107 |
| 20 | 020 | 1.294 |
| 21 | 021 | 1.517 |
| 22 | 022 | 1.665 |
| 23 | 023 | 1.374 |
| 24 | 024 | 1.752 |
| 25 | 025 | 1.376 |
| 26 | 026 | 1.296 |
| 27 | 027 | 1.536 |
| 28 | 028 | 1.700 |
| 29 | 029 | 2.485 |
| 30 | 030 | 2.557 |
| 31 | 031 | 2.849 |
| 32 | 032 | 1.651 |
| 33 | 033 | 1.884 |
| 34 | 034 | 3.653 |
| 35 | 035 | 3.884 |
| 36 | 036 | 3.036 |
| 37 | 037 | 2.379 |
| 38 | 038 | 2.455 |

| Lot No. | TMK No. (2) 4-2-010: | Area (acres) |
|---------|-------------------------|-----------------|
| 39 | 039 | 1.585 |
| 40 | 040 | 4.299 |
| 41 | 041 | 2.277 |
| 42 | 042 | 2.118 |
| 43 | 043 | 1.747 |
| 44 | 044 | 1.992 |
| 45 | 045 | 2.359 |
| 46 | 046 | 1.400 |
| 47 | 047 | 1.248 |
| 48 | 048 | 1.806 |
| 49 | 049 | 1.999 |
| 50 | 050 | 1.506 |
| 51 | 051 | 2.035 |
| 52 | 052 | 0.927 |
| 53 | 053 | 12.014 |
| 54 | 054 | 0.021 |
| 55 | 055 | 6.520 |
| 56 | 056 | 12.096 |
| 57 | 057 | 1.475 |
| 58 | 058 | 1.821 |
| 59 | 059 | 0.506 |
| 60 | 060 | 0.508 |
| 61 | 061 | 1.309 |
| 62 | 062 | 0.124 |
| 63 | 063 | 0.573 |