

LU Committee

From: meh@wkmaui.com
Sent: Monday, July 31, 2017 12:23 PM
To: LU Committee
Cc: Deborah Wright; James Giroux
Subject: Attn: Robert Carroll, Chair, Land Use Committee; Special Use Permit and Conditional Permit Applications of Leona R. Wilson-Lona Ridge, LLC/588 Kulaiwi Drive, Wailuku (LU-23)
Attachments: 2017 07-25 LETTER TO GIROUX & EXS 1-7.pdf; 2017 07-25 EXS 8-22 TO LETTER TO GIROUX.pdf

Dear Councilmember Robert Carroll as Chair of the Land Use Committee,

Pursuant to staff's phone request of today, we are forwarding an electronic copy of Deborah Wright's July 25, 2017 letter and enclosures to James Giroux, Deputy Corporation Counsel. Thank you.

Margaret E. Harris
Paralegal
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July 25, 2017

Via Email: james.giroux@co.maui.hi.us

James Giroux
Deputy Corporation Counsel
County of Maui, Department of
the Corporation Counsel
200 South High Street, 3rd Floor
Wailuku, HI 96793

RE: LEONA R. WILSON, APPLICANT; 588 KULAIWI DRIVE, WAILUKU

Dear James:

In follow up to our discussions, I am writing to provide you with some history and documentation regarding my client, Leona R. Wilson's property, as it relates to the current proceedings before the Maui County Council. I will follow up with some additional research as soon as possible.

A. The Lona Ridge Property at Issue

Lona Ridge, LLC purchased the 5.75 acre parcel of property identified as Tax Map Key No. (2) 3-5-002-010 (hereinafter "the Property") from David Paul Neihaus ("Neihaus") and Clifford Paul Rhodes ("Rhodes") on June 29, 2005. At the time, Leona Wilson, and her late husband, Bill Wilson, were the sole Members of Lona Ridge, LLC, a Hawaii LLC. The Property was owned by Lona Ridge, LLC, from its initial purchase in 2005 but was conveyed to Leona R. Wilson, Trustee of the Leona R. Wilson Revocable Trust dated December 27, 2001, as amended (the "Leona Wilson Trust") on October 18, 2014. The Leona Wilson Trust is the current holder of title to Lona Ridge.

The Property has a street address of 588 Kulaiwi Drive and is accessed from a cul-de-sac on Kulaiwi Drive, a County roadway in the "Wailuku Heights Extension - Unit II Subdivision," commonly known as and referred to as "Wailuku Heights." However, as discussed in greater detail below, only approximately 9,959 square feet of the 5.75 acre Property fell within the

Wailuku Heights subdivision and that portion is used as a gated 200-yard driveway with terraced landscaping. *See county maps attached as Exhibit "1."* The home, pool, lawn, and the farming activities are not within the Wailuku Heights subdivision (other than landscaping on the driveway), but rather are on the upper plateau of the Property, out of view and a good distance away from Wailuku Heights and any neighboring homes. *Id.*

Lona Ridge, LLC purchased the property in order to start a farm supporting endangered or rare plants which are either endemic, indigenous or brought to Hawaii by the original Polynesian voyaging explorers. Lona Ridge, LLC planted an extensive farm of A'ali', Aloalo, Hapu'u, Kalo (taro), Ki (ti leaf), Maile, Ma'o (Hawai'ian cotton), Oha, Ohi'a Ha, Olena (turmeric), Pili grass, Uki Uki, Alahehe'e, Awapuhi, Ho'awa, Iliahi (sandalwood), Koai'a, Mai'a (banana), Mamaki, Nanu, Ohi'a (mountain apple), Ohi'a Lehua, Palapalai and Uala, all of which have medicinal and practical uses traced to the Ancient Hawaiians. Additionally, the Property has an extensive grove of fruit trees, including Buddahs Fingers, Ponderosa, Meyer and Eureka Lemon, Yuzu, Bears and Kaffir Lime, Ruby Red Grapefruit, Washington Navel and Lane Late Orange, Dancy Tangerine, Jabong (Pamello), Fig, two varieties of Avocado, Mango, Guava, Papaya and Lilikoi trees, as well as various other herbs and vegetables on its grounds. Lona Ridge, LLC also constructed a residence at the Property, which became its Member Leona's full-time and sole residence in early 2013.

The issue is whether any of the Property is subject to the Association's Declaration. We contend that it is not. The Property is an undivided Lot 171 which is not defined as part of or subject to the Declaration and there is no provision in the Declaration for part of a "Lot" to be subject to its Declaration. Moreover, Lot 171 contains agriculturally zoned land and HRS Chapter 205 specifically prohibits the imposition of restrictive covenants upon agricultural lands. No agricultural tourism or commercial activities have occurred or are occurring on that four percent former Lot 144 portion of the Property. Therefore, the Association's attempts to regulate the entire Property or impose penalties against the Property's owner are not supported by the Declaration, Hawaii statute or any independent agreement. The most that any such restrictions could ever apply to even under a liberal interpretation is the portion that was the original Lot 144.

B. Background of the Property's Consolidation and Resubdivision and Current Zoning

The Property, Lot 171, is the result of a consolidation and resubdivision which the previous owners, Niehaus and Rhodes, completed prior to Lona Ridge, LLC's purchase in June 2005. By Warranty Deed dated March 8, 2002, Niehaus purchased a 56.334 acre agricultural lot, identified as Tax Map Key No. (2) 3-5-002-005, or Lot 169 on Map 5 filed in the Land Court with Land Court Application No. 52 of C. Brewer & Co., Ltd. (hereinafter referred to entirely as "Lot 169"). *See Exhibit "2" attached.* By Warranty Deed dated January 10, 2003, Niehaus and Rhodes, together as Tenants in Common, purchased a 9,959 square foot lot in the Wailuku Heights II subdivision identified as Tax Map Key No. (2) 3-5-015-071, or Lot 144 as shown on Map 4 filed in Land Court with Land Court Application No. 52 of C. Brewer & Co., Ltd. (hereinafter referred to as "Lot 144"). *See Exhibit "3" attached.*

In August 2003 Niehaus and Rhodes submitted an application to subdivide and consolidate Lots 169 and 144 with the County of Maui and were assigned Subdivision No. 3.205. In connection with that application, Niehaus and Rhodes, as Subdivider, and the County of Maui entered into an "Agreement for Allocation of Future Subdivision Potential," which was dated August 25, 2003 and recorded in the Bureau as Document No. 2003-177807, providing that a maximum number of nine lots could be created. *See Exhibit "4" attached.* Further, Niehaus and Rhodes, as the "Subdivider," and the County of Maui, signed a Subdivision Agreement (Agricultural Use) dated November 3, 2003, and recorded in the Bureau as Document No. 2003-241286 for Subdivision No. 3.2052 of Lot 169 containing 55.354 acres and Lot 144 containing 9,959 square feet to be a subdivision entitled "Waikapu Heights Subdivision" as follows: 1) Lot 144-A consisting of 5.75 acres and Lot 169-A consisting of 50.783 acres. *See Exhibit "5" attached.* The Subdivision Agreement provides in pertinent part that the portions of the land classified as "Agricultural" by State Land Use Commission, namely all of the subdivided lots with the exception of the 9,959 square feet encompassing the original Lot 144, remain subject to restrictions on uses prescribed in HRS §205-4.5, the Agricultural zoning statute. *Id.*

Niehaus and Rhodes separately petitioned the Land Court of the State of Hawaii ("Land Court") for an order consolidating and resubdividing Lots 169 and 144. On August 3, 2004, the Land Court issued an Order of Subdivision consolidating Lots 144 and 169 as shown on Maps 4 and 5, respectively, and resubdividing said consolidation into Lots 171 and 172. *See Exhibit "6"*

attached. On August 3, 2004, the Return of the State Land Surveyor was filed in the Land Court on Subdivision of Application No. 52, Map 7 with regard to the Petition of Niehaus and Rhodes, Owners, for consolidation of Lots 144 and 169 as shown on Maps 4 and 5, respectively and resubdivision of said consolidation into Parcels 171 and 172 and designation of Easements 57 and 58 affecting Lot 172; the State Land Surveyor noted that he had examined the mathematical correctness of the application and compared Transfer Certificates of Title 633,824 and 605,618 and found them to be in accord and noted that Lot 144-A and 169-A had been changed Lot 171 and Lot 172. *See Exhibit "7" attached.*

C. Agreement With the Wailuku Heights II Association's Board of Directors

In November 2004, certain members of the Wailuku Heights Extension, Unit II Homeowners' Association (the "Association") objected to work being done by Niehaus and Rhodes on the newly consolidated and resubdivided 5.75 acre Property, Lot 171, as being in alleged violation of the Association's Declaration of Protective Covenants, Conditions and Restrictions for Wailuku Heights Extension - Unit II (the "Declaration"). *See Exhibit "8."* Niehaus retained James Krueger as his legal counsel to address the issue with the Association. *See Exhibit "9" attached.* On November 30, 2004, Niehaus' attorney wrote to John Sullivan of Oihana Property Management, the Association's managing agent, informing the Association that the former Wailuku Heights II Parcel 144 was merged and legally consolidated into Parcel 144-A, a parcel including the former Parcel 144 and 5 to 6 acres of another lot owned by Niehaus - TMK (2) 3-5-002-005. *Id.* Niehaus' counsel further advised the Association that the Land Court recently re-designated the two lots: Lot 144-A was recently renumbered as Lot 171 and the other lot was renumbered as Lot 172. *Id.* Niehaus' counsel advised the Association that Niehaus was engaged in enhancing Lot 171¹, but such work was not inclusive of land which formerly comprised Lot 144; Lot 144 was merely providing access from the Wailuku Heights' subdivision to the remainder of Lot 171. *Id.* Niehaus' counsel noted that the Association had harassed Niehaus, was interfering with his potential sale of Lot 171, and the Association had no right to object to anything Niehaus did with Lot 171 as it is a separate and legal

¹ Although he noted that the consolidated and resubdivided 5.75 acre parcel had been redesignated as Lot 171, he continued to refer to it under its previous designation, Lot 144-A. For clarity, the land at issue is referred to as "Lot 171" or the "Property."

parcel of land and a separate lot that was never under any jurisdiction of the Association. *Id.* Counsel further emphasized that the fact that the former Lot 144 became consolidated, with no objection by the Association, with other property owned by Niehaus, thereby making up Lot 171, is a circumstance which is not covered in the Declaration. *Id.*; *see also Declaration attached as Exhibit "8."* Niehaus' counsel further advised the Association that as a result, no portion of the Declaration applies to Lot 171 and the Association had no legal bases to object to anything Niehaus was doing on Lot 171 – a property not subject to the Declaration as described on the map appearing at the end of the Declaration or as the word "Lot" is defined at page 2 of the Declaration. *Id.* Niehaus' counsel contended that use of former Lot 144, now an undivided portion of Lot 171, for access to and from the remainder of Lot 171, is a use permitted by the CC&Rs. *Id.*

On December 15, 2004, the Association's President, Warren M. Harrison, sent correspondence to Niehaus' attorney, James Krueger, in which he disagreed that the former Lot 144 could be removed from the Declaration. *See Exhibit "10" attached.* The Association's President however also **confirmed that it was true that the Association had no control over the portion of the newly configured Lot 171 which is outside the boundaries of the Wailuku Heights II subdivision.** *Id.* Mr. Harrison further asserted that the Association did have the power to review, regulate and require prior approval of actions to be taken by Niehaus on the portion of Lot 171 within the subdivision. *Id.* On December 21, 2004, Niehaus' counsel, James Krueger, sent a letter to Warren M. Harrison, President of the Association stating that Niehaus would abide by the provisions of the Declaration but applicable only as to the former Lot 144 portion. *See Exhibit "11."*

The Declaration provides that it is binding on all persons acquiring any right, title or interest in and to the real property within, or any owner of any part of, Wailuku Heights Extension Unit II. *See Exhibit "8."* A "Lot" is defined as "a portion of the Real Property which is a lot as shown on a recorded Subdivision map." *Id.* "Owner" means "any Person who is the record owner of a fee simple interest in any Lot." *Id.* Each Owner is a member of the Association. *Id.* "Real Property" means all of the land described in Exhibit "A." *Id.* "Wailuku Heights Extension – Unit II" means "... all of the land described in Exhibit 'A' together with all rights and interests appurtenant thereto, such as, but not limited to easement rights, together with all buildings and other improvements." *Id.* Exhibit "A" identifies Lot 144, area 9,959 square feet as a Lot that is part of the Real Property, as shown on Map 4, filed in the Land

Court with Land Court Application No. 52 of C. Brewer & Co., Ltd.; TMK No. (2) 3-5-002-006. *Id.* However, neither Lot 171 (nor the former Lot 169) is identified as a Lot and thus is not subject to the Declaration. *Id.*

Each Owner is obligated to pay an assessment based on each point assigned to their Lot. *Id.* According to the Declaration, each provision of the Declaration is deemed incorporated in each deed by which any right, title or interest in any Lot by an Owner is conveyed. *Id.* The Declaration states that it may be amended or changed by affirmative vote of not less than Owners holding a two-third's interest in Association. *Id.* However, the Declaration has never been amended to bring Lot 171 into the Subdivision.

In late 2004, Leona, and her late husband, Bill Wilson, saw an advertisement for the sale of Lot 171 and made an offer to purchase the property from Niehaus and Rhodes. On January 11, 2005, Niehaus and Rhodes provided Leona and Bill Wilson with a Seller's Real Property Disclosure Statement – Vacant Land for Lot 171. *See Exhibit "12" attached.* Niehaus and Rhodes checked off "yes" on whether the property is subject to CC&Rs, but made a notation to see attachments 3, 4, 5 and 6. *Id.* Attachment 3 was the Declaration (Exhibit "8" attached), and attachments 4, 5, and 6 were the letters between Niehaus' counsel, James Krueger and the Association dated November 30, 2004, December 15, 2014, and December 21, 2014, in which Niehaus ultimately agreed that he would abide by the Declaration only with regard to the former Lot 144 portion of Lot 171. *Id.* In the Addendum to the Disclosure Statement, Niehaus and Rhodes further advised that the:

Roadway through Wailuku Heights subdivision to border of property is a paved public road. The small portion of the lot that is part of Wailuku Heights subdivision has no roadway grading done. An unpaved dirt road has been created through an area of area of (sic) the property with (sic) is not in the Wailuku Heights subdivision. This was done at the end of 2004 using a grading permit issued by the County of Maui.

See Exhibit "12" attached.

During due diligence on the Property, the Wilsons hired attorney Peter Horovitz, then with the firm of Mancini Welch and Geiger, to assist them. Mr. Horovitz advised the Wilsons that he had found no provision in the Declaration which gave someone the automatic right to bring additional lands into the Association when those lands were consolidated with an existing lot within the Subdivision, i.e., when the lands from the former Lots 144 and 169 were combined and resubdivided to create Lot 171. (This information was contained in an attorney-client privileged communication between Mr. Horovitz and Mr.

and Mrs. Wilson and is provided solely for the County's knowledge; the letter in which the opinion was expressed is not being disclosed due to the attorney-client privileged nature).

During the course of due diligence, the Wilsons' attorney wrote to Niehaus and Rhodes' realtor, Vanessa Schwadenland of Prudential Iwado Realty, Inc., and copied the Wilson's broker as well as the escrow and title company, Title Guaranty, requesting that the following items be clarified with regard to the Association before the Wilsons could accept title to the property: 1) assurance from the Association that the former Lot 144 could be utilized for access to full Lot 171 in perpetuity; 2) that building restrictions apply only to former Lot 144 and do not apply to the portion of Lot 171 which was not made up of former Lot 144; and, 3) the Association assessments would only take into account former Lot 144 and not the remaining portion of Lot 171. *See Exhibit "13."* Mr. Horovitz advised the seller that these agreements should be set forth in an amendment to the Declaration and By-laws that apply to the Association, but that that might not be feasible within the time permitted for closing; if the Association would give the Wilsons a binding written commitment to amend, then the Wilsons might be willing to close within the time schedule of the DROA.

Bill and Leona Wilson subsequently had direct discussions with the Association President, Warren Harrison, regarding these issues and on April 24, 2005, the Wilsons sent a letter to Mr. Harrison confirming the Association President's verbal response to the Wilsons' request to be given permanent approval for the full use of the former Lot 144 for access purposes. *See Exhibit "14" attached.* The Wilsons stated in that letter that they were in the process of purchasing the 5.75 acre Lot 171, and intended to use the former Lot 144 only as an entry to the property above where they would be building their primary residence. *Id.* The Wilsons further stated that they intended to have the former Lot 144 fronting Kulaiwi Drive designed and landscaped professionally, all landscaping plans would be submitted to Wailuku Heights' committees for review and approval, but they would first have to set the driveway location as determined by an engineering study and plan; as stated in Peter Horovitz's letter of April 1, 2005, they also requested that the Association agree there was permanent access (rather than temporary use of the former Lot 144 for access) to the new full 5.75 acre Lot 171. *Id.*

The Wilsons were concerned about the upcoming closing, wanted to resolve the issues with the Association before then, and therefore took over the communications with the Association. The Wilsons wrote to attorney David

Jorgensen, the Association's attorney at the time, on May 9, 2005 and agreed as follows: 1) they would not subdivide the Property and would maintain agricultural zoning; 2) they would construct a main house for themselves; 3) they would construct a small cottage for the Wilsons' staff of 17 years; 4) they would need assurance that permanent access through former Lot 144 to the agricultural portion would be allowed; 5) and that only the area of former Lot 144 would be taken into consideration for community association purposes, as well as assurance that the landscaping committee would be reasonable in its approval process. *See Exhibit "15" attached.*

In a follow up correspondence dated May 17, 2005 from Bill and Leona Wilson to the Association's counsel, David Jorgensen, the Wilsons provided their final explanation to the Association regarding their intended use of the Lona Ridge property, stating that they: 1) would not subdivide the 5.75 acre parcel - new Lot 171; 2) would be constructing a main dwelling and accessory dwelling for staff on Lot 171 per agricultural zoning regulations; 3) no dwelling would be constructed on the former Wailuku Heights Lot 144; and, 4) the former Lot 144 would be used as a driveway entry only and would be well landscaped, with the plans to be submitted to the Association for their approval. The Wilsons requested that the Association agree with them about permanent access through the former Lot 144 as soon as possible as well as an assurance that only the area of former Lot 144 portion of Lot 171 would be taken into consideration for community Association purposes. *See Exhibit "16" attached.*

On June 8, 2005, Paul MacLaughlin of Coldwell Banker Island Properties, the Wilsons' realtor-broker in the purchase of Lona Ridge, received an email letter from Mark Ballard, Vice-President of the Association, confirming their conversation and agreement that: 1) the Association had no objection to the Wilsons' building plan; 2) the Association requested that the Wilsons have their attorneys prepare all documents related to the transaction; and 3) in order to get approval for the driveway the five acres (Lot 171) would never be subdivided and the Wilsons would prepare a driveway and landscape plan for the former Lot 144 which would be submitted to the Association's Board for approval. *See Exhibit "17" attached.* This plan was done and approved by the Association.

Just before closing in June 2005 the Wilsons created Lona Ridge LLC, a Hawaii limited liability company, to take title to Lot 171. At the time, Bill and Leona Wilson were the only Members of Lona Ridge, LLC. (Bill Wilson died in March 2010 and Leona became the sole Member of Lona Ridge LLC).

The title company retained David Jorgensen, who was already familiar with the transaction as the Association's attorney, to prepare the Warranty Deed with Covenants and Restrictions. The Warranty Deed with Covenants and Restrictions ("Warranty Deed") was recorded in the Bureau on June 29, 2005. *See Exhibit "18."* Within the main body of the Warranty Deed, it provides as follows:

AND the Grantee does hereby acknowledge and confirm that a portion of the Property was formerly identified as Lot 144 of the Wailuku Heights Extension - Unit II Subdivision (the "Subdivision"), that said Lot 144 was consolidated with the remainder of the Property which lies outside of the Subdivision, and that the portion of the Property formerly identified as Lot 144 remains bound by the terms and conditions of the documents governing and controlling actions and activities within the Subdivision, including the Declaration of Protective Covenants, Conditions and Restrictions for Wailuku Heights Extension - Unit II, dated January 29, 1988, filed in the Office of the Assistant Registrar for the State of Hawaii as Land Court Document No. 1530403 (the "Declaration").

AND the Grantee does hereby further acknowledge and confirm that Grantee has requested that the Homeowners' Association of the Subdivision (the "HOA") consent to and approve the use by Grantee of the portion of the Property formerly identified as Lot 144 for a driveway to access the remainder of the Property and for the landscaping by Grantee of former Lot 144, and that said HOA has agreed to such use and landscaping subject to certain conditions, which conditions grantee is willing to agree to and to confirm herein.

AND, THEREFORE, Grantee does hereby covenant and agree for the benefit of the owners from time to time of lots in the Subdivision as follows: (1) that Grantee shall submit driveway and landscaping plans to the HOA for review and approval; (2) that the Property will not be further subdivided; and (3) that no more than two dwellings shall be built on the Property.

AND the Grantee does hereby covenant to and with the Grantor for the further benefit of the owners from time to time of lots in the Subdivision that, as to the portion of the Property formerly identified as Lot 144 of the Subdivision, Grantee will observe and perform all of the terms, covenants, conditions and restrictions set forth in the Declaration, as the same exist or may hereafter be amended from time to time, as well as the terms, covenants, conditions and restrictions contained in all other

Orders, Grants, Easements and Agreements recorded against the Property on the part of Grantee to be observed and performed, as and when required to do so, and will indemnify and hold and save harmless them and each of them from any failure so to observe and perform any of such terms, covenants, conditions and restrictions.

Id. [emphasis supplied]

Lona Ridge and its predecessor, Leona, have been assessed common area expenses by the Association, **only** as to the 9,959 square feet which used to be Lot 144. *See Exhibit "19" attached.* Those payments have been made under protest however. *See Exhibit "20" attached.*

D. Lona Ridge's Agricultural Zoning and Uses, Farm Plan and Special Use Permit

Since its purchase in 2005, Lona Ridge, LLC has spent years grading the Property and is continually expanding and improving its farming operations, including the Koa'ia tree farm, and which are now being continued by the new owner, the Leona Wilson Trust. On August 30, 2006, Lona Ridge, LLC applied for a Farm Plan Permit and the County of Maui, Department of Planning issued Farm Plan Permit No. 2006/0120 to it on September 22, 2006. *See Exhibit "21."* The Lona Ridge property is zoned "Agricultural." Lona Ridge, LLC receives agricultural tax assessments and agricultural water rates from the County of Maui. Lona Ridge further qualifies as a farm with the U.S.D.A. Farm Service Agency and receives reimbursements under the national USDA Reimbursement Transportation Cost Program for its transportation costs relating to items used for its farming operations, including gasoline for equipment, fertilizers, pesticides and the purchase of farming equipment or crops. In May 2012 Lona Ridge, LLC obtained confirmation from the County of Maui, Department of Planning that it was approved to conduct guided farm tours; the County specifically found that Lona Ridge's proposed tours are in compliance with Chapter 205, Hawaii Revised Statutes and Chapter 19.30A of the Maui County Code and that guided agricultural tours are a permitted accessory use with no other land use permits required. *See Exhibit "22" attached.*

E. HRS Chapter 205

HRS §205-4.6, which was enacted in 2003 and amended in 2004, provides in relevant part:

Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural **shall not be restricted by any private agreement contained in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants**, easements or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4[.] [...] [emphasis supplied]

HRS § 205-2(d) provides that:

Agricultural districts shall include:

(1) Activities or uses as characterized by the cultivation of crops, ... orchards, forage and forestry;

[...]

(11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with the surrounding farm operations; and provided further that this paragraph shall only apply to a county² that has adopted ordinances regulating agricultural tourism under section 205-5[.]

HRS §165-2 defines farming operation as a:

...commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" also includes but shall not be limited to:

- (1) Marketed produce at roadside stands or farm markets;
- (2) Noises, odors, dust and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit;
- (3) Operation of machinery and irrigation pumps;

² Maui County has adopted such rules – see Maui County Code 19.30A-010.

- (4) Ground and aerial seeding and spraying;
- (5) The application of chemical fertilizers, conditioners, insecticides, pesticides and herbicides; and
- (6) The employment and use of labor.

The other cited statute, HRS §205-4.5(a) provides in relevant part:

Permissible uses within the agricultural districts. (a)

Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;

[...]

- (3) Raising of livestock, including poultry, bees, ... that are propagated for economic or personal use;

[...]

- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, ...

[...]

- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education or involvement of visitors; provided that the agricultural tourism is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism.

[...]

As used in this paragraph:

"Agricultural activity means any activity described in paragraphs (1) to (3) of this subsection.

[...]

- (18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, "agricultural education programs means activities or events designed to promote knowledge and understanding of agricultural

activities and practices conducted on a farming operation
as defined in section 165-2.

[...]

F. HRS Chapter 205's Impact on Lona Ridge

The Property, Lot 171, is an undivided Agricultural lot and therefore cannot be subject to the Declaration under HRS Chapter 205. Lona Ridge, LLC's initial deed to the property was recorded June 29, 2005. *See Exhibit "18."* In the body of that Warranty Deed, the grantors, Niehaus and Rhodes, and Lona Ridge, LLC, agreed that Lona Ridge, LLC could use the former Lot 144 portion of the Lona Ridge property as a driveway, provided that the Declaration applied only to that portion with assessments being paid to the Association only for that portion, Lona Ridge, LLC landscaped the driveway, and did not build more than two residence structures on Lot 171, and Lot 171 would not be further subdivided. *Id.*

HRS 205-4.6 states that agricultural uses and activities as defined in HRS §§ 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any deed or other conveyance document recorded in the bureau of conveyances after July 8, 2003. Both the conveyance of Lot 171 to Niehaus and Rhodes via the Land Court Petition for Consolidation and Resubdivision and their subsequent conveyance to Lona Ridge, LLC were recorded after July 8, 2003. As discussed above, Lot 171 is an entirely separate and undivided agricultural lot and may not be submitted in part to the Declaration. HRS Chapter 205 and the Special Use Permit which Lona Ridge, LLC control what Lona Ridge, LLC may do on its property, not the Association's Declaration.

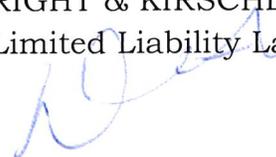
I just received a letter dated July 20, 2017 from Robert Carroll, which I will be responding to separately. I will be referring Mr. Carroll to the information provided to you in this letter for more detail regarding our position and bases for our responses to his question. Should you need further information or have any questions, please do not hesitate to contact me.

Thank you for your time and consideration.

James Giroux
Deputy Corporation Counsel
July 25, 2017
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Very truly yours,

WRIGHT & KIRSCHBRAUN
A Limited Liability Law Company



DEBORAH K. WRIGHT

DKW:meh
Enclosures

cc: Leona R. Wilson (via email) (w/encl.)

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Controls

Available Layers

- Parcels
- Yearly Sales
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- Tsunami Evacuation Zones
- Flood Hazard Areas
- State Land Use Districts
- Special Management Area
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- Physical (Google)
- qPublic BaseMap



[Show Scale](#)



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Google

Reports

Parcel

View in: [Picture Maps](#)

Selected Parcel

Land Size

Name

Mailing Address

Situs/Physical A

Assd Land Valu

Assd Building V

Total Assd Valu

Exempt Value

Taxable Value

Date

Agricul

Acres

2.2135

2.5079

0.8

Parcel List

Legend

Measure

Maui County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the 1 change before the next certified taxroll.

EXHIBIT "1"

Zoom County
Zoom In
Zoom Out
Hand
Get Info
Zoom To Parcel
Center On Parcel
Measure
Area Tool
Print Page
Search
Additional Options

Controls

Available Layers

- Parcels
- Yearly Sales
- Parcel Numbers
- Pending Parcel Changes
- Roads
- Tsunami Evacuation Zones
- Flood Hazard Areas
- State Land Use Districts
- Special Management Area
- Streets (Google)
- Satellite (Google)
- Hybrid (Google)
- Physical (Google)
- Public BaseMap



[Show Scale](#)



Reports

Parcel

View in: [Picture Maps](#)

Selected Parcel

Land Size

Name

Mailing Address

Situs/Physical A

Assd Land Valu

Assd Building V

Total Assd Valu

Exempt Value

Taxable Value

Date

Agricul

Acres

2.2135

2.5079

0.8

Parcel List

Legend

Measure

Maui County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last change before the next certified taxroll.

251
251



L-350 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

MAR 08, 2002 10:30 AM

Doc No(s) 2785314
on Cert(s) 1,853

Issuance of Cert(s) 605,618



/s/ CARL T. WATANABE
ASSISTANT REGISTRAR
CONVEYANCE TAX: \$50.00

KM

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (x) Pickup () To:

Avery B. Chumbley
Wailuku Agribusiness Co., Inc.
255 East Waiko Road
Wailuku, Hawaii 96793

TG :200204168 ^A
TGE:A2-101-0345
MABEL LEE-ESCROW OFFICER

LC
②

Tax Key: (2) 3-5-002-005

Total No. of Pages: 6

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Maui, Hawaii 96793, (the "Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Grantor by DAVID PAUL NIEHAUS, husband of Deborah Laurine Mathias, whose address is 1630 Piiholo Road, Makawao, Maui, Hawaii 96768, (the "Grantee"), receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto said Grantee, as HIS SOLE PROPERTY, absolutely and in fee simple:

All of that certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, together with all of the personal property, if any, described in said Exhibit "A".

EXHIBIT "2"

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of Grantor, both at law and in equity, therein and thereto.

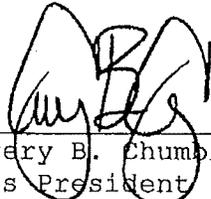
TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto said Grantee as aforesaid, absolutely and forever.

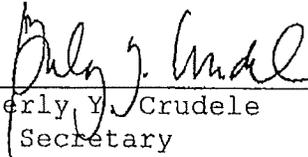
And Grantor, in consideration of the premises, does hereby covenant and agree to and with said Grantee that Grantor is lawfully seised of the property described in Exhibit "A" for an estate in fee simple and Grantor's title thereto is free and clear of and from all encumbrances other than (1) real property taxes assessed for the current fiscal year, and (2) those more particularly set forth in Exhibit "A"; that Grantor has good right to sell and convey the same as aforesaid and that Grantor will WARRANT AND DEFEND the same unto said Grantee against the lawful claims and demands of all persons, except as aforesaid.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations, and their and each of their respective successors, successors in trust, heirs, legal representatives and permitted assigns, according to the context thereof, and that sif these presents shall be signed by two (2) or more Grantors or Grantees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Grantor has executed these presents on this 21st day of February, 2002.

WAILUKU AGRIBUSINESS CO., INC.

By 
Avery B. Chumbley
Its President

By 
Beverly Y. Crudele
Its Secretary

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 21st day of February, 2002, before me personally appeared AVERY B. CHUMBLEY, to me personally known, who being by me duly sworn or affirmed, did say that he is the PRESIDENT of WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, and that the instrument was signed in behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

Terrianne L. Arreola
Print Name: Terrianne L. Arreola
Notary Public, State of Hawaii.

L.S.

My commission expires: August 15, 2002

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 15th day of February, 2002, before me personally appeared BEVERLY Y. CRUDELE, to me personally known, who being by me duly sworn or affirmed, did say that she is the SECRETARY of WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, and that the instrument was signed in behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

Nora Rosario *J.S.*
Print Name: Nora Rosario
Notary Public, State of Hawaii.

My commission expires: 12-13-2002

EXHIBIT "A"

All of that certain parcel of land situate in Waikapu, Island and County of Maui, State of Hawaii, described as follows:

LOT 169, area 56.334 acres, more or less, as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 52;

Being the land(s) described in Transfer Certificate of Title No. 1853 issued to the Grantor herein.

TOGETHER WITH a perpetual, nonexclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, being an access and utility easement, containing an area of 7,612 square feet, more or less, as shown on the Easement Map attached as Exhibit "A" and more particularly described in Exhibit "B", both attached to that certain Easement entered into by and between the parties hereto dated February 21, 2002, filed in the said Land Court as Land Court Document No. 2786313, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874

SUBJECT, HOWEVER, to the following:

1. West Maui Forest Reserve as shown on Tax Map.
2. Designation of Easement "1" as shown on Map 2, as set forth by Land Court Order No. 56429, filed April 28, 1980.
3. Designation of Easement "52" for drainage purpose as shown on Map 5, as set forth by Land Court Order No. 83524, filed April 8, 1987.
4. Designation of Easement "53" for drainage purpose as shown on Map 5, as set forth by Land Court Order No. 83524, filed April 8, 1987.
5. Designation of Easement "54" for drainage, water and sewer purposes as shown on Map 5, as set forth by Land Court Order No. 83524, filed April 8, 1987.

6. Designation of Easement "55" for roadway purpose as shown on Map 5, as set forth by Land Court Order No. 83524, filed April 8, 1987.
7. Grant to Hawaiiana Investment Co., Inc., a Hawaii corporation, dated September 23, 1980, filed in the said Land Court as Land Court Document No. 1033576, granting a perpetual nonexclusive easement for drainage purposes over and across Easement "1", besides other easements.
8. Grant to Wailuku Agribusiness Co., Inc., a Hawaii corporation, dated June 19, 1987, filed in the said Land Court as Land Court Document No. 1474192, granting a nonexclusive easement for roadway, access, and utility purposes over, under, across, along and through Lots 25, 166, 158, and 169, as shown on Map 4, filed with Land Court Application No. 52.
9. Grant to Hawaii States Properties, Inc., a Hawaii corporation, dated June 22, 1987, filed in the said Land Court as Land Court Document No. 1474196, granting nonexclusive easements for drainage purposes over, under, across, along and through Easements 52 and 53 as shown on Map 5, filed as Land Court Application No. 52.
10. Grant to Hawaii States Properties, Inc., a Hawaii corporation, dated June 22, 1987, filed in the said Land Court as Land Court Document No. 1474197, granting a nonexclusive easement for drainage, water and sewer purposes over, under, across, along and through Easement 54 as shown on Map 5, filed as Land Court Application No. 52.
11. Grant to Hawaii States Properties, Inc., a Hawaii corporation, dated June 22, 1987, filed in the said Land Court as Land Court Document No. 1474198, granting a nonexclusive easement for roadway purposes over, under, across, along and through Easement 55.
12. Grant to Wailuku Heights Extension Unit II Homeowners Association, a Hawaii non-profit corporation, dated February 16, 1988, filed in the said Land Court as Land Court Document No. 1530404, granting all drainage easements listed on Exhibit "A" attached therein.
13. Designation of Easement "56" as shown on Map 5, as set forth by Land Court Order No. 106610, filed April 16, 1992.

14. Grant to Stephen Winant Knox and Moira Henderson Knox, husband and wife, dated August 24, 1992, filed in the said Land Court as Land Court Document No. 1951174, granting a perpetual, nonexclusive easement for access and utility purposes over, across, along and upon Easement 56, as shown on Map 5 of Land Court Application No. 52.

15. Grant to Maui Electric Company, Limited and GTE Hawaiian Telephone Company Incorporated now known as Verizon Hawaii, Inc., dated June 19, 1991, filed in the said Land Court as Land Court Document No. 2012377, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-053932, granting a perpetual right and easement for utility purposes.

16. Grant to the Grantee herein dated February 21, 2002 filed in the said Land Court as Land Court Document No. 2785513, and also recorded in the said Bureau of Conveyances as Document No. 2002-040874, granting Easement "A-1" for access and utility purposes.

17. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

18. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

END OF EXHIBIT "A"

Tax Key: (2) 3-5-002-005

2/25
28 of 3



L-306 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

JAN 10, 2003 08:02 AM

Doc No(s) 2880134

on Cert(s) 556,424

Issuance of Cert(s) 633,824



5 1/1 Z6

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR
CONVEYANCE TAX: \$242.50

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL PICKUP

David Paul Niehaus et al.
1630 Pihiolo Road
Makawao, HI 96768



Escrow No. 14-104830-MW
Miran Wietecha

W

TAX MAP KEY NO.: (2) 3-5-15-071

Total Number of Pages: 5

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That ALVIN WAYNE AKIYAMA and KAREN NANBARA AKIYAMA, husband and wife, whose residence and post office address is 95-593 Wailoa Loop, Mililani Town, Hawaii 96789, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by DAVID PAUL NIEHAUS*, a married man, whose residence and post office address is 1630 Pihiolo Road, Makawao, Hawaii 96768 and CLIFFORD PAUL RHODES**, a married man, whose residence and post office address is 1630 Pihiolo Road, Makawao HI 96768, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee, as Equal Tenants in Common, with an undivided one-half (1/2) interest unto each, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibit "A".

PA
PP

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

* David Paul Niehaus wife's name is Deborah Niehaus

** Clifford Paul Rhodes wife's name is Karen Marie Rhodes

PA
PP

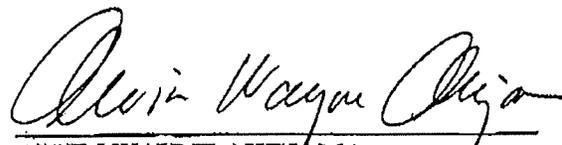
EXHIBIT "3"

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances, except the liens and encumbrances hereinbefore mentioned, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the above bargained and granted lands and premises.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the Grantor has executed these presents on this 8th day of January, 2003.

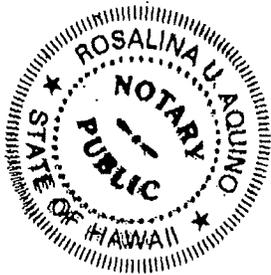

ALVIN WAYNE AKIYAMA


KAREN NANBARA AKIYAMA

Grantor

STATE OF Hawaii)
City +) SS.
COUNTY OR Honolulu)

On this 8th day of January, 2002³, before me personally appeared ALVIN WAYNE AKIYAMA and KAREN NANBARA AKIYAMA, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.



Rosalina U. Aquino
Notary Public, State of Hawaii
Typed or Printed Name: ROSALINA U. AQUINO
My commission expires: 3/28/16

EXHIBIT "A"

All that certain parcel of land situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, described as follows:

LOT 144, area 9,959 square feet, more or less, as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 52 of C. Brewer & Co., Ltd.

TOGETHER WITH a nonexclusive easement for roadway purposes over, under, across, along and through Easement "55", as shown on Map 5, filed in said Office of the Assistant Registrar of the Land Court with Land Court Application No. 52; provided, however, that in the event that all or any portion of the easement area shall be dedicated and/or conveyed to the State of Hawaii, the County of Maui, or other governmental authority, said easement with respect to the portion or portions so conveyed and/or dedicated shall immediately terminate; as granted to Grantor herein by instrument dated June 22, 1987, filed as Land Court Document No. 1474198.

TOGETHER ALSO WITH a nonexclusive easement for roadway, access and utility purposes over, under, across, along and through Lot 25, area 1,968 square feet, as shown on Map 4, filed in said Office of the Assistant Registrar of the Land Court with Land Court Application No. 52; provided, however, that in the event that any of said lots or any portion or portions thereof is dedicated and/or conveyed to the State of Hawaii, the County of Maui, or other governmental authority, or to the Wailuku Heights Extension Unit II Homeowners Association, said easement with respect to the portion or portions thereof so dedicated and/or conveyed shall immediately terminate.

Being all the property described in the DEED dated May 17, 2000 from RANDAL FUMIO ODA, single as Grantor, to ALVIN WAYNE AKIYAMA and KAREN NANBARA AKIYAMA, husband and wife, as Tenants by the Entirety as Grantee, recorded June 9, 2000 in said Office of the Assistant Registrar as Land Court Document No. 2631145.

Being all the property described in and covered by TRANSFER CERTIFICATE OF TITLE NO. 556,424.

SUBJECT, HOWEVER, to the following:

1. "Reserving, however, unto Wailuku Sugar Company, its successors and assigns, all water and water rights within or appurtenant to the above-described premises; provided, however, that in the exercise of the rights set forth in this paragraph Wailuku Sugar Company, its successors and assigns shall not have the right to drill upon or otherwise disturb the surface of the land or any improvements thereon."; as reserved in Deed dated September 23, 1980, filed as

Land Court Document No. 1033575, and also recorded in the Bureau of Conveyances of the State of Hawaii in Book 15016, Page 304.

2. Exceptions and reservations, covenants and agreements as contained in that certain DEED, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons dated June 22, 1987, filed in said Office of the Assistant Registrar as Land Court Document No. 1474194.

3. DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAILUKU HEIGHTS EXTENSION - UNIT II, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons dated January 29, 1988, filed in said Office of the Assistant Registrar as Land Court Document No. 1530403.

END OF EXHIBIT "A"
Tax Map Key No. (2) 3-5-15-071



R-769 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 AUG 25, 2003 08:02 AM
 Doc No(s) 2003-177807



Isi CARL T. WATANABE
 REGISTRAR OF CONVEYANCES

20 1/1 Z3

| | |
|---|----------------|
| LAND COURT SYSTEM | REGULAR SYSTEM |
| AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP (X) | |
| Development Services Administration | |
| County of Maui | |
| 250 South High Street | |
| Wailuku, Hawai'i 96793 | |
| <small>S:\CLERICAL\KAO\PW\Master Templates\AGALLOCA.wpd(4/03)</small> | |

TMK NO. (2) 3-5-002:005 Total Number of Pages: 7
 Subdivision File No.: 3.2052

AGREEMENT FOR ALLOCATION OF FUTURE SUBDIVISION POTENTIAL

THIS AGREEMENT is made and entered into this 6th day of August, 2003, by and between David Paul Niehaus and Clifford Rhodes, whose residence address is 1630 Piholo Road, Makawao, Hawaii 96768

Cliff Rhodes, 64 MAHO Dr., Kula, HI 96790, and whose mailing address is _____, (hereinafter "Subdivider"), and COUNTY OF MAUI, through its Department of Public Works and Environmental Management, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793 (hereinafter "County").

EXHIBIT "4"

The Subdivider is the owner of a certain parcel of real property situate at Waikapu, County of Maui, State of Hawaii, Tax Map Key No. (2) 3-5-002-005, containing an area of approximately 55,354 acres, which is the subject of the Subdivision of Land application 52, Subdivision File No. 3.2052 (hereinafter "Subject Subdivision").

Section 19.30A.040 of the Maui County Code requires the Subdivider of land in the agricultural district to allocate the maximum number of lots that may be created when subdividing lands within the agricultural district.

The Director of Public Works and Environmental Management, in accordance with Subsection 19.30A.040.A.1, Maui County Code, has determined the maximum number of lots that may be created from the subject parcel is 9, based upon the subject parcel's gross area of 55,354 acres within the County agricultural district.

Pursuant to Subsection 19.30A.040.A.2, Maui County Code, the Subdivider hereby declares that the maximum number of future lots that may be created from each new lot created by the Subject Subdivision, is as set forth in Exhibit "A", which is attached hereto and made a part hereof.

The restriction on the number of lots shall not apply to subdivisions identified in subsections 19.30A.040.B, 19.30A.040.C and Section 19.30A.070 of the Maui County Code.

The maximum number of future lots for each lot as set forth in Exhibit "A" may be reallocated or transferred among the newly created lots within the Subject Subdivision after review by the Director of Public Works and Environmental Management for compliance with Section 19.30.040, Maui County Code, by executing and recording an Amended Agreement for Allocation of Future Subdivision Potential.

The maximum number of future lots, as established in Exhibit "A", shall be set forth as a covenant in the deed, agreement of sale or other conveyance document to each lot created by the Subject Subdivision.

The provisions of this Agreement shall be a covenant running with the land and shall be binding on all present and future owners, lessees and occupants and anyone claiming under said owners, their heirs, personal representatives, successors and assigns; provided that any of the foregoing may petition for the termination of this Agreement as it applies to a lot that is no longer zoned agricultural district.

This Agreement shall be recorded by the Owner with the State of Hawaii Bureau of Conveyances or the Land Court of the State of Hawaii, as the case may be, prior to the granting of any permit or approval sought by the Owner, with all fees to be paid by the Owner.

This Agreement shall become effective upon the date of final approval of the Subject Subdivision.

SUBDIVIDER:

By Clifford Rhodes
(Signature)

Clifford Paul Rhodes
(Print name)

Its _____
(Title)

By David Paul Nicholas
(Signature)

David Paul Nicholas
(Print name)

Its _____
(Title)

By _____
(Signature)

(Print name)

Its _____
(Title)

COUNTY OF MAUI:

DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT

By Gilbert S. Coloma-Agaran
GILBERT S. COLOMA-AGARAN
Its Director

APPROVED AS TO FORM AND LEGALITY:

Cindy Y. Young
CINDY Y. YOUNG
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
COUNTY OF Maui) SS.

On this 3RD day of JULY, 2003, before me personally appeared Clifford Rhoads, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

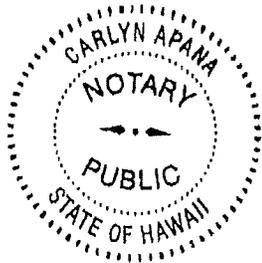
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jerilyn W. A. Higgins
NOTARY PUBLIC, State of Hawaii.
Print Name Jerilyn W. A. Higgins
My commission expires: 2-27-2006

STATE OF HAWAII)
COUNTY OF Mau) SS.

On this 7th day of July, 2003, before me personally appeared David Paul Niehaus, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Carlyn Apana
NOTARY PUBLIC, State of Hawaii.
Print Name CARLYN APANA
My commission expires: Notary Public

Second Judicial Court
State of Hawaii
My Commission Expires Nov. 30, 2006

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC, State of Hawaii.
Print Name _____
My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 6th day of August, 2003, before me personally appeared GILBERT S. COLOMA-AGARAN, to me personally known, who being by me duly sworn, did say that he is the Director of Public Works and Environmental Management of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Title 18 of the Maui County Code, the Subdivision Ordinance, and the said GILBERT S. COLOMA-AGARAN acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.

Jill Anne S. Ong

NOTARY PUBLIC, State of Hawaii.
Print Name JILL ANNE S. ONG
My commission expires: 4/30/06

EXHIBIT "A"

TMK PARCEL'S AGRICULTURAL AREA = 59.354 ACRES

| MINIMUM LOT SIZE | NUMBER OF LOTS ALLOWED PURSUANT TO MCC §19.30A.030(G) |
|------------------|---|
| 2 ACRES | 9 |
| 15 ACRES | 0 |
| 25 ACRES | 0 |
| 40 ACRES | 0 |

ALLOCATION OF LOTS

| MINIMUM LOT SIZE | LOT 169# | LOT 144# | LOT |
|-----------------------|----------|----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 2 ACRES | 7 | 2 | | | | | | | | | | | |
| 15 ACRES | 0 | 0 | | | | | | | | | | | |
| 25 ACRES | 0 | 0 | | | | | | | | | | | |
| 40 ACRES | 0 | 0 | | | | | | | | | | | |
| *TOTAL LOT ALLOCATION | 7 | 2 | | | | | | | | | | | |

*A TOTAL LOT ALLOCATION OF ONE (1) INDICATES NO FURTHER SUBDIVISION POTENTIAL.

WHEREAS, Owner is the owner of a certain parcel of real property identified in Subdivision File No. 3.2052, incorporated herein by reference and made a part hereof and situate at Wailuku and Waikapu, County of Maui, State of Hawaii, Tax Map Key No. (2) 3-5-002:005 and (2)-3-5-015:071 containing an area of approximately 56.53 acres ("Property"); and

WHEREAS, the Owner desires to subdivide the Property in an undertaking known as the Waikapu Heights Subdivision ("Subdivision"); and

WHEREAS, the Subdivision will contain lots of the following: (1) Lot 144-A (5.750 acres)
Lot (2) 169-A (50.783 acres)

(hereinafter collectively referred to as "Lots"); and

WHEREAS, the Property or a portion of the Property is classified Agricultural by the State Land Use Commission; and

WHEREAS, Lots of the Subdivision have been classified by the Land Study Bureau's Detailed Land Classification as Overall (MASTER) Productivity Rating Class D and E; and

WHEREAS, Section 205-4.5, Hawaii Revised Statutes, states:

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

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry;
Farm dwelling as used in this paragraph means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings which are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly

accessory to the abovementioned uses and are permitted under section 205-2(d);

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

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

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

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee from obtaining mortgage financing from any of the mortgage lending agencies set forth hereinbelow, and said requirement is the sole reason for failure to obtain mortgage financing, then such requirement of encumbrances shall, insofar as such mortgage financing is so jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that such conditional waiver shall thereafter become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies mentioned hereinabove are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for

Cooperatives, and any other federal, state or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

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

WHEREAS, the Owner acknowledges that Section 205-13, Hawaii Revised Statutes, provides that any person who violates any provision under Section 205-4.5, or any regulation established relating thereto, shall be fined not more than \$5,000; and

WHEREAS, the Department of Planning is charged with the enforcement of said restrictions and conditions by Chapter 205, Hawaii Revised Statutes;

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That Lots of the Subdivision, and all parts thereof, are and shall be held subject to the following covenants, conditions and restrictions, and that all of such covenants, conditions and restrictions shall be effective as to the property from and after the recording of this Agreement with the Bureau of Conveyances of the State of Hawaii or the Land Court of the State of Hawaii, as the case may be, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Owner, the County of Maui, or any successor, personal

representative, heir or assign, as the case may be of any of them; that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Agreement by such person or persons, entity or entities, and that upon any transfer of any right, title or interest in or with respect to the Property, the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions and restrictions of this Agreement; and

2. That this Agreement shall be a covenant running with the land and be binding on all present and future owners, lessees and occupants of the Property and anyone claiming under said owners, their heirs, personal representatives, successors and assigns, as owners or occupants thereof or otherwise; and

3. That where there is more than one owner, all obligations of the owner set forth herein shall be joint and severable obligations of each owner; and

4. That Lots of said Subdivision shall be subject to the restriction on uses as prescribed in Section 205-4.5, Hawaii Revised Statutes; and

5. That this Agreement shall be subject to subsequent legislative and administrative amendments and interpretations,

which are made to Chapter 205, Hawaii Revised Statutes, and the State Land Use Commission District Regulations; and

6. That this Agreement shall remain in effect so long as the land retains its Agricultural District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes and the State Land Use Commission District Regulations remain in effect; and

7. That the Owner shall expressly set forth the provisions of this Agreement, the restrictions on uses and the condition as prescribed in Section 205-4.5, Hawaii Revised Statutes, in any deed, lease, agreement of sale or rental agreement to the Property hereafter executed, so as to provide additional notice of said covenants; and

8. That this Agreement shall be recorded by the Owner with the State of Hawaii Bureau of Conveyances or the Land Court of the State of Hawaii, as the case may be, prior to the granting of any permit or approval sought by the Owner, with all fees to be paid by the Owner; and

9. That the Department of Public Works and Environmental Management shall issue the requested final subdivision approval provided the Owner complies with all applicable laws; and

10. That all present and future owners, lessees and occupants of the Property hereby grant the Department of Planning the right to enter upon the Property, at reasonable times, to

inspect and ensure compliance with the provisions of this Agreement; and

11. That the County of Maui may obtain injunctive relief, or any other available remedy in law or equity, to prevent any violation, or threatened violation, of any of the covenants, conditions, or restrictions in this Agreement; and

12. That the terms and provisions of this Agreement shall be canceled and rendered null and void upon the land being reclassified to a land use district other than agricultural district; and

13. That the term "Owner" wherever used herein, and any pronoun used in place thereof, shall mean and include the singular and the plural, and the use of any general term shall mean and include all genders; and

14. That the parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original or the same counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

OWNER: Clifford P. Rhodes and
David P. Niehaus
(print name above)

By Clifford P. Rhodes
name: Clifford P. Rhodes
Its owner 9/2/03

By David P. Niehaus
name: David P. Niehaus
Its owner 9/3/03

By _____
name:
Its

By _____
name:
Its

By _____
name:
Its

By _____
name:
Its

COUNTY OF MAUI:

DEPARTMENT OF PLANNING

By Michael Foley
MICHAEL W. FOLEY
Its Director

APPROVED AS TO FORM
AND LEGALITY:

Cindy Y. Young
CINDY Y. YOUNG
Deputy Corporation Counsel
County of Maui

STATE OF Hawaii)
COUNTY OF Maui) SS.

On this 2nd day of September, 2003, before me personally appeared Clifford P. Rhodes, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Daisy E. Asuncion
NOTARY PUBLIC, State of Hawaii U.S.
Print Name Daisy E. ASUNCION
My commission expires: 01/24/2007

STATE OF Hawaii)
COUNTY OF Maui) SS.

On this 3rd day of September, 2003, before me personally appeared David P. Niehaus, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Margaret Nan Amara
NOTARY PUBLIC, State of Hawaii U.S.
Print Name MARGARET NAN AMARA
My commission expires: 6-15-04

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 27th day of October, 2003, before me personally appeared MICHAEL W. FOLEY, to me personally known, who being by me duly sworn, did say that he is the Director of Planning of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said MICHAEL W. FOLEY acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



NOTARY PUBLIC, State of Hawaii.
Print Name AVIS K TESHIMA-WONG
My commission expires: 01.04.07

L.S.

In the Land Court of the State of Hawaii

In the matter of the application)
)
 of)
)
 C. BREWER & CO., LTD.)
)
 to register and confirm title to land situate)
 at Waikapu, District of Wailuku, Island and)
 County of Maui, State of Hawaii)
)
 _____)
 State of Hawaii)

Application No. 52
Map No. 7

2004 AUG - 3 PM 3: 21
KATHLEEN HANAWAHINE
REGISTRAR
LAND COURT
STATE OF HAWAII

Petition of DAVID PAUL NIEHAUS and CLIFFORD PAUL RHODES, Owners, consolidation of Lots 144 and 169 as shown on Maps 4 and 5, respectively and resubdivision of said consolidation into Lots 171 and 172 and designation of Easements 57 and 58 affecting Lot 172

ORDER OF SUBDIVISION

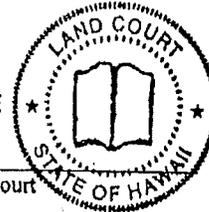
Upon the record and the evidence herein, and the map or plan filed with the application for subdivision in this matter having been referred to the Surveyor of the State of Hawaii, and he having examined and checked the same and certified the same to be correct, Copy of said petition and the Return of the Surveyor by reference made a part hereof,

IT IS ORDERED, ADJUDGED AND DECREED, that the said subdivision, as certified by the Surveyor of the State of Hawaii, is hereby authorized and approved, and the Assistant Registrar of this court is hereby directed to endorse on Owner's Certificate of Title No. ^{633,824}~~663,824~~; 605,618 a reference to said map or plan as approved, and, upon presentation to him of proper deeds of transfer, to issue a new certificate, or certificates, for the lots conveyed, and enter same on said Owner's Certificate of Title No. ^{633,824}~~663,824~~; 605,618 and found to be in accord therewith.

Dated: Honolulu, Hawaii, 3rd day of August, 2004

KATHLEEN HANAWAHINE

Registrar for Judge of the Land Court



A TRUE COPY, ATTEST WITH THE SEAL OF SAID COURT.

DAVID I.D. FONG
Clerk

EXHIBIT "6"

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application)
)
 of)
)
 C. BREWER & CO., LTD.)
)
 to register title to land situate at Waikapu,)
 District of Wailuku, Island and County of)
 Maui, State of Hawaii)
 _____)

SUBDIVISION
 of
 Application 52
 (Map 7)

LAND COURT
 STATE OF HAWAII
 2004 AUG - 3 PM 3:22
 KATHLEEN WAWAHIRE
 REGISTRAR

Petition of DAVID PAUL NIEHAUS and CLIFFORD PAUL RHODES, Owners,
 consolidation of Lots 144 and 169 as shown on Maps 4 and 5, respectively and
 resubdivision of said consolidation into Lots 171 and 172 and designation of Easements 57
 and 58 affecting Lot 172

RETURN OF THE STATE LAND SURVEYOR

To the Honorable Judge of the Land Court,
 State of Hawaii.

Pursuant to an Order duly made and issued out of said Honorable Court on the
 26th day of April 2004, referring the map filed for approval of subdivision in the above
 entitled matter, to the State Land Surveyor for verification, check on the ground if
 necessary and report.

The undersigned, the State Land Surveyor begs to report that the same has been
 examined and checked as to form and mathematical correctness and found to be in order.

And further, that said map has been compared with Transfer Certificates of Title
 No. 663,824; 605,618 and found to be in accord therewith.

RSKs
 600824

EXHIBIT "7"

NOTE:

Allegations in the petition have been checked and found to be in accord therewith except for the following:

1. Petitioner should not use the phrase "more or less" when describing the area of the lots.
2. Lots 144-A and 169-A have been changed to Lots 171 and 172, respectively.
3. The status of Doc. No. 2858671 should be clarified (noted in TCT).
4. The status of LCO Nos. 56429 and 83524 should be clarified (not noted in TCT).

Only encumbrances as noted in the petition have been checked.

And pending approval of the Court, the map and said Transfer Certificates of Title will be held for further instructions.

DATED at Honolulu, this 3rd day of August, 2004.

Examined by:

Ronald B.K. Fleming
Assistant.
cv

Natalie Kiyuna

ACTING STATE LAND SURVEYOR

=====

Received from the State Land Surveyor _____ blueprints of, and the approved tracing map in the above entitled matter and Transfer Certificates of Title No.

Honolulu, Hawaii
AUG - 3 2004, 2004

Natalie Kiyuna

~~REGISTRAR~~ OF THE LAND COURT
Clerk

To Auction Winkler Hts Extn
TGS INC
Winkler Co

1530403

LAND COURT
OFFICE OF ASSISTANT REGISTRAR
RECEIVED FOR REGISTRATION

88 FEB 16 AM 8:01

[Signature]
ASSISTANT REGISTRAR

NOTE ON CERTIFICATE 298432

EXHIBIT "8"

15

117

Recordation requested by:

TITLE GUARANTY ESCROW SERVICES INC

Wailuku Branch
P. O. Box 875
Wailuku, Hawaii 96793

After recordation, return to:

TITLE GUARANTY ESCROW SERVICES INC

Wailuku Branch
P. O. Box 875
Wailuku, Hawaii 96793

Return by Mail () Pickup (/)

0753M

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS FOR WAILUKU HEIGHTS EXTENSION - UNIT II

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After recordation, return to:

Return by Mail () Pickup ()
0753M

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS FOR WAILUKU HEIGHTS EXTENSION - UNIT II

THIS DECLARATION is made this 24th day of January, 1988, by HAWAII STATES PROPERTIES, INC., a Hawaii corporation, whose principal place of business and post office address is 707 Richards Street, Suite 420, Honolulu, Hawaii 96813, hereinafter referred to as the "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant owns certain real property in Wailuku, Island and County of Maui, State of Hawaii; and

WHEREAS, Declarant intends to develop a portion of said real property in a manner which, to the extent possible, will increase the economic value, desirability and attractiveness of said real property to its owners;

NOW, THEREFORE, Declarant hereby declares that all of the real property now or hereafter included in Wailuku Heights Extension Unit II, as hereinafter defined, shall, at all times, be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained, all of which are established and declared for the purpose of increasing the economic value, desirability and attractiveness of said real property and for the mutual benefit of the owners thereof. The covenants, conditions and restrictions set forth in this Declaration shall run with said real property and shall be binding upon all persons acquiring any right, title or interest in and to said real property, and shall inure to the benefit of the Declarant, the Association and each person who becomes an owner of any part of Wailuku Heights Extension Unit II, and each successor in interest of such owner.

ARTICLE I. DEFINITIONS

The following words when used in this Declaration, unless the context otherwise specifies or requires, shall have the following meanings:

1.1 Amending Declaration. "Amending Declaration" means any declaration of protective covenants, conditions and restrictions Recorded pursuant to Section 11.3 hereof whose purpose is to amend the terms of this Declaration.

1.2 Architect. "Architect" means a Person licensed to practice architecture in the State of Hawaii.

1.3 Association. "Association" means the Wailuku Heights Extension Unit II Community Association, a non-profit Hawaii corporation, and its successors and assigns.

1.4 Association Property. "Association Property" means all real and personal property including but not limited to easement rights, owned by or leased to the Association.

1.5 Board. "Board" means the Board of Directors of the Association.

1.6 By-Laws. "By-Laws" means the By-Laws of the Association.

1.7 Charter. "Charter" means the Charter of Incorporation of the Association granted or to be granted pursuant to Chapter 415B of the Hawaii Revised Statutes, as amended.

1.8 Common Area. "Common Area" means any Lot owned by the Association and all improvements thereon.

1.9 Declarant. "Declarant" means Hawaii States Properties, Inc., its successors and assigns, including such other Person or Persons whom said Hawaii State Properties, Inc. may, by a Recorded document, designate as having the powers and functions of Declarant, or some of such powers and functions.

1.10 Declaration. "Declaration" means this Declaration of Protective Covenants, Conditions and Restrictions, as the same may from time to time be amended.

1.11 Guest. "Guest" means any employee, tenant, guest (whether or not for hire) or invitee of an Owner, including transient guests; and any Person who is not an Owner and who has acquired any title or interest less than a fee simple in a Lot by, through or under an Owner, including a lessee, licensee or mortgagee and any employee, tenant, guest (whether or not for hire) or invitee of any such Person.

1.12 Lot. "Lot" means a portion of the Real Property which is a lot as shown on a recorded Subdivision map.

1.13 Member. "Member" means any Person who is a member of the Association pursuant to Article III hereof.

1.14 Owner. "Owner" means any Person who is the record owner of a fee simple interest in any Lot. The By-Laws shall provide for the determination of who is the Owner of any Lot.

1.15 Person. "Person" means a natural individual, corporation, partnership or any other legal entity.

1.16 Points. "Points" are numerical figures assigned to each Lot to fix the proportionate share of the total assessments levied by the Association to be borne by the Owner of that Lot, the proportionate voting power of the Owner of that Lot in the Association and the proportionate interest of the Owner of that Lot in distributions made by the Association. Each Lot used solely for roadway, utility, park or recreational purposes, and each Lot owned by the Association shall have no (zero) Points assigned. Each other Lot shall be assigned one (1) Point. "Total Points" at any time means the sum of all the Points then assigned to Lots in Wailuku Heights Extension.

1.17 Real Property. "Real Property" means all of the land described in Exhibit "A" attached hereto, together with all rights and interests appurtenant thereto.

1.18 Record. "Record, Recorded and Recordation" means with respect to any document the recordation or filing of such document in the Bureau of Conveyances and/or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

1.19 Subdivision. "Subdivision" means a parcel of real property divided or separated into lots as shown on a subdivision plan approved pursuant to the subdivision ordinances of the County of Maui, or the procedure of so dividing or separating real property.

1.20 Wailuku Heights Extension. "Wailuku Heights Extension Unit II" means the Real Property and all buildings and other improvements now or hereafter located on the Real Property and all Association Property.

1.21 Wailuku Heights Extension - Unit II. "Wailuku Heights Extension Unit II" means all of the land described in Exhibit "A" attached hereto, together with all rights and interests appurtenant thereto, such as, but not limited to, easement rights, and together also with all buildings and other improvements now or hereafter located thereon.

1.22 Wailuku Heights Extension Unit II Environmental Committee. "Wailuku Heights Extension Unit II Environmental Committee" means the committee established pursuant to Article VIII hereof.

ARTICLE II. CLASSIFICATION OF REAL PROPERTY USE.

2.1 Classification. The Real Property shall be classified as Residential. Subject to the approval of the Wailuku Heights Extension Unit II Environmental Committee, which approval shall be given in its sole discretion, Lots and portions of Lots shall be used only for single family residential purposes; provided, however, that uses incidental to and not inconsistent with such residential purposes, including, without limitation, parks, utility distribution systems and roads serving the residents of such Lots and

portions of Lots, shall also be permitted. No Residential Lot shall be improved except with a residence structure or complex designed to accommodate no more than a single family and its servants and occasional guests, plus such other improvements and structures as are necessary or customarily incident to a single family residence. No structure or above-ground improvements shall be permitted on any Lot which are detached or separated from the principal residence structure unless located within a reasonably compact area adjacent to the principal residence structure and unless designed as a single visual element, connected or related visually with the principal residence structure by fencing or other architectural features.

2.2 Approval by Wailuku Heights Extension, Unit II Environmental Committee. No change in the existing state of a Lot such as by earth movement, construction, clearing, or planting shall be permitted without the prior written approval of the Wailuku Heights Extension Unit II Environmental Committee, all in accordance with the provisions of Article VIII hereof. The Wailuku Heights Extension Unit II Environmental Committee shall not approve any use for a Lot or portion of a Lot which is inconsistent with the provisions of this Declaration.

2.3 Construction of Subdivision Improvements. Notwithstanding any provisions to the contrary contained in Section 2.2 hereof, or elsewhere in this Declaration, any work performed on any Lot by Declarant, its representatives, agents, employees, or contractors in connection with the construction of subdivision improvements required by the County of Maui pursuant to the grant of subdivision approval for Wailuku Heights Extension Unit II or with the construction of any roadways or any electrical, communication, water or other utilities, shall be permitted without the prior written approval of the Wailuku Heights Extension Unit II Environmental Committee, and Declarant, its representatives, agents, employees or contractors may proceed with work on any such improvements without complying with the provisions of Article VIII hereof.

ARTICLE III. THE ASSOCIATION.

3.1 General Purposes and Powers. The Association has been or will be incorporated to be and constitute the Association to which reference is made in this Declaration. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Charter or By-Laws.

3.2 Membership. Each Owner, by virtue of being an Owner and for so long as he is an Owner, shall be a member of the Association.

3.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to an Executive Committee composed of not fewer than three (3) directors. At the first annual meeting of the Association, one-third (1/3) of the Directors shall be elected to a three

(3) year term; one-third (1/3) of the Directors shall be elected to a two (2) year term; and one-third (1/3) of the Directors shall be elected to a one (1) year term. Thereafter, at each annual meeting, Directors elected to succeed those whose terms expire shall be elected for a term of three (3) years. The number and qualifications of Directors shall be as provided in the Charter and By-Laws of the Association.

3.4 Voting Rights.

3.4.1 Class A Voting Rights. Each Owner other than Declarant shall have Class A voting rights and shall have one vote for each Point assigned to his Lot. Voting by proxy shall be permitted. In the event of multiple Owners of the same Lot, the multiple Owners may, prior to each meeting of Owners, provide the Board with a written statement, signed by each such multiple Owner, designating one Person who shall have the right to cast the votes assigned to the Lot owned by such multiple Owners. At any election of the Board of Directors, every Owner entitled to vote may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes said Owner may cast multiplied by the number of Directors to be elected. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of fee interest in any Lot to a new Owner or Owners shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto.

3.4.2 Class B Voting Rights. Declarant shall have Class B voting rights and shall have three votes for each Point assigned to its Lots until the total Class A votes then existing equal the total Class B votes then existing. Upon the occurrence of such event, the Declarant's Class B voting rights shall be one vote for each Point assigned to its Lots. In all other respects there shall be no difference between Class A and Class B voting rights.

3.5 Notices. Each owner shall be entitled to notice of any meeting at which such Owner has the right to vote. Notices of meetings shall be in writing and shall state the date, time and place of the meeting and shall indicate each matter to be voted on at the meeting which is known to the Association at the time notice of the meeting is given. Such notices shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting. Any notice shall be deemed given and any budget or other information or material shall be deemed furnished or delivered to a party if sent in accordance with the provisions of Section 11.16 hereof.

3.6 Record Date. The Board shall have the power to fix in advance a date as a record date for the purpose of determining Owners entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of Owners for any purpose. Notwithstanding any provisions of Section 3.4 hereof to the contrary, the Owners of record on any

such record date shall be deemed the Owners for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date on which the particular action requiring determination of Owners is proposed or expected to be taken or to occur. If no record date is established for a meeting, the date on which notice of such meeting is first given to any Owner shall be deemed the record date for the meeting.

3.7 Quorums. The presence of Owners who hold votes equal to one-quarter of the total voting power of the Association, in person or by proxy, at a meeting to consider a matter shall constitute a quorum for consideration of that matter. If a quorum is established for consideration of a matter, except as a greater percentage of votes is required under a specific provision of this Declaration, a majority of the votes cast on the matter or, in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter.

3.8 Charter and By-Laws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Charter and By-Laws of the Association, including any reasonable provisions with respect to corporate matters, but in the event that any such provisions may be, at any time, inconsistent with any provision of this Declaration, the provisions of this Declaration shall govern.

3.9 Notification of Association. Each Owner shall within ten (10) days of any sale, transfer or conveyance of fee interest in the Owner's Lot notify the Association of such sale, transfer or conveyance.

ARTICLE IV. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Association Rights in Lots. The Association shall have the right, upon not less than 24 hours prior written notice, to enter upon any Lot for the purpose of enforcing this Declaration.

4.2 Maintenance of Association Property. The Association shall be obligated to provide for the care, operation, management, maintenance, repair and replacement of Association Property. Without limiting the generality of the foregoing, said obligations shall include keeping Association Property in good, clean, attractive and sanitary condition, order and repair; repairing wind and other damage caused by the elements; and making necessary or desirable alterations, additions, betterments or improvements to or on Association Property.

4.3 Labor and Services. The Association may obtain and pay for the services of any Person to manage its affairs, or any part thereof, to the extent it deems advisable, as well

as the services of such other personnel, including independent contractors, as the Association shall determine to be necessary or desirable for the proper operation of Walluku Heights Extension or the Association, whether such personnel are furnished or employed directly by the Association or by any Person with whom or which it contracts. The Association may grant such Person the exclusive right to use some Association Property for the benefit of all, some or any Owners. The Association may delegate to such Person any of its powers except the powers to levy assessments; execute contracts involving \$10,000 or more or the performance of work or services which will not be completed within 60 days; and the power to sell, convey, mortgage or encumber any Association Property without prior approval of the Board.

4.4 Association Functions. The Association may undertake or contract for any lawful activity, function or service for the benefit of the Owners. In addition to the assessments described in Article V hereof, all costs and expenses of activities, functions or services undertaken by the Association for the benefit of fewer than all of the Owners shall be assessed to the Owners benefited thereby, and such assessments shall be enforced in accordance with the provisions of Article V hereof. The Association shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder. The activities, functions or services undertaken or contracted for by the Association shall include, without limitation, the providing of legal and accounting services necessary or desirable in connection with the enforcement of this Declaration; the granting or conveying of easements or rights of way over, across, along or under any real property of the Association; and the enforcement of all rights granted to the Association in any lease, easement or other instrument.

4.5 Personal Property of Association. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

4.6 Real Property of Association. The Association shall accept title to or a leasehold interest in all real property from time to time conveyed to it by Declarant, including but not limited to easement rights, provided that the Association need not accept any such real property subject to a lien upon such real property securing or evidencing an obligation to pay money except a lien for nondelinquent real property taxes and assessments.

4.7 Association Right to Lease and License Association Property. Subject to the rules and regulations of the Association, the Association shall have the right to license to, or permit the use of by, fewer than all of the Owners or by non-Owners, for thirty (30) days or less with or without charge as the Association may deem desirable, any Association Property, and may contract with any Person to manage Association Property, which Person shall, if authorized in writing by the Board, have said right. Any person licensed by the Association to use any Association Property may, with or without charge, permit Owners or non-Owners to use such Association Property.

4.8 Rules and Regulations. The Association or any Person contracted with by the Association to manage the Association and Association Property may make and enforce reasonable and uniformly applied rules and regulations governing the use of Lots and of Association Property. Such rules and regulations may, without limitation: (i) regulate use and enjoyment of Association Property; (ii) regulate the burning of open fires; (iii) prohibit noxious or offensive activity, nuisances, unsafe or hazardous activities or construction, emission of loud sounds or offensive odors and unsightliness; (iv) reasonably restrict or limit Owners' rights to use Association Property which may be licensed by the Association for a particular use, purpose or event; (v) open to public use Association Property or any part thereof; and (vi) regulate the use of Association Property by Guests.

The Association shall furnish each Owner with a written copy of each and every rule or regulation adopted pursuant to this Section 4.8; however, failure to furnish said copy shall not be deemed to invalidate said rules or regulations to any extent.

The Association shall have the right to enforce any of the rules and regulations of the Association and the obligations of any owner under this Declaration or any provision of the Charter or By-Laws by having the Association assess a reasonable fine against such Owner and/or suspend the right of such Owner to use Association Property and/or suspend the right of such Owner to vote at meetings of the Association; provided that such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation; provided further that if any such violation continues for a period of ten (10) days after notice of such violation has been given to such Owner, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties. If any such fine imposed on an Owner by the Association is not paid by said Owner within sixty (60) days after said Owner has received from the Association written notice of the imposition of such fine, then the amount of such fine shall be added to the amount of the regular Assessment charged to said Owner and shall be enforceable as an Assessment in accordance with Article V hereof. No penalty may be imposed under this Section until the Owner accused of any such violation has been afforded the right to have a hearing before the Board or a committee designated by the Board to conduct such hearing, or has, in writing, waived such right. Each such Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

No Owner's Guests shall violate the rules and regulations adopted from time to time by the Association whether relating to the use of Lots, the use of Association Property, or otherwise and violations of the rules and regulations by any Owner's Guests shall be treated as a violation by such Owner and shall be enforceable in accordance with the provisions hereof.

4.9 Association Right to Charge Fees. The Association may charge reasonable fees for the use of Association Property.

4.10 Dedication of Land. The Association may dedicate, grant easements in or transfer any part of the Common Area to any public agency, authority or utility.

4.11 Real Property Taxes. The Association shall pay all property taxes and assessments levied on any portion of Association Property. The Association may contest, by appropriate, legal proceedings conducted in good faith and with due diligence, the amount, validity or application of any taxes or assessments.

4.12 Implied Rights. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

ARTICLE V. ASSESSMENTS.

5.1 Assessments. Each Owner, or, in the event of multiple Owners of the same Lot, such multiple Owners jointly and severally, shall be obligated to, and shall, pay to the Association amounts as hereinafter provided based on each Point assigned to the Lot(s) owned by such Owner(s), which amounts are herein called "Assessments". Assessments shall include "Regular" and "Supplementary" Assessments.

Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments should be paid to the Association, and each Owner shall comply with all such determinations.

5.2 Determination of Budgets and Assessments. The fiscal year of the Association shall be the calendar year. Within sixty (60) days prior to the commencement of each fiscal year or partial fiscal year, the Board shall determine the total amount to be raised by Regular Assessments during such fiscal year or partial fiscal year. The amount to be raised by regular Assessments for any fiscal year or partial fiscal year shall be determined in the following manner. The Board shall prepare or cause to be prepared and approve a budget for the fiscal year or partial fiscal year showing, in reasonable detail, the estimated operating costs and expenses which will be payable in that fiscal year or partial fiscal year to fulfill the regular operating functions and obligations of the Association in that fiscal year or partial fiscal year, including amounts necessary to cover obligations made in connection with or contemplated under, any previously approved budgets, plus an amount sufficient to provide a reasonable carry over to serve for the next fiscal year (the "Operating Budget"). The Board shall subtract from the Operating Budget the amount equal to the anticipated surplus attributable to Assessments collected but not disbursed in the fiscal year or

partial fiscal year immediately preceding the fiscal year or partial fiscal year for which the Operating Budget has been prepared; provided that in lieu of such subtraction the Association may elect to refund to the Owners said anticipated surplus. The Board shall furnish a copy of the budget to each Owner.

If the Board fails to determine or cause to be determined the total amount to be raised by Regular Assessments in any fiscal year or partial fiscal year, and/or fails to notify the Owners of the amount of such Regular Assessments for any fiscal year or partial fiscal year, then the amounts of Regular Assessments shall be deemed to be the amount assessed in the previous fiscal year or partial fiscal year.

Except as emergencies may require, the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association.

5.3 First Assessments. Prior to the conveyance by Declarant of the first Lot to be sold in Wailuku Heights Extension Unit II, the Association shall estimate the costs and expenses to be incurred by the Association from the time of the sale by Declarant of the first Lot until the commencement of the first full fiscal year. The estimate shall be assessed to each Owner as provided in Section 5.5 hereof as a Regular Assessment as of the date of the sale by Declarant of the first Lot. Declarant shall be responsible for the Assessments on Lots which it owns. All costs and expenses incurred prior to such sale shall be the sole responsibility of Declarant.

5.4 Supplementary Assessments. In addition to Regular Assessments, the Association may levy Supplementary Assessments, payable over such period as the Association may determine: (i) for the purpose of defraying any expense incurred or to be incurred as provided in this Declaration, including the acquisition of Association Property; or (ii) to cover the deficiency, in the event that, for whatever reason, the amount received by the Association from Regular Assessments is less than the amount determined and assessed by the Association. If the aggregate amount of Supplementary Assessments levied in any calendar year exceeds Five Hundred and No/100 Dollars (\$500.00) per Point, such Supplementary Assessment may not be levied without the prior approval of Owners holding fifty-one percent (51%) of the Class A voting rights in person or by proxy at a meeting duly called for the purpose of authorizing such Supplementary Assessment.

5.5 Apportionment of Assessments. The amount of the Regular or Supplementary Assessment for any fiscal period payable by an Owner for each Point assigned to the Lot(s) owned by such Owner shall be computed by multiplying the total amount to be raised by such Assessments by a fraction, the numerator of which shall be one and the denominator of which shall be the Total Points assigned to all Lots in Wailuku Heights Extension.

5.6 Time for Payments. The amount of any Assessment, charge, fine, penalty, or other amount payable with respect to any owner or such Owner's Guests or Lot, shall become due and payable as specified by the Board and, in any event, thirty

(30) days after any notice of the amount due as to such Assessment, charge, fine, penalty or other amount shall have been given by the Association to such owner, and any such amount shall bear interest at a rate specified by the Board but in no event greater than the maximum amount permitted by law from the date due and payable until paid.

5.7 Lien for Assessments and Other Amounts. If an Owner does not pay in full any Assessment, charge, fine, penalty or other amount or any installment thereof or any interest accrued thereon when due, the Owner shall be deemed to be in default and, upon Recording a notice of default describing the Lot owned by the defaulting Owner, the Association shall have a lien against such Lot to secure payment of any such Assessment, charge, fine, penalty or other amount due and owing to the Association with respect to the Owner or with respect to such Owner's Guests or Lot, plus interest from the date due and payable, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Hawaii. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such obligations.

5.8 Estoppel Certificate. Upon payment of a reasonable fee and upon written request of any Owner the Association shall furnish a written statement setting forth the amount of Assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to the Owner, the Lot owned by such Owner and such Owner's Guests and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot owned by such Owner, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid.

5.9 Liability of Owners and Purchasers. The amount of any Assessment, charge, fine or penalty owing to the Association by any Owner under this Declaration shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

ARTICLE VI. USE RIGHTS AND RESTRICTIONS.

6.1 Owner's Rights in Association Property. The rights of Owners to use Association Property shall be subject to this Declaration, the Charter, By-Laws and rules and regulations of the Association.

6.2 No Imperiling of Insurance. No Owner and no Owner's Guests shall do anything or cause anything to be kept in or on Association Property or any Lot which might result in an increase in the insurance premiums of insurance obtained by the Association or which might cause cancellation of such insurance, without the prior written consent of the Association.

6.3 No Violation of Law. No Owner and no Owner's Guests shall do anything or keep anything in or on Association Property or any Lot which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

6.4 Subdivision of Lots. No Lot may be divided or subdivided or a fractional portion thereof conveyed or otherwise transferred so as to be held in divided ownership. Notwithstanding the foregoing, adjoining Lot Owners may, subject to the approval thereof by the Wailuku Heights Extension Unit II Environmental Committee and compliance with any applicable laws or ordinances, sell or purchase adjoining property within the Wailuku Heights Extension Unit II to accomplish relocation of the boundary line between such Lots if such sale and purchase will not cause or result in a violation of any building or other restriction contained herein or in any such laws or ordinances. In such cases, the new boundary line thus established shall be deemed the new boundary line between the respective Lots, but no restrictions, easements or land classifications established for such Lots with respect to the former boundary line or otherwise shall be changed or shifted by reason of the change of boundary line.

6.5 Combining Lots. Two or more adjoining Lots which are under the same ownership may be combined and developed as one Lot. Easements created or established by Declarant along the common boundary line of the combined parcels may be changed provided that the consents of Declarant and the Association are obtained and provided that alternate easements are granted or created, satisfactory to Declarant and the Association, by the owner of the combined Lots. If easements are changed along the common boundary line of combined parcels, the combined parcels shall thereafter be deemed one Lot, and may not thereafter be split and developed as two Lots.

6.6 Occupancy Limitations. No residence structure on any Lot shall be used for living purposes by more persons than the structure was designed to accommodate pursuant to plans approved by the Wailuku Heights Extension Unit II Environmental Committee. No portion of any Lot, other than the portion on which the permitted residence structure is situated, shall be used as a residence or for living purposes.

6.7 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

6.8 No Hazardous Activities. No activities shall be conducted on any Lot and no improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

6.9 No Unsightliness. No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing: (a) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure or appropriately screened from view; (b) garden or maintenance equipment shall be kept at all times in an enclosed structure or screened from view, except when in actual use; (c) refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view; (d) service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view; (e) pipes for water, gas, sewer, drainage or other purposes and wires, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities and gas, oil, water or other tanks, and sewage and disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground; and (f) no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any lot.

6.10 Noise. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Lot and improvements thereon, shall be placed or used upon any Lot. No sound shall be permitted to be emitted on any Lot which is unreasonably loud or annoying.

6.11 Light; Lighting Fixtures. No light shall be emitted from any Lot which is unreasonably bright or which causes unreasonable glare. All exterior lighting (including, without limitation, lighting for tennis courts or other recreational facilities) shall conform to the rules and regulations issued by the Walluku Heights Extension Unit II Environmental Committee, which rules and regulations may govern or prohibit exterior use, inter alia, of mercury vapor lamps or lamps which emit light of a similar character, fluorescent lamps, neon lamps and neon tubing, flashing lights or lamps, unshielded lights, colored lights and spotlights. In addition to complying with said rules and regulations, all light fixtures which are visible from other Lots must be approved by the Walluku Heights Extension Unit II Environmental Committee.

6.12 Odors. No odor shall be emitted on any Lot which is noxious or offensive to others.

6.13 Support of Adjacent Lot. In the event of any excavation on a Lot, the owner of such Lot shall provide such artificial support as is necessary to support adjacent Lots.

6.14 No Temporary Structures. No temporary buildings, structures, outhouse sheds or tents shall be erected, placed or permitted to remain on any Lot.

6.15 Animals. No animals, livestock or poultry of any kind shall be kept on any Lot except that a reasonable number of dogs, cats or other common household pets may be kept,

provided they are not kept for any commercial purposes and that they do not unreasonably bother or constitute a nuisance to occupants of other Lots.

6.16 Signs. No signs or advertising devices of any nature shall be erected or maintained on any Lot except signs necessary to identify the ownership of the Lot and its address; signs not more than 1-1/2 feet by 2 feet in size necessary to show that the Lot is for sale or for rent; signs necessary or desirable to give direction, advise of rules and regulations, or caution or warn of danger; one job identification sign per contractor or subcontractor having a maximum surface of six feet during the period of actual construction on a Lot; and such other signs as may be otherwise required by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Lot only with the prior written approval of the Wailuku Heights Extension Unit II Environmental Committee, which approval shall be given only if such signs shall be professionally prepared, shall be of attractive design in keeping with the overall character of the area, shall be as small in size as is reasonably possible, and shall be placed or located as directed or approved by the Wailuku Heights Extension Unit II Environmental Committee.

6.17 Mining and Drilling. No mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth shall take place on any Lot.

6.18 Cesspools or Septic Tanks. No cesspools or septic tanks shall be permitted on any Lot.

6.19 Clearing and Grading. The clearing and grading of any Lot shall be performed in strict accordance with plans and specifications therefor which have been approved by the Wailuku Heights Extension Unit II Environmental Committee, and such clearing and grading shall not alter or impede existing drainage patterns without the prior approval of the Wailuku Heights Extension Unit II Environmental Committee. All areas cleared shall be left clear of rubbish and litter, and approved ground vegetation shall be reestablished. All grading operations shall exercise dust control measures, and the areas graded shall be replanted with grass or ground cover approved by the Wailuku Heights Extension Unit II Environmental Committee immediately upon completion of grading.

6.20 Structure Limitations. The residence structure erected on each Lot shall comply with the Construction and Design rules dated February 1, 1988.

6.21 Architectural Design Criteria. The overall visual character of Wailuku Heights Extension Unit II shall be one of natural materials, rough textures, colors and forms compatible with those occurring in the natural landscape of the area.

6.22 Construction Period. During the course of actual construction of any structure or improvement permitted hereunder the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived to the extent necessary, as determined by the Wailuku Heights Extension Unit II Environmental Committee in its sole discretion to facilitate such construction, provided that such construction is carried out with all due diligence and that during the course of such construction, nothing is done which will result in a violation of any of said provisions, covenants, conditions and restrictions upon completion of construction. All construction activities shall be conducted in compliance with rules and regulations adopted by the Wailuku Heights Extension Unit II Environmental Committee.

6.23 Leasing of Lots. The Owner of a Lot may lease the same provided that such leasing is strictly in conformity with rules and regulations relating thereto promulgated from time to time by the Association.

6.24 No Business or Commercial Activity. Subject only to the provisions of Section 6.23, no Lot shall be used at any time for business or commercial activity, provided that Declarant may use any Lot owned by it for model homes or real estate sales offices.

6.25 Maintenance of Lots. Each Lot and all improvements, fixtures, furniture and equipment located therein or thereon shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and in good repair.

6.26 Owner Caused Damage. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any Association Property, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the insurer has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner, and such amount shall be secured by a lien on the Lot of such Owner in accordance with the provisions of Section 5.7 of this Declaration.

6.27 Assignment of Rights or Obligations. An Owner may assign or delegate to another Person some or all of his rights hereunder as an Owner and may enter into any arrangement with such other Person under which such Person shall agree to assume some or all of such Owner's obligations hereunder. The Association shall recognize any such assignment or delegation of rights or arrangement for assumption of obligations, provided that, to be effective with respect to the Association, Declarant or any other Owner, the assignment or delegation of rights or arrangement for assumption of obligations shall be in writing, shall be in terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with the Association. Notwithstanding the foregoing, no Owner shall be permitted to relieve himself of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period he is an Owner.

ARTICLE VII. EASEMENTS.

7.1 Granting of Easement by Declarant. The Declarant reserves the right to grant to the Association any easement and/or easement rights encumbering Lots or encumbering property immediately adjacent to the Real Property. The Association shall accept any such easement and/or easement rights granted to the Association by the Declarant and thereafter shall be responsible for the repair, maintenance, operation, management and replacement of any such easement and the structures and/or equipment appurtenant thereto.

7.2 Easements in Lots for Repair, Maintenance and Emergencies. The Association shall have an easement for access through each Lot for maintenance, repair and construction of drainage easements owned by the Association and for making emergency repairs thereon necessary to prevent damage to Association Property or to another Lot. Nothing herein shall be deemed to obligate the Association to make any such emergency repairs.

7.3 Negligence or Willful Misconduct. Any damage to any Lot caused by the gross negligence or willful misconduct of the Association or any of its agents during any entry onto any Lot shall be repaired by and at the expense of the Association.

7.4 Flooding and Erosion. No Owner shall permit to be constructed on his Lot any improvements which will create a problem of flooding, erosion or interference with natural water flow or runoff damaging to his Lot or adjacent properties, or otherwise interfere with the easement rights of the Declarant or the Association, nor shall any Owner fail to reasonably act so as to minimize runoff damage or interference with the natural flow of storm waters.

ARTICLE VIII. WAILUKU HEIGHTS EXTENSION UNIT II ENVIRONMENTAL COMMITTEE.

8.1 Creation. The Wailuku Heights Extension Unit II Environmental Committee (the "Committee") is hereby created with all of the rights, powers, privileges and duties herein set forth. The Committee shall consist of three members.

8.2 Term. The initial Committee shall be appointed by Declarant as follows: One (1) of the members of the Committee shall be appointed to a three (3) year term; one (1) of the members of the Committee shall be appointed to a two (2) year term; and one (1) of the members of the Committee shall be appointed to a one (1) year term. Thereafter, each member shall hold office for a period of three years and until his successor has been duly appointed as herein set forth unless he has sooner resigned or been removed.

8.3 Appointment. Declarant shall have the sole right to appoint and remove the members of the Committee until the twentieth (20th) anniversary date hereof, or until Declarant shall assign said right to appoint and remove to the Board of Directors, whichever shall first occur. Thereafter, the Board shall have the sole right to appoint and remove the members of the Committee. Declarant may, at any time and from time to time, assign such right to appoint and remove members of the Committee to the Board.

8.4 Removal; Resignation. Any Committee member appointed by Declarant may be removed by Declarant with or without cause. Any Committee member appointed by the Board may be removed by the Board with or without cause. Any Committee member may resign by submitting a written notice to the Board stating the effective date of his resignation, and acceptance of the resignation shall not be necessary to make the resignation effective.

8.5 Committee Functions. The functions of the Committee, in addition to any functions set forth elsewhere in this Declaration, shall be to consider and approve or disapprove any plans, specifications or other material submitted to it for the erection, construction, installation, alteration, placement or maintenance of any buildings or other improvements on Lots, or for the alteration or remodeling of, or construction of additions to, any then existing structures on Lots; to adopt Committee rules as provided in this Article VIII; and to perform such other duties as may, from time to time, be delegated to it by the Association. The Committee shall meet from time to time as necessary to adequately perform its duties hereunder, and the Committee's action on matters shall be by majority vote of the Committee. Any action required to be taken by the Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Committee members. The Committee shall keep and maintain a record of all actions taken by it.

8.6 Review of Plans. The Committee may, by the enactment of appropriate rules, specify the procedures for the submission and approval of said plans, specifications and other material; provided, however, that the Committee's approval or disapproval of any such plans, specifications and other materials shall be given in writing within thirty (30) days after submission of said plans, specifications and other materials and after the Owner's compliance with the requirements set forth in Section 8.9 below. If the Committee shall disapprove of any such plans, specifications, and other materials, it shall, within said thirty (30) day period, send

notice of its disapproval to the Person or Persons applying for said approval at the address set forth in the application therefor and shall also return to such Person the cash bond, the owner's completion bond, or the note and mortgage submitted by such Person pursuant to Section 8.9 below. If notice of disapproval is not so sent within said thirty (30) day period, the plans, specifications and other materials submitted shall be deemed to have been approved by the Committee.

8.7 Requirements for Plans. All plans and specifications for any new building or other improvement shall be prepared by an Architect, shall be submitted to the Committee for its approval, and shall include, without limitation, floor, elevation, plot and grading plans; specifications for the principal exterior materials; description of color schemes; landscaping plans; provisions to be made for automobile parking; outside lighting plans, if any; and a detailed description of the location, character and method of utilization of all utilities. The plans and specifications for any alteration, modification or addition to the exterior of any existing building or improvement including, without limitation, alterations such as exterior painting except for repainting with the same color paint and changes in or addition of fencing, must contain the same information as is required for any new building or other improvement, except that plans for nonstructural alterations, modifications or additions need not be prepared by an Architect. After approval of any plans, specifications and other materials, the Committee shall, upon written request from the Owner, provide said Owner with a statement of approval in a form appropriate for Recordation.

8.8 Standards of Review. The Committee shall, in reviewing plans, specifications and other materials submitted to it, consider the suitability of the proposed building or other improvement for the area in which it will be located; the quality of the materials to be used in construction; and the effect of the proposed building or other improvement on Wailuku Heights Extension Unit II. The Committee shall require that the overall visual character of Wailuku Heights Extension Unit II be one of natural materials, rough textures, colors and forms compatible with those occurring in the natural landscape and that the roofs and other exterior portions of all buildings and other improvements in Wailuku Heights Extension Unit II conform to aesthetic standards contained in and/or be constructed with materials specified in the Wailuku Heights Extension Unit II Design Rules.

8.9 Bond Requirement. The Lot Owner shall provide to the Committee, together with the plans, specifications and other materials, and as a condition precedent to any Committee approval, a cash bond in the sum of \$5,000.00, guaranteeing completion (once construction has been commenced) of all the improvements, landscaping and other work (other than interior portions of the principal dwelling which are not visible from outside the Lot) in accordance with the plans, specifications and other materials approved by the Committee. Said \$5,000.00 may be retained and used by the Association upon receipt by the Association of written certification from the Committee that the improvements, landscaping and other work have not been timely completed in accordance with the plans, specifications

and other materials approved by the Committee, which certification specifies the various deficiencies; provided, however, that the Lot Owner shall have a period of sixty (60) days after receipt of a copy of such certification within which to cure all such deficiencies; and provided further that the Association shall promptly refund said \$5,000.00 to the Lot Owner upon receipt of written certification from the Committee that the improvements, landscaping and other work (other than interior portions of the principal dwelling which are not visible from outside the Lot) have been timely completed in accordance with the plans, specifications and other materials approved by the Committee.

As an alternative to the \$5,000.00 cash bond required above, however, the Lot Owner may provide to the Committee either of the following:

(a) An owner's completion bond in form and by a corporate surety satisfactory to the Committee, in its sole discretion, in the penal sum of \$5,000.00 and running in favor of the Association, as obligee, guaranteeing completion (once construction has been commenced) of all of the improvements, landscaping and other work (other than interior portions of the principal dwelling which are not visible from outside the Lot) in accordance with the plans, specifications and other materials approved by the Committee. Such bond shall be unconditional, be effective for a period of at least two and one-half (2 1/2) years from the date of the Committee's approval, and be automatically payable to the Association upon written certification by the Committee that the improvements, landscaping and other work have not been timely completed in accordance with the plans, specifications and other materials approved by the Committee, which certification specifies the various deficiencies; provided, however, that the Lot Owner shall have a period of sixty (60) days after receipt of a copy of such certification within which to cure all such deficiencies; and provided further that the Association shall promptly surrender said bond to the Lot Owner upon receipt of written certification from the Committee that the improvements, landscaping and other work (other than interior portions of the principal dwelling which are not visible from outside the Lot) have been timely completed in accordance with the plans, specifications and other materials approved by the Committee; or

(b) A promissory note in favor of the Association, in the amount of \$5,000.00, secured by a second mortgage (which mortgage shall be junior only to the construction and permanent financing loans, if any, obtained by the Lot Owner and shall be in form satisfactory to the Committee, in its sole discretion) covering the Owner's Lot. Such note shall be in form satisfactory to the Committee, in its sole discretion, and shall be payable upon demand; provided, however, that such note may provide that the Association may call the note only upon receipt buy it of a written

certification from the Committee that the improvements, landscaping and other work have not been timely completed in accordance with the plans, specifications and other materials approved by the Committee, which certification specifies the various deficiencies, and that the Lot Owner shall have a period of sixty (60) days after receipt of a copy of such certification within which to cure all such deficiencies; and provided further that the note may provide that the Association shall cancel said note if the Lot Owner shall provide to the Association a written certification from the Committee that the improvements, landscaping and other work (other than interior portions of the principal dwelling which are not visible from outside the Lot) have been timely completed in accordance with the plans, specifications and other materials approved by the Committee.

8.10 Prosecution of Work After Approval. After approval by the Committee of any plans, specifications or other materials, and after complying with the requirements set forth in Section 8.9 above, the construction, alteration or other work described in such plans, specifications or other materials shall be performed as promptly and diligently as possible and in complete conformity with said plans, specifications or other materials. Failure to commence such construction, alteration or other work within eighteen (18) months after the date of approval, or within such other time as the Committee shall specify, or the failure to complete the proposed work strictly in accordance with said plans, specifications or other materials within one (1) year after commencement of the work, shall operate automatically to revoke the approval by the Committee and, (a) upon written certification by the Committee that the construction, alteration, landscaping or other work (other than interior portions of the principal dwelling which are not visible from outside the Lot) have not been timely completed (if commenced) in accordance with said plans, specifications or other materials, the Association may retain the cash or enforce the bond, note and/or mortgage provided by the Lot Owner pursuant to Section 8.9 above, and may (but need not) undertake to complete the improvements, landscaping or other work on behalf of the Lot Owner or to restore the Lot to the conditions as nearly as possible to its state prior to any such construction, alteration or other work; and (b) upon demand by the Committee, the Lot upon which such construction, alteration or other work was undertaken shall be restored by the Lot Owner as nearly as possible to its state existing prior to any such construction, alteration or other work; provided that if said Lot is not so restored the Committee or the Association may undertake such restoration and charge the cost thereof to the Owner of said Lot, which cost shall be enforceable as an Assessment in accordance with Article V hereof. The rights and remedies provided for in the preceding sentence are cumulative with all other rights and remedies available to the Association and the Committee under this Declaration and at law or in equity. The Committee and its duly appointed agents may enter upon any Lot at any reasonable time or times to inspect the progress or status of any such construction, alteration or other work. The Committee may Record a notice to show that any such work has not been approved or that any approval given has been automatically revoked.

8.11 Fees. The Committee shall have the right to require payment of a reasonable fee of not less than \$100.00 for review of proposed plans, specifications and other materials.

8.12 Rule-Making Authority. The Committee shall adopt rules and regulations (i) regulating construction at Wailuku Heights Extension Unit II, including, without limitation, dust and noise abatement requirements, use of temporary construction camps, trailers, construction offices, supply and equipment shelters and screening, hours of construction activity and construction equipment routes, and (ii) interpreting or implementing the provisions of this Declaration pertaining to the design of buildings and other improvements, including, without limitation, setback requirements; building height; minimum square footage requirements for improvements; types of building materials; permissible exterior colors; landscaping; and aesthetic requirements. Said rules and regulations shall be called the "Wailuku Heights Extension Unit II Design Rules". A copy of the Wailuku Heights Extension Unit II Design Rules as from time to time adopted, amended or repealed, certified by a member of the Committee, shall be maintained in the Association office and shall be available for inspection during normal business hours by any Owner or prospective Owner or any Architect or agent of any Owner or prospective Owner.

8.13 Liability of Committee Members. Provided that Committee Members act in good faith and with due diligence, neither the Committee nor any member thereof shall be liable to the Association, any Owner or any other Person for any damage, loss or prejudice suffered or claimed on account of:

8.13.1 the approval or disapproval of any plans, specifications and other materials, whether or not defective; or

8.13.2 the construction or performance of any work, whether or not pursuant to approved plans, specifications and other materials; or

8.13.3 the development or manner of development of any land within Wailuku Heights Extension Unit II; or

8.13.4 the execution and Recordation of a form of approval pursuant to Section 8.7, or disapproval pursuant to Section 8.10, whether or not the facts stated therein are correct; or

8.13.5 the performance of any other function pursuant to the provisions of this Declaration.

8.14 Professional Advice. The Committee may employ the services of an Architect or engineer to render professional advice, and may pay a reasonable compensation for such services which compensation may be charged to any Owner who has submitted plans, specifications or other materials requiring review by such Architect or engineer; provided that such compensation may only be charged to such Owner if he has been informed in advance that such compensation will be charged to him.

ARTICLE IX. INSURANCE.

9.1 Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain fire, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Hawaii. All such insurance shall name as insureds Declarant, the Association, the Board, the Wailuku Heights Extension Unit II Environmental Committee and the officers, directors, employees, and agents of Declarant and the Association. All such insurance shall protect each of the insureds as if each were separately insured under separate policies. To the extent reasonably practicable, such fire insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against Declarant, the Association and their officers, directors, employees, and agents and against each Owner and each Owner's employees and Guests; (ii) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of Declarant, the Association or the officers, employees and agents of either Declarant or the Association or of any Owner or such Owner's employees or Guests; (iii) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or mortgagee; (iv) contain a standard mortgage clause endorsement in favor of the mortgagee of any part of Association Property except a mortgagee who is covered by other and separate insurance; and (v) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each mortgagee covered by any standard mortgage clause endorsement. To the extent possible, public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Board deems consistent with good business practice.

The cost and expense of all insurance obtained by the Association, except insurance obtained at the request of and specifically benefitting any particular Owner or group of Owners, shall be an expense of the Association.

9.2 Fire Insurance. The Association shall obtain and maintain fire insurance insuring all Association Property against loss or damage caused by fire and such other hazards as are covered under standard extended coverage policies, with vandalism and malicious mischief endorsements, and if available and if deemed appropriate by the Association, all risk, for the full insurable replacement cost of said Association Property.

9.3 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering bodily injury and property damage liability of the Association, its officers, directors, employees and agents and of each Owner and each

Owner's employees and Guests, arising in connection with ownership, operation and maintenance, occupancy or use of Association Property with limits of not less than \$1,000,000 for each occurrence involving bodily injury liability and/or property damage liability.

9.4 Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

9.5 Insurance by Owners. Each Owner shall be responsible for obtaining insurance he deems desirable, including, without limitation, fire insurance covering improvements, furnishings and personal property belonging to that Owner and that Owner's employees and Guests. Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and shall, to the extent reasonably practicable, contain a waiver of the right of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees against Declarant, its officers, directors, employees and agents and against other Owners and their employees and Guests. A copy of any insurance policy obtained by an Owner shall be furnished to the Association upon request of the Association.

9.6 Receipt and Application of Insurance Proceeds. Except as some particular Person has a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association.

9.7 Other Insurance by Association. The Association shall have the power and authority to obtain and maintain other and additional insurance coverage, including fire insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

9.8 Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any Lot, or of any Owner-installed improvements upon any Lot, the premiums of any policy of insurance purchased by the Association are increased, or a special policy is required, the cost of such increase or specific policy shall be payable by the Owner of such Lot.

ARTICLE X. DESTRUCTION, CONDEMNATION AND RESTORATION OF WAILUKU HEIGHTS EXTENSION, UNIT II.

10.1 Certain Definitions. The following terms shall have the following definitions:

10.1.1 Substantial and Partial Destruction. "Substantial Destruction" shall exist whenever damage or destruction to all of the Common Area is valued at ten percent (10%) or more of the total assessed value of all of the Common Area; "Partial Destruction" shall mean any other damage or destruction.

10.1.2 Substantial and Partial Condemnation. "Substantial Condemnation" shall exist whenever a taking of all of the Common Area under eminent domain or by grant or conveyance in lieu of condemnation is valued at ten percent (10%) or more of the total assessed value of all of the Common Area. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu of eminent domain.

10.1.3 Restoration. "Restoration", in the case of any damage or destruction, shall mean restoration of the Common Area to a condition the same or substantially the same as the condition in which it existed prior to the damage or destruction and in the case of condemnation, shall mean restoration of the remaining portion of the Common Area to a state appropriate for a single-family residential community.

10.1.4 Available Funds. "Available Funds" shall mean any proceeds of insurance or condemnation awards of payments in lieu of condemnation and any uncommitted income or funds of the Association including funds carried over from the previous fiscal year. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee.

10.2 Determination by the Board. Upon the occurrence of any damage or destruction to the Common Area or any part thereof, or upon a complete or partial taking of the Common Area under eminent domain or by grant or conveyance in lieu of condemnation, the Board shall make a determination as to whether such damage or taking was substantial or partial.

10.3 Restoration of the Common Area. Restoration of the Common Area shall be undertaken by the Association without a vote of Owners in the event of Partial Destruction or Partial Condemnation. Within sixty (60) days after the Board has determined that Substantial Destruction or Substantial Condemnation has occurred, the Board shall send each Owner a written description of the Destruction or Condemnation and a ballot on which each Owner shall indicate whether or not Restoration is to be undertaken. Restoration shall be undertaken unless Owners holding two-thirds (2/3) of the voting power of the Association vote against such Restoration. In the event the insurance proceeds actually received exceed the cost of Restoration when such Restoration is undertaken pursuant to this Section, the excess shall be either used as determined by the Association, used to reduce assessments or paid and distributed to all of the Owners in proportion to the number of Points attributable to the Lots owned by such Owners.

10.4 Action if Restoration of the Common Area is Disapproved. If Restoration is not undertaken in the event of Substantial Destruction or Substantial Condemnation, the Association shall remove all damaged or destroyed improvements from the Common Area and restore the Common Area to a safe condition.

10.5 Authority of Association to Restore. The Association, as attorney-in-fact for each Owner, shall have full power and authority to restore the Common Area whenever Restoration is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration.

10.6 Payment of Proceeds. All insurance proceeds shall be paid to the Association.

10.7 Special Assessments for Restoration. Whenever Restoration is to be undertaken, the Association may levy a Supplementary Assessment payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by Available Funds.

10.8 Receipt and Application of Condemnation Funds. All compensation, damages or other proceeds constituting awards for a complete taking of the Common Area or a taking of part of the Common Area under eminent domain or by grant or conveyance in lieu of condemnation shall be payable to the Association. The award shall be applied to costs and expenses of Restoration if undertaken and, to the extent not so applied, shall be used as determined by the Association.

ARTICLE XI. MISCELLANEOUS.

11.1 Release of Dedicated Lots. Declarant shall have the right and power, without having to obtain the consent or approval of the Association, any Lot owner or any other person, to grant or dedicate any Lot or easement owned by Declarant to the County of Maui or the State of Hawaii, or to any other appropriate governmental agency, or to any public or private utility. Notwithstanding any other provision contained in this Declaration to the contrary, upon any such grant or dedication, any such Lot(s) or easement(s) so granted or dedicated shall be free and clear of, and shall no longer be subject to, any of the terms, covenants, conditions or restrictions contained in this Declaration. Upon any such grant or dedication, the release and removal of this Declaration (and all of the terms, covenants, conditions and restrictions contained herein) as an encumbrance upon the Lot(s) or easements so granted or dedicated may, but need not necessarily, be made effective by recording in the Bureau of Conveyances of Hawaii and/or filing in the Office of the Assistant Registrar of the Land Court of Hawaii, a certificate executed by Declarant certifying such grant or dedication of the Lot(s) or easements and noting the release and removal of the Declaration as an encumbrance upon said Lot(s) or easements pursuant to this Section 11.1.

11.2 Duration of Declaration. Each of the provisions contained in this Declaration shall run with the land and continue and remain in full force and effect for a period beginning as of the date of execution of this Declaration and continuing to and including the later of December 31, 2030 or 21 years following the death of Ronald Reagan, President of the United States of America, and his descendants, and the descendants of the two preceding Presidents of the United States of America living on the date of execution hereof.

11.3 Amendment. Any provision contained in this Declaration may be amended or changed, and additional provisions may be added hereto by the affirmative vote of Owners who hold not less than 66.6 percent of the voting power of the Association, except that (a) Section 8.3 can only be amended by the affirmative vote of Owners who hold not less than one hundred percent (100%) of the voting power of the Association, and approved in writing by Declarant or its assigns, and (b) Sections 3.4 and 11.3 can only be amended by the affirmative vote of Owners who hold not less than one hundred percent (100%) of the voting power of the Association; or by Declarant any time prior to the sale of the first Lot in Wailuku Heights Extension Unit II.

11.4 Effect of Provisions of Declaration. Each provision of this Declaration, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration: (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in Wailuku Heights Extension Unit II or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in Wailuku Heights Extension Unit II or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner; (iii) shall be deemed a real covenant by Declarant for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to Wailuku Heights Extension Unit II and each Lot and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of Wailuku Heights Extension Unit II and each Lot; and (iv) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association burdening and encumbering the title to Wailuku Heights Extension Unit II and each Lot in favor of the Association.

11.5 Enforcement and Remedies. In addition to any other remedies herein provided, each provision to this Declaration with respect to an Owner or the Lot of an Owner shall be enforceable by the Association, by Declarant, or by any Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. If any court proceedings are instituted in connection with the right of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party its costs and expenses in connection therewith, including reasonable attorneys' fees.

11.6 Protection of Encumbrancer. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any

mortgage or other lien on any Lot taken in good faith and for value and Recorded prior to the time of Recording of an instrument describing the Lot and listing the name or names of the Owner or Owners of fee simple title to the Lot and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Upon foreclosure of any such mortgage or other lien, no such holder who thereby assumes title to a Lot shall be required to correct past violations hereof with respect to said Lot so long as said Lot is neither occupied nor used for any purpose by such holder but is merely held for prompt resale. The Association, at its sole cost and expense, may correct said past violations. Any such purchaser on foreclosure shall, however, take subject to the Declaration except only that violations or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser, including violations of Article V hereof, shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

11.7 Construction. The provisions of this Declaration shall be liberally construed to promote and effectuate the fundamental concepts of Wailuku Heights Extension Unit II as set forth in this Declaration, and no provision hereof shall be construed to excuse any Person from observing any law or regulation of any governmental body having jurisdiction over Wailuku Heights Extension Unit II.

11.8 Assignment of Powers. Any and all of the rights and powers vested in Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by Declarant to the Association and the Association shall accept the same effective upon the Recording by Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

11.9 Non-Avoidance. No Owner through non-use of the Common Area or by abandonment of his Lot may avoid the burdens or obligations imposed on him by this Declaration.

11.10 Limited Liability. Neither Declarant, the Association, the Board, nor any member, agent or employee of any of the same, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

11.11 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and the heirs, personal representatives, successors and assigns of each.

11.12. Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

11.13. Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

11.14. No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

11.15. Further Assurances. The Association and each Owner hereby agree to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of this Declaration.

11.16. Notices. Any notice, information or material required to be given hereunder shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party, and in any event, when such party actually receives such notice, information or material.

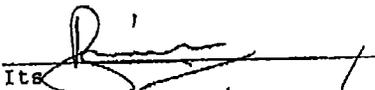
Any notice, information or material delivered or furnished to the name and address of an Owner as last shown on the books of the Association, shall be deemed to be the proper delivery or furnishing of such notice, information or material. If notice of a meeting is given as provided for above, nonreceipt of actual notice by any Owner shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. Any Owner may waive notice of any meeting either prior to or at or after the meeting with the same effect as though notice of the meeting had been given to him. The presence of any Owner at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

Notices, information and material required to be given hereunder to Declarant, the Association, the Board or the Wailuku Heights Extension Environmental Committee shall be addressed to such entity in care of the Association at the office of the Association.

11.17 Word Usage. The use of the masculine gender herein shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, whenever the text so requires.

IN WITNESS WHEREOF, Declarant has executed this Declaration the date and year first above written.

HAWAII STATES PROPERTIES, INC.

By 
Its

By _____
Its

STATE OF HAWAII)
City and) SS.
COUNTY OF MAUI Honolulu)

On this 29th day of January, 1988,
before me appeared Erwin Donald Higgin, to me
personally known, who, being by me duly sworn, did say that he
is the Vice President, respectively, of HAWAII STATES
PROPERTIES, INC., a Hawaii corporation, and that the seal
affixed to the foregoing instrument is the corporate seal of
said corporation and that said instrument was signed and sealed
in behalf of said corporation by authority of its Board of
Directors, and the said Officer acknowledged said instrument to
be the free act and deed of said corporation.

Paul C. Sakumori
Notary Public, State of Hawaii.

My commission expires: 12-14-91

EXHIBIT "A"

FIRST:

All of those certain parcels of land situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, described as follows:

LOTS: 25, area 1,968 square feet, (Roadway),
26, area 5,040 square feet,
27, area 11,984 square feet,
28, area 11,355 square feet,
29, area 10,836 square feet,
30, area 10,262 square feet,
31, area 8,764 square feet,
32, area 8,820 square feet,
33, area 9,548 square feet,
34, area 9,735 square feet,
35, area 9,678 square feet,
36, area 10,499 square feet,
37, area 9,546 square feet,
38, area 9,703 square feet,
39, area 9,843 square feet,
40, area 9,787 square feet,
41, area 9,273 square feet,
42, area 9,045 square feet,
43, area 8,819 square feet,
44, area 8,484 square feet,
45, area 8,434 square feet,
46, area 10,745 square feet,
47, area 9,900 square feet,
48, area 10,232 square feet,
49, area 9,535 square feet,
50, area 8,689 square feet,
51, area 8,670 square feet,
52, area 8,528 square feet,
53, area 8,712 square feet,
54, area 8,129 square feet,
55, area 8,305 square feet,
56, area 9,150 square feet,
57, area 9,094 square feet,
58, area 8,352 square feet,
59, area 8,354 square feet,
60, area 8,217 square feet,
61, area 8,177 square feet,
62, area 8,326 square feet,
63, area 10,323 square feet,
64, area 9,939 square feet,
65, area 10,596 square feet,
66, area 12,081 square feet,
67, area 10,269 square feet,
68, area 12,379 square feet,
69, area 9,016 square feet,
70, area 10,026 square feet,
71, area 8,761 square feet,
72, area 8,759 square feet,
73, area 8,485 square feet,
74, area 8,700 square feet,
75, area 8,777 square feet,
76, area 8,734 square feet,
77, area 8,249 square feet,
78, area 8,359 square feet,
79, area 8,222 square feet.

80, area 8,845 square feet,
81, area 9,930 square feet,
82, area 8,672 square feet,
83, area 8,473 square feet,
84, area 8,182 square feet,
85, area 8,249 square feet,
86, area 8,087 square feet,
87, area 8,475 square feet,
88, area 8,249 square feet,
89, area 8,621 square feet,
90, area 8,471 square feet,
91, area 8,322 square feet,
92, area 8,718 square feet,
93, area 8,716 square feet,
94, area 8,271 square feet,
95, area 8,323 square feet,
96, area 9,397 square feet,
97, area 11,570 square feet,
98, area 10,211 square feet,
99, area 10,572 square feet,
100, area 9,181 square feet,
101, area 8,998 square feet,
102, area 8,656 square feet,
103, area 8,427 square feet,
104, area 8,389 square feet,
105, area 8,323 square feet,
106, area 8,322 square feet,
107, area 8,471 square feet,
108, area 8,777 square feet,
109, area 8,395 square feet,
110, area 8,625 square feet,
111, area 8,681 square feet,
112, area 8,727 square feet,
113, area 8,496 square feet,
114, area 8,441 square feet,
115, area 11,627 square feet,
116, area 8,479 square feet,
117, area 8,435 square feet,
118, area 8,611 square feet,
119, area 8,359 square feet,
120, area 10,123 square feet,
121, area 9,100 square feet,
122, area 8,640 square feet,
123, area 8,332 square feet,
124, area 8,502 square feet,
125, area 8,489 square feet,
126, area 9,056 square feet,
127, area 8,751 square feet,
128, area 8,761 square feet,
129, area 9,818 square feet,
130, area 9,589 square feet,
131, area 13,797 square feet,
132, area 10,387 square feet,
133, area 10,989 square feet,
134, area 10,448 square feet,
135, area 9,011 square feet,
136, area 10,348 square feet,
137, area 9,559 square feet,
138, area 9,565 square feet,
139, area 11,406 square feet,
140, area 11,265 square feet,
141, area 9,714 square feet,
142, area 9,900 square feet,
143, area 10,180 square feet,
144, area 9,959 square feet,

145, area 9,655 square feet,
 146, area 10,247 square feet,
 147, area 10,053 square feet,
 148, area 9,798 square feet,
 149, area 10,527 square feet,
 150, area 10,409 square feet,
 151, area 10,584 square feet,
 152, area 10,565 square feet,
 153, area 12,793 square feet,
 154, area 12,138 square feet,
 155, area 10,004 square feet,
 156, area 10,174 square feet,
 157, area 52,501 square feet, (Roadway),
 158, area 34,209 square feet, (Roadway),
 159, area 29,509 square feet, (Roadway),
 160, area 29,597 square feet, (Roadway),
 161, area 3,840 square feet, (Roadway),
 162, area 3,793 square feet, (Roadway),
 163, area 45,578 square feet, (Roadway),
 164, area 37,791 square feet, (Roadway),
 165, area 14,273 square feet, (Roadway),
 166, area 42,667 square feet, (Roadway),
 167, area 9,899 square feet, (Roadway),
 168, area 10,687 square feet, (Roadway).

all as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 52 of C. Brewer & Co., Ltd.;

Being the premises described in Transfer Certificate of Title No. 298,422 issued to the Declarant herein.

Together with the right of ingress and egress to and from Easements "52" and "53", over and across Lot 169 and together also with right to construct, maintain, and use such drainage facilities upon the easement areas as Grantee shall deem necessary or desirable; as granted to the Declarant herein by instrument dated June 22, 1987, filed as Document No. 1474196; subject, however, to the terms and conditions contained therein.

Together with the right of ingress and egress to and from Easement "54" over and across Lot 169 and together also with right to construct, maintain, and use such drainage facilities upon the easement areas as Grantee shall deem necessary or desirable; as granted to the Declarant herein by instrument dated June 22, 1987, filed as Document No. 1474197; subject, however, to the terms and conditions contained therein.

Together with a nonexclusive easement for roadway purposes over, under, across, along and through Easement "55", as shown on Map 5, filed in the said Land Court with Land Court Application No. 52; Provided, however, that in the event that all or any portion of the easement area shall be dedicated and/or conveyed to the State of Hawaii, the County of Maui, or other governmental authority, said easement with respect to the portion or portions so conveyed and/or dedicated shall immediately terminate; as granted to the Declarant herein by instrument dated June 22, 1987, filed as Document No. 1474198.

SECOND:

All of that certain parcel of land situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, described as follows:

LOT 170, area 0.026 acre, as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 52 of C. Brewer & Co., Ltd.;

Together with a nonexclusive easement for roadway, access and utility purposes as set forth in Grant of Easement dated June 19, 1987, filed as Document No. 1474193 to the Declarant herein, over, under, across, along and through Lot 160, as shown on Map 4, filed in the said Land Court with Land Court Application No. 52; provided, however, that in the event that said Lot 160 or any portion or portions thereof is dedicated and/or conveyed to the State of Hawaii, the County of Maui, or other governmental authority, said easement with respect to the portion or portions thereof so taken shall immediately terminate.

Being the premises described in Transfer Certificate of Title No. 298,423 issued to the Declarant herein.

SUBJECT, HOWEVER, to the following:

1. AS TO LOT 26:

Easement "48" (4,017 square feet) for drainage purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

2. AS TO LOT 27:

Easement "8" (427 square feet) for drainage purposes, as shown on Maps 3 and 4, as set forth by Land Court Order No. 59070, filed February 19, 1981.

3. AS TO LOT 28:

Easement "29" (33 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

4. AS TO LOT 30:

Easement "18" (1,393 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

5. AS TO LOT 33:

Easement "30" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

6. AS TO LOT 36:

Easement "17" (2,039 square feet) for drainage purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

7. AS TO LOT 39:

Easement "32" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

8. AS TO LOT 43:

Easement "33" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

9. AS TO LOT 49:

Easement "34" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

10. AS TO LOTS 53, 78, 79, and 80:

Easement "27" (5,370 square feet) for sewerline and waterline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

11. AS TO LOT 57:

Easement "31" (118 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

12. AS TO LOTS 63 and 70:

Easement "50" (4,746 square feet) for sewerline, waterline and drainline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

13. AS TO LOT 66:

Easement "7" (1,522 square feet) for drainage purposes, as shown on Maps 3 and 4, as set forth by Land Court Order No. 59070, filed February 19, 1981.

14. AS TO LOT 67:

Easement "39" (35 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

15. AS TO LOTS 67 and 68:

Easement "5" (5,452 square feet) for drainage purposes, as shown on Maps 3 and 4, as set forth by Land Court Order No. 59070, filed February 19, 1981.

16. AS TO LOTS 68 and 69:

Easement "49" (2,763 square feet) for sewerline and waterline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

17. AS TO LOTS 67, 97, 98 and 99:

Easement "10" (12,094 square feet) for drainage purposes, as shown on Maps 3 and 4, as set forth by Land Court Order No. 59070, filed February 19, 1981.

18. AS TO LOTS 70 and 71:

Easement "26" (1,744 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

19. AS TO LOT 73:

Easement "40" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

20. AS TO LOTS 74 and 75:

Easement "16" (2,326 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

21. AS TO LOT 77:

Easement "41" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

22. AS TO LOT 79:

Easement "42" (33 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

23. AS TO LOT 80:

Easement "28" (703 square feet) for waterline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

24. AS TO LOTS 87, 110 and 111:

Easement "23" (3,857 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

25. AS TO LOTS 92 and 105:

Easement "51" (2,805 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

26. AS TO LOTS 96 and 101:

Easement "19" (3,324 square feet) for drainage and sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

27. AS TO LOT 99:

Easement "3" (1,995 square feet) for drainage purposes, as shown on Maps 3 and 4, as set forth by Land Court Order No. 59070, filed February 19, 1981.

28. AS TO LOT 100:

Easement "38" (31 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

29. AS TO LOTS 100 and 101:

Easement "25" (2,165 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

30. AS TO LOT 102:

Easement "24" (1,203 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

31. AS TO LOT 105:

Easement "37" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

32. AS TO LOT 118:

Easement "35" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

33. AS TO LOTS 120, 130 and 131:

Easement "22" (9,190 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

34. AS TO LOT 123:

Easement "36" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

35. AS TO LOT 127:

Easement "43" (32 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

36. AS TO LOT 130:

Easement "47" (35 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

37. AS TO LOT 133:

Easement "14" (1,953 square feet) for drainage purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

38. AS TO LOT 137:

Easement "44" (30 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

39. AS TO LOT 142:

Easement "45" (31 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

40. AS TO LOTS 145, 146 and 147:

Easement "20" (2,361 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

41. AS TO LOT 148:

Easement "13" (1,297 square feet) for drainage purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

42. AS TO LOT 149:

Easement "46" (33 square feet) for electrical purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

43. AS TO LOTS 150 and 152:

Easement "21" (3,998 square feet) for sewerline purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

44. AS TO LOT 155:

Easement "15" (1,319 square feet) for drainage purposes, as shown on Map 4, as set forth by Land Court Order No. 83058, filed March 12, 1987.

45. "Reserving, however, unto Wailuku Sugar Company, its successors and assigns, all water and water rights within or appurtenant to the above-described premises; provided, however, that in the exercise of the rights set forth in this paragraph Wailuku Sugar Company, its successors and assigns shall not have the right to drill upon or otherwise disturb the surface of the land or any improvements thereon."; as reserved in Deed dated September 23, 1980, filed in the said Land Court as Land Court Document No. 1033575, and also recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15016 on Page 304.

46. AS TO LOTS 25, 158, 160 and 166:

Grant of Easement in favor of Wailuku Agribusiness Co., Inc. dated June 19, 1987, filed as Document No. 1474192; granting a nonexclusive easement for roadway, access and utility purposes over, under, across, along and through said parcels of land.

47. AS TO LOT 160:

Grant of Easement in favor of Wailuku Agribusiness Co., Inc. dated June 19, 1987, filed as Document No. 1474193; granting a nonexclusive easement for roadway, access and utility purposes over, under, across, along and through said Lot 160.

48. AS TO LOT 170:

(A) Reservations as set forth in Deed dated June 22, 1987, filed as Document No. 1474195, to-wit:

Excepting and reserving, however, unto Grantor, its successors and assigns, forever, all water and water rights within or appurtenant to the granted premises; provided, however, that in the exercise of said rights, Grantor,

its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon;

Excepting and reserving, also, unto the Grantor, its successors and assigns, forever, as appurtenant to the lands which are located adjacent to or in the vicinity of the granted premises and which are now owned and used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operations, the unrestricted right to engage in any type of farming operation, including but not limited to open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting, and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration and other nuisances to be discharged or emitted over and upon the granted premises, Grantee hereby agreeing that Grantor, its successors and assigns, shall not be responsible or liable to Grantee or its successors or assigns for the consequences from the creation and discharge of such noxious emissions.

(B) Restrictive covenants as set forth in Deed dated June 22, 1987, filed as Document No. 1474195.

49. That certain First Mortgage, Security Agreement and Financing Statement made by the Declarant herein in favor of First Hawaiian Creditcorp, Inc., a Hawaii corporation, dated July 24, 1987, and filed as Land Court Document No. 1482196, which said First Mortgage, Security Agreement and Financing Statement was amended by instrument dated August 31, 1987, and filed as Land Court Document No. 1504130.

END OF EXHIBIT "A"

Tax Key: 3-5-002-006 (2)

DHakumet 4 1 of 5

JAMES KRUEGER
ATTORNEY AT LAW
A LAW CORPORATION

2065 MAIN STREET/P. O. BOX 1460
WAILUKU, MAUI, HAWAII 96793

AREA CODE 808
MAUI 244-7444
FAX 244-4177
HONOLULU DIRECT 936-7474

JAMES KRUEGER
A LAW CORPORATION
LICENSED IN HI & CO

IN REPLY, PLEASE REFER
TO OUR FILE NUMBER

INTERNET
www.kruegerlaw.us

E-MAIL
maulew@maui.net

UPCOUNTRY AND
HONOLULU OFFICES
BY APPOINTMENT ONLY

#Pending

November 30, 2004

JOHN L. SULLIVAN
Vice President
OIHANA PROPERTY MANAGEMENT
& SALES, INC.
840 Alua, Suite 103
Wailuku, Maui, Hawaii 96793

RE: DAVID NIEHAUS

Dear Mr. Sullivan:

This office represents David Niehaus, owner of former parcel 144 of the Wailuku Heights Extension - Unit II. Previously, that parcel was merged and legally consolidated into TMK 144-A, a parcel including former parcel 144 and some five or six acres of another lot owned by my client described as TMK 2-3-5-002-005. Lot 144-A has recently been renumbered as lot 171. The other lot has also been renumbered and designated as lot 172. The Land Court only recently redesignated these two lots. For the purpose of previous context, however, the lots involved are referred to by their previous TMK descriptions.

Mr. Niehaus is engaged in enhancing parcel 144-A, although such work is not inclusive of the land which formerly comprised lot 144. Lot 144 is merely providing access from the subdivision to the remainder of lot 144-A.

EXHIBIT "9"

LW 010503

JOHN I. SULLIVAN
Vice President
OIHANA PROPERTY MANAGEMENT &
SALES, INC.
November 30, 2004
Page 2

For reasons which are unclear, members of the board of the Wailuku Heights Extension - Unit II, hereafter "unit", have harassed my client, posting "stop work" signs on former lot 144 and trespassing onto the portions of lot 144-A which is mauka and additional to the metes and bounds of the former lot 144.

Numerous other actions have been engaged in by unit, presumably with the agreement of all unit board members, all of which interfere with quiet enjoyment of my client's property. Unit's action is also interfering with a potential sale of lot 144-A by my client to another.

Unit has no right to object to anything my client does with lot 144-A as it is a lot never under any jurisdiction of unit. The fact that lot 144 became consolidated, with no objection by unit, with other property of my client, thereby making up lot 144-A, is a circumstance which is not described in the declaration of protective covenants, conditions and restrictions for Wailuku Heights Extension - Unit II. Accordingly, no portion of the declaration applies to lot 144-A.

Unit has referred in writing to my client that he has violated Sec. 2.2 of the declaration. Even were the

JOHN L. SULLIVAN
Vice President
OIHANA PROPERTY MANAGEMENT &
SALES, INC.
November 30, 2004
Page 3

declaration applicable to lot 144-A, which it is not, the reference therein is to a change in the existing state of a lot. As can be readily seen from the adjacent road, nothing my client has done has effected any change in the existing state of what was lot 144.

Similarly inapplicable are the provisions of Sec. 2.3 for the foregoing reasons. There are, therefore, no legal bases had by unit to objecting to anything my client is doing on lot 144-A, a property not subject to the declaration provisions as described on the map appearing at the end of the declaration or as the word "lot" is defined at p. 2 of the declaration.

The use of former lot 144, now portion of lot 144-A, for access to and from the remainder of lot 144-A, carved out of lot 169, is a use permitted by the declaration. See p. 3, para 2.1 relating to use of subdivision property for "roads" as being a permitted use.

It is clear that the objections unit has been implementing to my client's use of lot 144-A is based on a mistaken belief that the declaration provides the unit such right. Now that I have pointed out the inapplicability of the declaration to the consolidated lot, 144-A, any further

JOHN L. SULLIVAN
Vice President
OIHANA PROPERTY MANAGEMENT &
SALES, INC.
November 30, 2004
Page 4

objection or action taken by the unit, in contravention to my client's proper enjoyment and use of his property, will be construed as intentionally malicious, consciously disregarding of his legal rights, abuse of trespass laws, and other related resulting damages, for which each of the board members of unit will be sued and damages sought therefrom.

Your action against my client's property will stop, one way or another, if not immediately, without further claim made by client against each of you, or later, in the courts, together with each of your payment of my client's attorney's fees and court costs, and punitive damages sought in addition, as well as any damages as my client may incur for your interference with his contractual relations re the sale of his property.

Please turn this letter over to your applicable insurance liability company forthwith together also to your attorneys. Because of the intentional nature of your conduct, it may be that the insurer will not cover this claim and each of you will be personally responsible for such damages as my client incurs resulting from your mistaken application of the unit declaration to my client's

JOHN L. SULLIVAN
Vice President
OIHANA PROPERTY MANAGEMENT &
SALES, INC.
November 30, 2004
Page 5

lot 144-A.

Whether suit is required is purely up to you and each of you. Either you forthwith desist from any further action relating to lot 144-A or you don't. The choice is yours.

A brief note from the unit president that the unit will take no further action respecting lot 144-A will suffice if received by me on or before December 15, 2004. This situation is mindful to me of the story about the little old lady in the dental chair, who, when the dentist leaned over to drill on her, gently with her hand encapsulated his genitals and said: "Now, doctor, we aren't going to hurt one another, are we?"

Very sincerely,



JAMES KRUEGER

JK:kkw

P.S. Extra copies of this letter are enclosed for your submission of this letter to each member of the Board of Directors of Wailuku Heights Extension - Unit II.

cc: David Niehaus
Clifford Rhodes, M.D.

Enclosures

P:\NIEHAUS\0411291L

LW 010507

Dec. 15. 2004 2:12PM Certified Management of Maui

No. 3755 P. 1

December 15, 2004

VIA FACSIMILE (244-4177)
AND REGULAR MAIL

MR. JAMES KRUEGER, ESQ.
Attorney at Law
2065 Main Street
P.O. Box 1460
Wailuku, Maui, Hawaii 96793

Re: David Niehaus

Dear Mr. Krueger:

The Board of Wailuku Heights Extension - Unit II (the "Subdivision") homeowners' association (the "Association") has reviewed your letter dated November 30, 2004. This letter is being sent on behalf of the Board in response to your communication.

As an initial matter, we disagree with your conclusion that the Association has no right to object to anything Mr. Niehaus does with Lot 144-A. While it may be true that there is no control of the portion of the newly configured Lot 144-A which is outside of the boundaries of the Subdivision, the portion which was formerly Lot 144 is and will remain under the jurisdiction of the Association and specifically subject to the provisions, rights and liabilities of the Declaration. No action by Mr. Niehaus can unilaterally remove the Declaration or any other encumbrance from Lot 144.

Therefore, the Association does have the power to review, regulate and require prior approval of actions to be taken by Mr. Niehaus on the portion of Lot 144-A which is still within the Subdivision.

The Association also disagrees with your conclusion that an access roadway is a "permitted use" of a "Lot" under the Declaration. The Declaration specifically limits the use of Lots within the subdivision to residential purposes, provided that uses incidental to such residential purposes, including "roads serving the residents of such Lots and portions of Lots." In other words, a driveway serving a residence located on a Lot within the subdivision is permitted; this section does not make a roadway running through a Lot to serve parcels outside the subdivision a permitted purpose.

We again emphasize that merely consolidating Lot 144 with TMK No. (2) 3-5-002-005 and obtaining a new Lot number for the reconfigured property does not remove Lot 144 from the coverage of the Declaration or the jurisdiction of the Association.

EXHIBIT "10"

LW 010501

Received Time Dec. 15. 2:41PM
No. 5486 P. 2

JAMES KRUEGER MAIL ALIC
Dec. 16. 2004 2:35PM

MR. JAMES KRUEGER, ESQ.
December 15, 2004
Page 2

Notwithstanding the foregoing, the Association has reviewed this matter and Mr. Niehaus is hereby advised that the Association does not object to his further use of former Lot 144 for a temporary ingress and egress to the remainder of new Lot 144-A on the following conditions:

1. Mr. Niehaus confirms in writing that the portion of Lot 144-A which remains within the boundaries of the Subdivision is subject to the provisions of the Declaration and the jurisdiction of the Association;

2. Prior to taking any further action which will make a change in the existing state of former Lot 144, such as earth movement (i.e. grading), construction, clearing, or planting, your client will obtain the prior written approval of the Association's Environmental Committee pursuant to Article VIII of the Declaration;

3. In addition to condition 2 above, and in the event Mr. Niehaus decides to construct any structure, a permanent roadway or other improvement on former Lot 144, he shall submit plans for such work for approval as required under the Declaration prior to commencing any such work; and

4. Any actions taken by Mr. Niehaus in using the former Lot 144 for access to the remainder of new Lot 144-A shall be taken in a manner which will minimize the adverse effects on surrounding Lot owners. As you may not be aware, the use of former Lot 144-A by trucks and other heavy equipment has created excessive dust, noise and a significant infestation of mice, rats and other pests. Your client must take steps to address these problems or appropriate remedies will have to be pursued against him.

Please confirm your client's agreement to these conditions in writing before any further work is performed on former Lot 144-A. Thank you for your attention to this matter

Sincerely,


WARREN M. HARRISON
President, Wailuku Heights Extension Unit II

249-0924

LW 010502

Received Time Dec. 15. 2:41PM
No. 5469

Dec. 16. 2004 2:35PM JAMES KRUEGER AAL ALC

A-Hatunutu 6

Page 1 of 1

JAMES KRUEGER
ATTORNEY AT LAW
A LAW CORPORATION
2065 MAIN STREET/P. O. BOX 1480
WAILUKU, MAUI, HAWAII 96793

JAMES KRUEGER
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IN REPLY, PLEASE REFER
TO OUR FILE NUMBER

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MAUI 244-7444
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HONOLULU DIRECT 535-7474

UPCOUNTRY AND
HONOLULU OFFICES
BY APPOINTMENT ONLY

December 21, 2004

Mr. Warren Harrison
Certified Management of Maui
270 Hookahi
Suite 201
Kahului, HI. 96732

Re: David Neihaus

Dear Mr. Harrison:

In reply to yours of December 15, 2004, please be advised that my client will abide the provisions of the declaration applicable to former lot 144.

Very sincerely,


JAMES KRUEGER

JK:ew

cc:David Neihaus

EXHIBIT "11"

LW 010500

No. 5563 P. 2/2

Dec. 22. 2004 10:21AM JAMES KRUEGER AAL ALC



SELLER'S REAL PROPERTY DISCLOSURE STATEMENT
VACANT LAND

Hawaii Association of Realtors® Standard Form
Revised 9/03 (NC) For Release 11/04



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Information obtained from Public Records (May Be Completed by Listing Broker)
Seller: Niehaus, Rhodes Property Address/Location:
Tax Map Key: Div. 2 /Zone 3 /Sec. 5 /Plat 15 /Parcel 71 /CPR (if applicable). Land Area: 5.75
County Zoning-State Land Use Designation: Ag/R-3 [X] FS [N/A] LH (Disclosure to be provided) Flood Zone
Broker/Salesperson: Tamio Iwado/ Vanessa Schwabenland Company: Prudential Iwado Realty, Inc.

*Purpose of Disclosure Statement: Under Hawaii law, a Seller is obligated to fully and accurately disclose to a Buyer any material fact, relating to Property. This statement is intended to assist Seller in organizing the facts to be presented to Buyer and to provide Buyer with notice concerning the condition of Property to assist Buyer in evaluating Property.

BUYERS ARE ADVISED TO OBTAIN BUYER'S OWN PUBLIC RECORDS, PROFESSIONAL ADVICE AND/OR HAVE AN EXPERT INSPECT PROPERTY. SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR HAVE AN EXPERT INSPECT PROPERTY.

MUST be completed by Seller Only

Seller's Statement: This is a statement concerning information relating to the condition of Property that: (I) are within the knowledge or control of Seller; or (II) can be observed from visible accessible areas. Seller may be ignorant of problems affecting the Property, and Buyer should take care to protect Buyer's own interests by conducting thorough inspections and obtaining expert help in evaluating Property.

Instructions to Seller: (1) Answer ALL questions. (2) Identify and clearly explain any material facts concerning Property that are known to you. (3) Attach additional pages with your signature, if additional space is needed. (4) Complete this form yourself. (5) NTMK means NOT TO MY KNOWLEDGE. (6) If the item does not apply to Property, line it out.

Approximate date of last personal inspection: December 2004
General Topography: steep hillside covered with vegetation

A. Do any of the following conditions exist on Property? Explain "YES" answers at the end of section A.

- 1) [] Yes [] No [X] NTMK Does any other party have an unrecorded interest in Property and/or a say in its disposition?
2) [] Yes [] No [X] NTMK Are there any lawsuits or foreclosure actions affecting Property?
3) [] Yes [] No [] NTMK Is there a Property map or study available?
4) [X] Yes [] No [] NTMK Are there any easements affecting Property? see copy "Exhibit A" attached (Attachment #1) (2 pages)
5) [] Yes [] No [X] NTMK Are there any roadways, driveways, walls, fences, and/or other improvements which are shared with adjoining land owners?
5a) [] Yes [] No [X] NTMK Are there any known encroachments?
5b) [] Yes [] No [X] NTMK Are there any written agreements concerning these items?
5c) [] Yes [] No [X] NTMK Are there any known de minimus structure position discrepancies?
6) [] Yes [] No [X] NTMK Are there substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, contaminated soil or water on Property?
7) [] Yes [] No [] NTMK Is there filled land on Property?
8) [X] Yes [] No [] NTMK Is there any settling or slippage, sliding, subsidence or other soil problems? see addendum
9) [] Yes [] No [] NTMK Are there any drainage, water infiltration, seepage, flooding or grading problems?

BUYER'S INITIALS & DATE

SELLER'S INITIALS & DATE

Property Reference:

©Hawaii Association of REALTORS®
Seller's Real Property Disclosure Statement
Vacant Land
RR106 Rev. 9/03



| | Yes | No | NT/AK | |
|------|-------------------------------------|--------------------------|-------------------------------------|---|
| 10) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there, or have there been, any visible signs of mold, mildew and/or fungus on this Property? |
| 11) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there any violations of government regulations/ordinances related to Property? |
| 11a) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there any zoning or setback violations and/or citations? |
| 12) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there any violations of existing land leases? |
| 13) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is Property subject to Covenants, Conditions and Restrictions (CC&Rs)? |
| 13a) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there any violations of the Covenants, Conditions and Restrictions covering Property? |
| 13b) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there any specific county restrictions on building? <i>see addendum answer 8</i> |
| 13c) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there any restrictions other than county on building? |
| 14) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there any lease agreements affecting Property? |
| 14a) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are there any violations of the lease agreements? |
| 15) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is the location of Property in a (tsunami (tidal wave) inundation area and/or flood zone? |
| 16) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is Property located in volcanic hazard Zone 1 or 2? (Only applicable to Island of Hawaii) |
| 17) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is Property located in a geothermal subzone? |
| 18) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is Property located in a shoreline management area? |
| 19) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is there any existing or past damage to Property from earthquakes, fire, floods, landslides, tsunami, volcanic activity, or winds? |
| 20) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is Property subject to air pollution? |
| 21) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is Property located in an aircraft path and/or does it experience regular excessive aircraft noise? |
| 21a) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is Property exposed to other types of recurring excessive noise (i.e. night club, school, etc.)? |
| 22) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is Property part of a Condominium Property Regimen (CPR)? |
| 22a) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Has a Final Public Report been Issued? |
| 22b) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are there any "common areas" facilities (such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others? |
| 23) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is Property subject to a Homeowners' and/or Community Association? |
| 23a) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If yes, what are the fees and payments? |
| 23b) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is membership mandatory? |
| 24) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Are you aware of any adverse conditions existing in the general neighborhood/area (such as pesticides, soil problems, irrigation, etc.)? |
| 25) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is there any additional information you should disclose (i.e. pending developments in the area, road widening projects, zoning changes, homicide, felony, or suicide occurring on Property etc.)? |
| 26) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is Property located within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy, or Marine Corps airport as officially designated by military authorities? |

*see attachments 3, 4, 5, 6 - with
to and from Waikiki Heights
Board Extension II*

see 8

see addendum

see addendum

Explanation of "yes" answers in Section A. Indicate corresponding number.

B. Utilities; Miscellaneous

NOTE: Re: B-27, 28, 29, 30: Sellers make no representation regarding any additional cost or action which may be necessary to provide waste water sewage system, electrical, telephone or television cable service to Property. Buyers are advised to contact the appropriate companies or agencies to determine actual availability, and whether or not additional measures may need to be taken to obtain these services.

| | | | | | | | | |
|---------------------|------|--|---|--|---|------------------------------------|--------------------------------------|-------------------------------|
| <i>see addendum</i> | 27) | Source of Water Supply available to this Property: | <input checked="" type="checkbox"/> Public | <input type="checkbox"/> Private | <input type="checkbox"/> Well | <input type="checkbox"/> Catchment | <input type="checkbox"/> Other _____ | <input type="checkbox"/> None |
| | | | <input checked="" type="checkbox"/> Installed | <input type="checkbox"/> Not Installed | | | | |
| | 28) | Existing Waste Water/Sewage System: | <input type="checkbox"/> Private | <input type="checkbox"/> Cesspool | <input type="checkbox"/> Septic System | <input type="checkbox"/> None | | |
| | | Is a wastewater system installed on Property? | <input checked="" type="checkbox"/> Yes | | <input type="checkbox"/> No | | | |
| | | Public connected: | <input type="checkbox"/> Yes | | <input checked="" type="checkbox"/> No | | | |
| | | If no, is connection required upon transfer? | <input checked="" type="checkbox"/> Yes | | <input type="checkbox"/> No | | | |
| | 29) | Source of Electrical Power: | <input checked="" type="checkbox"/> Public | <input type="checkbox"/> SSPP (Special Subdivision Project Provision) or | <input type="checkbox"/> Other _____ | <input type="checkbox"/> None | | |
| | 30) | Telephone Service: | <input type="checkbox"/> Yes | | <input type="checkbox"/> No | | | |
| | 31) | Television Cable Service: | <input type="checkbox"/> Yes | | <input type="checkbox"/> Not available | | | |
| | 32) | Access: Is by | <input checked="" type="checkbox"/> Public | <input type="checkbox"/> Private Road | <input type="checkbox"/> Other | | | |
| | 32a) | If private access, is it legal and of record? | <input type="checkbox"/> Yes | | <input type="checkbox"/> No | | | |
| <i>see addendum</i> | 32b) | Roadway: | <input checked="" type="checkbox"/> Paved | <input checked="" type="checkbox"/> Unpaved but graded | <input type="checkbox"/> Not in | | | |
| | 33) | Survey: All survey boundary pins are: | <input type="checkbox"/> Visible | | <input checked="" type="checkbox"/> Not visible | | | |

BUYER'S INITIALS & DATE

CR 1/11/05 DW 1/11/05
SELLER'S INITIALS & DATE

Property Reference: _____

ADDENDUM SELLER'S REAL PROPERTY DISCLOSURE
STATEMENT VACANT LAND TMK 2 3 5 15 71

8. Some areas of the property are steep and could possibly be subject to erosion. A soil engineering study will be required prior to doing any significant excavation. This was a requirement of the county subdivision process and will be listed in the deed when the property is transferred (see attachment #2, letter to Mr. Francis Cerizo submitted 1,5,04 as part of subdivision application).
9. There is a concrete drainage culvert that runs along a portion of the lower border of the property. A small section of this was filled with dirt to allow for heavy equipment to access the property to build the road. This was done at the apex of the culvert where the water flows down in 2 different directions to minimize any affect the filling would have on drainage and flood control. It is not impossible that at some point for some reason it will be necessary to remove the dirt from the culvert and perhaps build a small bridge over the culvert.
15. The property itself is not in a flood zone but the border of portions of the property are at the top of a steep ravine and the bottom of the ravine (which is not a part of the property) could be subject to flooding.
- 22b Wailuku Heights has some common areas such as a park.
- 23-23b Wailuku Heights Extension Unit II Homeowners Association membership is mandatory. Annual fees are approximately \$70.
27. Water meter is installed at beginning of property. Pipes will need to be run to wherever water will eventually be used.
- 28-31. Sewage, phone, electric and cable exist in the Wailuku Heights subdivision.
32. Roadway through Wailuku Heights subdivision to border of property is a paved public road. The small portion of the lot that is part of Wailuku Heights subdivision has no roadway grading done. An unpaved dirt road has been created through an area of area of the property with is not in the Wailuku Heights subdivision. This was done at the end of 2004 using a grading permit issued by the County of Maui. A soil engineering study was not done to create this road.

Sellers Initials *CR* Date *1/11/05* Sellers initials *DN* Date *1/11/05*

LW 010543

Attachment #1 page (1) of (2)

EXHIBIT "A"

All that certain parcel of land situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, described as follows:

LOT 144, area 9,959 square feet, more or less, as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 52 of C. Brewer & Co., Ltd.

TOGETHER WITH a nonexclusive easement for roadway purposes over, under, across, along and through Easement "55", as shown on Map 5, filed in said Office of the Assistant Registrar of the Land Court with Land Court Application No. 52; provided, however, that in the event that all or any portion of the easement area shall be dedicated and/or conveyed to the State of Hawaii, the County of Maui, or other governmental authority, said easement with respect to the portion or portions so conveyed and/or dedicated shall immediately terminate; as granted to Grantor herein by instrument dated June 22, 1987, filed as Land Court Document No. 1474198.

TOGETHER ALSO WITH a nonexclusive easement for roadway, access and utility purposes over, under, across, along and through Lot 25, area 1,968 square feet, as shown on Map 4, filed in said Office of the Assistant Registrar of the Land Court with Land Court Application No. 52; provided, however, that in the event that any of said lots or any portion or portions thereof is dedicated and/or conveyed to the State of Hawaii, the County of Maui, or other governmental authority, or to the Wailuku Heights Extension Unit II Homeowners Association, said easement with respect to the portion or portions thereof so dedicated and/or conveyed shall immediately terminate.

Handwritten note: A-1 5-14-11 ALP J.M.

Being all the property described in the DEED dated May 17, 2000 from RANDAL FUMIO ODA, single as Grantor, to ALVIN WAYNE AKIYAMA and KAREN NANBARA AKIYAMA, husband and wife, as Tenants by the Entirety as Grantee, recorded June 9, 2000 in said Office of the Assistant Registrar as Land Court Document No. 2631145.

Being all the property described in and covered by TRANSFER CERTIFICATE OF TITLE NO. 556,424.

SUBJECT, HOWEVER, to the following:

1. "Reserving, however, unto Wailuku Sugar Company, its successors and assigns, all water and water rights within or appurtenant to the above-described premises; provided, however, that in the exercise of the rights set forth in this paragraph Wailuku Sugar Company, its successors and assigns shall not have the right to drill upon or otherwise disturb the surface of the land or any improvements thereon."; as reserved in Deed dated September 23, 1980, filed as

Land Court Document No. 1033575, and also recorded in the Bureau of Conveyances of the State of Hawaii in Book 15016, Page 304.

2. Exceptions and reservations, covenants and agreements as contained in that certain DEED, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons dated June 22, 1987, filed in said Office of the Assistant Registrar as Land Court Document No. 1474194.

3. DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAILUKU HEIGHTS EXTENSION - UNIT II, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons dated January 29, 1988, filed in said Office of the Assistant Registrar as Land Court Document No. 1530403.

END OF EXHIBIT "A"
Tax Map Key No. (2) 3-5-15-071

PAUL R. MANCINI*
THOMAS D. WELCH, JR.
JAMES W. GEIGER

MANCINI, WELCH & GEIGER LLP
A LIMITED LIABILITY LAW PARTNERSHIP

THE KAHULUI BUILDING
33 LONO AVE., SUITE 470
KAHULUI, HAWAII
96732-1681

COUNSEL
ROSALYN LOOMIS
PETER A. HOROVITZ
ROBERT A. RICHARDSON

TELEPHONE:
(808) 871-8351

FACSIMILE:
(808) 871-0732

*A LAW CORPORATION

April 1, 2005

Via facsimile (877-5078)

Vanessa Schwadenland
Prudential Iwado Realty, Inc.
296-A Alamaha Street
Kahului, Hawaii 96732

Re: 0 Kulaiwi Drive, Wailuku, Hawaii 96793 (the "Property"); Escrow No. A5-23-0017;
DROA Reference Date- 1/7/2005, Buyers- Mr. & Mrs. Wilson,
Sellers- David Niehaus, et al.

Dear Ms. Schwadenland:

I represent the Wilsons with regard to the above referenced Property. There are a few items that must be clarified with regard to the Wailuku Heights Extension-Unit II Homeowners Association before the Wilsons can accept the above referenced Property. Notably:

1. We need assurances from the Association that the former Lot 144 can be utilized for access to the full Lot 171 in perpetuity. The letters that we have received indicate that the Association has granted access to the full Lot 171 through the former Lot 144 only on temporary basis;
2. We need assurances that the Association's building restrictions apply only to the former Lot 144, and do not apply to that portion of Lot 171 which was not made as of the former Lot 144. For example, we need assurances that a main house and any other structures permitted under County regulations may be built wholly on that portion of Lot 171 which is not made up of the former Lot 144 irrespective of the fact that the Association's Declaration allows only a single residential structure per lot;
3. We need assurances that for all purposes, i.e. assessments, the Association will only take into account the area of the former Lot 144, and will not take into account the remaining portion of Lot 171. For example, if assessments for yearly dues are based on acreage, only the acreage of the former Lot 144 would be taken into account for such assessment, and not the additional five plus acres that was consolidated.

Ultimately these agreements must be set forth in an amendment to the Declaration and By-Laws that apply to the Association. We understand that this may not be feasible within the time permitted for closing this transaction. At this point, if the Association can give us a binding written commitment to amend its Declaration and/or By-Laws in accordance with these understandings, the Wilsons may, subject to our review and approval of the same, be willing to close within the time

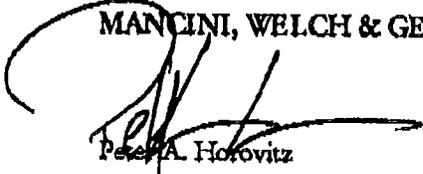
89182

EXHIBIT "13"

schedule of the DROA. We need to address these issues within the due diligence period, so please contact me by Tuesday, April 5, 2005 to discuss how best to proceed. I look forward to hearing from you.

Very truly yours,

MANCINI, WELCH & GEIGER LLP



Peter A. Horowitz

PAHlg

cc: Tamara Cabanilla-Aracayos- Tide Guaranty
Paul McLaughlin- Coldwell Banker Island Properties
Mr. & Mrs. Bill Wilson

April 24, 2005

Mr. Warren Harrison
415 Kulaiwi Drive
Wailuku, HI 96753

Dear Mr. Harrison

Thank you for your verbal response to our request to be given permanent approval for full use of the former Wailuku Heights subdivision lot #144 for access purposes.

As you are aware we are purchasing a 5.75 acre piece of property above Wailuku Heights, part of which is the former lot #144. Our intended use of lot #144 is for an entry to the property above where we will be building our primary residence.

We want to assure the Wailuku Heights Board of Directors and the Wailuku Heights residents that we look forward to being good neighbors. One of the things that attracted us to the property was the nicely landscaped and well-maintained yards of the neighborhood. Landscaping and gardens are our passion. Our home in New York, which we also built, has been featured in the National Garden Conservancy publication for fine gardens in the U.S.

We intend to have lot #144 fronting Kulaiwi Dr. designed and landscaped professionally. All plans for landscaping for lot #144 will be submitted to the Wailuku Heights directors and landscape committee for their review and approval. We first, however must determine where the driveway into the property will be located which requires an engineering study and plans. The landscaping plans would then follow the entry driveway design.

As stated in Mr. Horovitz's letter of April 1, 2005 to Ms. Schwabenland, and Ms. Schwabenland's letter to you, we request that the Wailuku Heights Homeowners Association grant us permanent rather than temporary use of lot #144 for access to the new full (5.75 acre) lot #177.

Thank you for your consideration in the matter, we look forward to your earliest reply.

Sincerely,



Bill & Leona Wilson
70 Old Roaring Brook Road
Mount Kisco, NY 10549
Ph. 914) 666 8446

LW 010511

EXHIBIT "14"

PAGE:2

May 9, 2005

David M. Jorgensen, Esq.
Ing Horikawa & Jorgensen
2145 Wells Street
Suite 204
Wailuku, Hawaii 96793

Dear Dave,

This letter is to CORRECT Peter Horovitz' letter of May 4th which contained INACCURATE information.

My apologies for the confusion. For whatever reason, I did not see Peter's letter prior to being sent. I suspect it was sent to our Hawaiian home when in fact we were in New York.

In any case.....to avoid further confusion, this is my letter to you and the Board of Wailuku Heights Community Association.

- 1) We will NOT subdivide Lot 144. We WILL maintain agriculture zoning.
- 2) We will construct a main house for ourselves.
- 3) We will construct a small cottage for our staff of 17 years. They have decided to join us in Hawaii.
- 4) We need assurance that PERMANENT access through the former Lot 144 to the ag portion be allowed.
- 5) Assurance that only the area of the former Lot 144 be taken into consideration for Community Association purposes.
- 6) Assurance that the landscaping committee be reasonable in landscaping approval.

I hope this letter clarifies our position and that the Association will act promptly in making its decision. It has been a bit trying, however, look forward to building our home there and being a good neighbor.

Yours sincerely,



Leona R. Wilson

EXHIBIT "15"

May 17, 2005

Mr. David M. Jorgensen, Esq.
Ing. Horikawa & Jorgensen
2145 Wells St., Suite 204
Wailuku, HI 96793

Re: 0 Kulaiwi Drive, Wailuku Heights

Dear Dave

Hopefully this letter will be our final explanation to the Wailuku Heights Community Association questions regarding our intended use of the subject property. If we are unable to come to an equitable understanding soon, we will be looking for another property.

- 1) We will not subdivide the 5.57 acres (the new lot #171). We will have a document drawn up to state this and it will be recorded and run with the land.
- 2) We will be constructing, on lot #171, a main dwelling and a secondary dwelling for our staff of 17 years (per agricultural zoning regs).
- 3) There will be no dwelling constructed on the former Wailuku Heights lot #144. This lot will be used as a driveway entry only and will be well landscaped. Landscaping plans for former lot #144 will be submitted to Wailuku Heights Community Association for their approval.

We request that the Association grant us PERMANENT access through former lot #144 as soon as possible. We would like assurance that only the area of the former lot #144 be taken into consideration for Community Association purposes.

We apologize for any confusion with prior correspondence and discussions. We look forward to a prompt written reply.

Sincerely Yours,

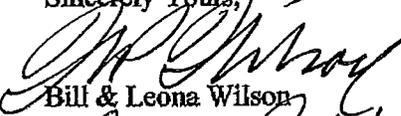

Bill & Leona Wilson


EXHIBIT "16"

Paul MacLaughlin

From: bfm871@aol.com
Sent: Wednesday, June 08, 2005 11:09 AM
To: paulmac@wailea.net
Subject: Wailuku Heights

Dear Paul,

This letter is to will serve to confirm our conversation of Monday.

- 1.) Wailuku Heights II has no objection to the Wilson building plan.
- 2.) We do request the Wilson's to have their attorneys prepare all the documents related to this transaction.
- 3.) We do require for our approval of this driveway two things:
 - a.) That the five acres will never be sub-divided.
 - b.) That the Wilson's will do a driveway & landscape plan for lot 144 to be submitted to the Board of Wailuku Heights for approval.

If you have any questions please call me at (808) 871-7911.

Sincerely,

Mark Ballard
Vice President
Wailuku Heights II

EXHIBIT "17"

6/9/2005

06-09-2005 11:54 W P WILSON 914 666 7428

PAGE: 1

Subj: Lot 171/Lot 144 - Niehaus & Rhodes to Lona Ridge, LLC
Date: 6/17/2005 3:53:24 P.M. Eastern Daylight Time
From:
To:
CC:

Aloha All! Sorry for the delay but it was a bit more difficult trying to make everything flow in the Deed.

Anyway, attached is the Warranty Deed with Covenants and Restrictions to be executed by Mr. Niehaus and Mr. Rhodes, as Grantors, and Mr. and Mrs. Wilson as the Members of and on behalf of Lona Ridge, LLC, as Grantees. I am also attaching a copy of the Articles of Organization of Lona Ridge, LLC, for your review, reference and files.

Please review the draft Warranty Deed and let me know if you see any problems or have any questions or comments.

Mahalo and have a great day!

Dave Jorgensen
2145 Wells Street, Ste. 204
Walluku, Maui, Hawaii 96793
(808) 242-4555
(808) 244-6964 (fax)

EXHIBIT "18"

Wilson Misc

221



L-425 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED
JUN 29, 2005 08:01 AM
Doc No(s) 3288311
on Cert(s) 719,376
Issuance of Cert(s) 755,542



20 1/1 Z1

16/ CARL T. WATANABE
ASSISTANT REGISTRAR
CONVEYANCE TAX: \$810.00

SM
1/8/05

LAND COURT SYSTEM _____ REGULAR SYSTEM _____

After Recordation Return by Mail Pickup () To:

Lona Ridge LLC
M/M William Wilson
192 Halau P/
Kihei HI 96753

TG: 200501397 B
TGE: 052030017
Tamara Cabanilla-
Arica yds

TOTAL NUMBER OF PAGES: _____

H:\Data\Melody\DOCS\DJW\WILSON leona\Warranty Deed (06-17-05).g64.doc
T.M.K.: (2) 3-5-015-071

WARRANTY DEED WITH COVENANTS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That **DAVID PAUL NIEHAUS**, husband of Deborah Laurine Mathias, also known as Deborah Niehaus, whose address is 1020 Piipolo Rd Makawao HI 96768 and **CLIFFORD PAUL RHODES**, husband of Karen Marie Rhodes, whose address is 125 Mano Dr Kula HI 96790, hereafter the "Grantor", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor paid by **LONA RIDGE, LLC**, a Hawaii limited liability company, whose address is 192 Halau Street, Wailea, Maui, Hawaii 96753, hereafter the "Grantee", receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey all of that certain property more fully described in Exhibit "A" hereto attached and incorporated herein by reference, including any fixtures, appliances, furniture and/or items of personal property itemized therein (the "Property"), unto the Grantee, as Tenant in Severalty, its successors and assigns, forever.

AND the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same together with all buildings, improvements, tenements, rights, easements, hereditaments, privileges and appurtenances thereunto belonging or appertaining, or held and enjoyed in connection therewith unto the Grantee according to the tenancy hereinabove set forth, absolutely and in fee simple, forever.

AND the Grantor hereby covenants with the Grantee that the Grantor is lawfully seised in fee simple of the Property and that the Grantor has good right to convey the same as aforesaid; that the Property is free and clear of all encumbrances, except as may be described in Exhibit "A"; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee, forever, against the lawful claims and demands of all persons, except as aforesaid.

AND the Grantee does hereby acknowledge and confirm that a portion of the Property was formerly identified as Lot 144 of the Wailuku Heights Extension – Unit II Subdivision (the "Subdivision"), that said Lot 144 was consolidated with the remainder of the Property which lies outside of the Subdivision, and that the portion of the Property formerly identified as Lot 144 remains bound by the terms and conditions of the documents governing and controlling actions and activities within the Subdivision, including the Declaration of Protective Covenants, Conditions and Restrictions for Wailuku Heights Extension – Unit II, dated January 29, 1988, filed in the Office of the Assistant Registrar for the State of Hawaii as Land Court Document No. 1530403 (the "Declaration").

AND the Grantee does hereby further acknowledge and confirm that Grantee has requested that the Homeowners' Association of the Subdivision (the "HOA") consent to and approve the use by Grantee of the portion of the Property formerly identified as Lot 144 for a driveway to access the remainder of the Property and for the landscaping by Grantee of former Lot 144, and that said HOA has agreed to such use and landscaping subject to certain conditions, which conditions grantee is willing to agree to and to confirm herein.

AND, THEREFORE, Grantee does hereby covenant and agree for the benefit of the owners from time to time of lots in the Subdivision as follows: (1) that Grantee shall submit driveway and landscaping plans to the HOA for review and approval; (2) that the Property will not be further subdivided; and (3) that no more than two dwellings shall be built on the Property.

AND the Grantee does hereby covenant to and with Grantor for the further benefit of the owners from time to time of lots in the Subdivision that, as to the portion of the Property formerly identified as Lot 144 of the Subdivision, Grantee will observe and perform all of the terms, covenants, conditions and restrictions set forth in the Declaration, as the same exist or may hereafter be amended from time to time, as well as the terms, covenants, conditions and restrictions contained in all other Orders, Grants, Easements and Agreements recorded against the Property on the part of Grantee to be observed and performed, as and when required to do so, and will indemnify and hold and save harmless

them and each of them from any failure so to observe and perform any of such terms, covenants, conditions and restrictions.

It is understood and agreed that the term "Property" shall be deemed to mean and include the real property specifically described in Exhibit "A", all buildings and improvements thereon (including any personal property described in Exhibit "A") and all rights, easements, privileges and appurtenances in connection therewith, that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine and/or feminine, the singular or plural number, individuals, firms or corporations, that the rights and obligations of the Grantor and Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors in trust and assigns and that where there is more than one Grantor or Grantee, any covenants of the respective party shall be and for all purposes deemed to be joint and several.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the undersigned have executed this instrument on

APPROVED AS TO FORM:

ING, HORIKAWA, JORGENSEN & STEWART

GRANTORS:

David Paul Niehaus
DAVID PAUL NIEHAUS

CLIFFORD PAUL RHODES

GRANTEE:

LONA RIDGE, LLC, a Hawaii limited liability company

By _____
LEONA R. WILSON, Member

By _____
WILLIAM P. WILSON, Member

them and each of them from any failure so to observe and perform any of such terms, covenants, conditions and restrictions.

It is understood and agreed that the term "Property" shall be deemed to mean and include the real property specifically described in Exhibit "A", all buildings and improvements thereon (including any personal property described in Exhibit "A") and all rights, easements, privileges and appurtenances in connection therewith, that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine and/or feminine, the singular or plural number, individuals, firms or corporations, that the rights and obligations of the Grantor and Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors in trust and assigns and that where there is more than one Grantor or Grantee, any covenants of the respective party shall be and for all purposes deemed to be joint and several.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

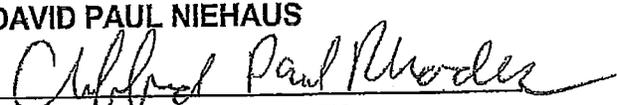
IN WITNESS WHEREOF, the undersigned have executed this instrument on

APPROVED AS TO FORM:

ING, HORIKAWA, JORGENSEN & STEWART

GRANTORS:

DAVID PAUL NIEHAUS


CLIFFORD PAUL RHODES

GRANTEE:

LONA RIDGE, LLC, a Hawaii limited liability company

By _____
LEONA R. WILSON, Member

By _____
WILLIAM P. WILSON, Member

3

them and each of them from any failure so to observe and perform any of such terms, covenants, conditions and restrictions.

It is understood and agreed that the term "Property" shall be deemed to mean and include the real property specifically described in Exhibit "A", all buildings and improvements thereon (including any personal property described in Exhibit "A") and all rights, easements, privileges and appurtenances in connection therewith, that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine and/or feminine, the singular or plural number, individuals, firms or corporations, that the rights and obligations of the Grantor and Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors in trust and assigns and that where there is more than one Grantor or Grantee, any covenants of the respective party shall be and for all purposes deemed to be joint and several.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

6/23/05 IN WITNESS WHEREOF, the undersigned have executed this instrument on

APPROVED AS TO FORM:

ING, HORIKAWA, JORGENSEN & STEWART

GRANTORS:

DAVID PAUL NIEHAUS

CLIFFORD PAUL RHODES

GRANTEE:

LONA RIDGE, LLC, a Hawaii limited liability company

By Leona R. Wilson
LEONA R. WILSON, Member

By William P. Wilson
WILLIAM P. WILSON, Member

STATE OF HAWAII

)
) SS.
)

COUNTY OF MAUI

On June 22, 2005 before me personally appeared **DAVID**

PAUL NIEHAUS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PS

Patricia A. Johnson
(notary's signature)

Patricia A. Johnson

(print/type name of notary)

Notary Public, in and for said
County and State.

My commission expires: 12/17/05

STATE OF HAWAII

)
) SS.
)

COUNTY OF MAUI

On _____ before me personally appeared

CLIFFORD PAUL RHODES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

(notary's signature)

(print/type name of notary)

Notary Public, in and for said
County and State.

My commission expires:

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On _____ before me personally appeared **DAVID PAUL NIEHAUS**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

(notary's signature)

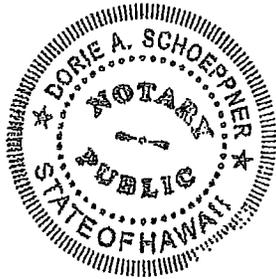
(print/type name of notary)
Notary Public, In and for said
County and State.

My commission expires:

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On JUN 21 2005 before me personally appeared **CLIFFORD PAUL RHODES**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Dorie A. Schoepner

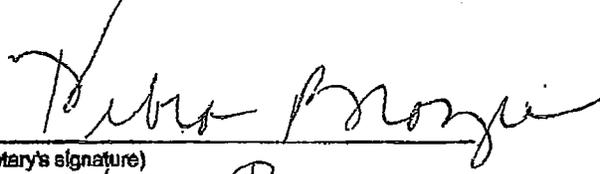
(notary's signature)
Dorie A. Schoepner
Expiration Date: September 28, 2007

(print/type name of notary)
Notary Public, In and for said
County and State.

My commission expires:

STATE OF ~~HAWAII~~ NY
COUNTY OF MAUI Westchester, ss.

On June 23 2005 before me appeared
LEONA R. WILSON and **WILLIAM P. WILSON**, to me personally known, who, being by
me duly sworn, did say that they are all of the Members of **LONA RIDGE, LLC**, a Hawaii
limited liability company, and that said instrument was signed in behalf of said company,
and the said Members acknowledged said instrument to be the free act and deed of said
company.



(notary's signature)

Debra Brazee

(print/type name of notary)

Notary Public, in and for said
County and State.

My commission expires:

6/4/07

DEBRA BRAZEE
Notary Public, State of New York
No. 01BR6059749
Qualified in Westchester County
Commission Expires June 4, 2007

EXHIBIT "A"

All of that certain parcel of land situate in Walkapu, District of Wailuku, Island and County of Maui, State of Hawaii, described as follows:

LOT 171, area 5.750 acres, more or less, as shown on Map 7, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 52 of C. Brewer & Co., Ltd.

Together with a nonexclusive easement for roadway purposes over, under, across, along and through Easement "55", as shown on Map 5, filed in the said Land Court with Land Court Application No. 52; provided, however, that in the event that all or any portion of the easement area shall be dedicated and/or conveyed to the State of Hawaii, the County of Maui, or other governmental authority, said easement with respect to the portion or portions so conveyed and/or dedicated shall immediately terminate; as granted to the Grantor herein by instrument dated June 22, 1987, filed as Land Court Document No. 1474198.

Together also with a nonexclusive easement for roadway, access and utility purposes over, under, across, along and through Lot 25, area 1,968 square feet, as shown on Map 4, filed in the said Land Court Application No. 52; provided, however, that in the event that any of said lots or any portion of portions thereof is dedicated and/or conveyed to the State of Hawaii, the County of Maui, or other governmental authority, or to the Wailuku Heights Extension Unit II Homeowners Association, said easement with respect to the portion or portions thereof so dedicated and/or conveyed shall immediately terminate.

Being the land described in Transfer Certificate of Title No. 719,376⁶ issued to Grantor herein.

SUBJECT, HOWEVER to the following:

1. Designation of Easement "53" for drainage purposes as shown on Map 5, as set forth by Land Court Order No. 83524.

2. Covenants, conditions and reservations, contained in Deed dated September 23, 1980, filed in the Office of the Assistant Registrar of the State of Hawaii as Land Court Document No. 1033575, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15016, Page 304.

The foregoing includes, but is not limited to, matters relating to water reservation.

3. Covenants, conditions and reservations, contained in Deed dated June 22, 1987, filed in said Office of the Assistant Registrar as Land Court Document No. 1474194.

The foregoing includes, but is not limited to, matters relating to agricultural activities, including sugar cane burning, on nearby lands.

4. Covenants, conditions and reservations, contained in Declaration of Protective Covenants, Conditions and Restrictions for Wailuku Heights Extension – Unit II dated January 29, 1988, filed in said Office of the Assistant Registrar as Land Court Document No. 1530403.

5. Covenants, conditions and reservations, contained in Agreement for Allocation of Future Subdivision Potential dated August 6, 2003, recorded in said Bureau of Conveyances as Document No. 2003-177807, by David Paul Niehaus and Clifford Rhodes, and the County of Maui, through its Department of Public Works and Environmental Management, a political subdivision of the State of Hawaii.

6. Covenants, conditions and reservations, contained in Subdivision Agreement (Agricultural Use) dated September 2, 2003, recorded in said Bureau of Conveyances as Document No. 2003-241286, by and between Clifford P. Rhodes, David P. Niehaus, and the County of Maui, through its Department of Planning, a body politic and corporate, and a political subdivision of the State of Hawaii.

7. Covenants, conditions and reservations, contained in Restrictive Covenants for Lot 171 and Lot 172, Map 7, Land Court Application No. 52, dated October 29, 2004, filed in said Office of the Assistant Registrar as Land Court Document No. 3192206.

WAILUKU HEIGHTS EXT UNIT II HOA



Hawaii Management Company, Ltd.
711 Kapiolani Boulevard, Suite 700
Honolulu, Hawaii 96813

To: **WILSON, LEONA R, TRUSTEE**
588 KULAIWI DR
WAILUKU, HI 96793

ACCOUNT NUMBER:
DATE PAYMENT DUE:
RE:
UNIT ID:

2917-11800-000
07/01/2017
WAILUKU HEIGHTS
00144

MAKE CHECK PAYABLE TO: WAILUKU HEIGHTS EXT UNIT II HOA
STATEMENT DATE: June 13, 2017
DIRECT INQUIRIES TO: ACCOUNTING DEPARTMENT
(808) 593-6845
RUDYPABLO@HMCMGT.COM

LATE FEE POLICY:

\$25 LATE FEE WILL BE ASSESSED IF THERE IS ANY
BALANCE REMAINING AFTER THE 10TH OF EACH MONTH.

| Trans. Date | Description | Opening Balance | Charges | Payments/Credit Adj. | Ending Balance |
|------------------|-----------------------|-----------------|---------|----------------------|----------------|
| JULY 2017 | | | | | |
| 07/01/2017 | SEMI-ANNUAL ASSN DUES | | 123.75 | | 123.75 |
| | SUB-TOTAL | 0.00 | 123.75 | 0.00 | 123.75 |
| | PERIOD TOTAL | 0.00 | 123.75 | 0.00 | 123.75 |

#1094
6/27/17

EXHIBIT "19"

1094

Track your expenses... TAX-DEDUCTIBLE ITEM

Clothing Food Transportation
 Credit Card Utilities Mortgage
 Entertainment Insurance Other: _____

6/27/17

Waukegan Hospital Ext Unit II
 one hundred & seventy three

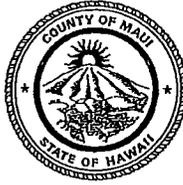
Under Protest

| | |
|-----------------|-------------------|
| BALANCE FORWARD | |
| THIS ITEM | 123 ¹⁵ |
| BALANCE | |
| DEPOSIT | |
| OTHER | |
| BALANCE FORWARD | 717 |

NOT NEGOTIABLE

For added security, your name and account number do not appear on this copy.

EXHIBIT "20"



06 SEP -8 AM 11:55

COUNTY OF MAUI
DEPARTMENT OF PLANNING
250 South High Street, Wailuku, Hawaii 96793
DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

FARM PLAN PERMIT

DATE: 8-30-06

TAX MAP KEY NO.: (2) 3-5-02: 010 CPR/HPR.NO. _____ LOT SIZE: 5.75 acres

PROPERTY ADDRESS: 588 Kulaiwi Drive Wailuku, Maui, Hawaii 96793

OWNER(PRINT): LONA RIDGE, LLC PHONE:(B) _____ (H) _____

ADDRESS: 192 Halau Place, Wailea, Maui, Hawaii 96753

CITY: _____ STATE: _____ ZIP: _____

OWNER SIGNATURE: *Morgan Gerdel*

Please check appropriate box and print name:

OWNER:
 AGENT/CONTACT: Morgan Gerdel

ADDRESS: 1849 Wili Pa Loop

CITY: Wailuku STATE: HI ZIP: 96793

PHONE:(B) 242-6900 (H) 357-5701 FAX: 244-7487

APPLICANT/AGENT SIGNATURE: *Morgan Gerdel*

CURRENT STATE LAND USE DISTRICT BOUNDARY DESIGNATION: URBAN / AG

COMMUNITY PLAN DESIGNATION: _____ COUNTY ZONING: R-3 / AG

SUBDIVISION FILE NO(S): _____

BUILDING PERMIT NO(S) & DESCRIPTION: _____

FOR COUNTY USE ONLY

Farm Plan Permit No. 2006/0120 Farm Plan Approval for _____

Approved by *M.W. Foley*

Date 9-22-06

MICHAEL W. FOLEY,
PLANNING DIRECTOR

EXHIBIT "21"

ALAN M. ARAKAWA
Mayor
WILLIAM R. SPENCE
Director
MICHELE CHOUTEAU McLEAN
Deputy Director



*original in
Sage*

COUNTY OF MAUI
DEPARTMENT OF PLANNING

May 1, 2012

Mrs. Leona Wilson
588 Kulaiwi Drive
Wailuku, Hawaii 96793

Dear Mrs. Wilson:

**SUBJECT: GUIDED FARM TOUR, LOCATED AT 588 KULAIWI DRIVE,
WAILUKU, HAWAII, TMK: (2) 3-5-002:010**

Thank you for your letter dated March 19, 2012, and for providing us with a sample tour of your proposed tour of the Koal'a trees and the other native and non-native plants on your property. The following general representations were made regarding the property and guided tour.

1. Approximately 3.5 acres are planted with approximately 300 Koal'a trees.
2. The tour will be guided and participants will learn about the Koal'a trees; other native and non-native plants planted on the property, their historical uses, some of the current uses, and more.

Based on the above mentioned representations and the extensive plantings seen on your property, we find that your proposed tour is in compliance with Chapter 205, Hawaii Revised Statutes and Chapter 19.30A of the Maui County Code, and the proposed guided tour will be a permitted accessory use with no land use permits required. However, the following conditions shall apply:

1. All other Federal, State and County rules and regulations shall be met.
2. The tour shall be guided and be a tour of the existing principal permitted uses on the land.
3. Unless a County Special Use Permit is obtained, buildings built specifically for the guided tour are not allowed.
4. A total of six (6) parking stalls shall be provided. Five (5) of the stalls may be graveled and one (1) stall shall be paved with asphalt, a concrete surface, or equivalent.

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634
CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

EXHIBIT "22"

Mrs. Leona Wilson
May 1, 2012
Page 2 of 2

Should you have any questions or concerns, you may contact Paul Critchlow, Staff Planner at paul.critchlow@maulcounty.gov or 270-5795.

Sincerely,



WILLIAM SPENCE
Planning Director

xc: Development Services Administration
ZAED Planners and Inspectors (via e-mail)
TMK (2) 3-5-002:010 (KIVA Related Documents; Project File)
12/General File
WRS:AHS:FAC:PBC:ckk
K:\WP_DOCS\PLANNING\LTR\2012\1542_GuidedTour_Koa-Trees\Response.doc

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

October 16, 2012

Leona Wilson
588 Kulaiwi Drive
Wailuku, Hawaii 96793

Dear Mrs. Wilson:

**SUBJECT: GUIDED FARM TOUR LOCATED AT 588 KULAIWI DRIVE,
WAILUKU, MAUI, HI; TMK (2) 3-5-002:010**

Thank you for your letter received on September 21, 2012.

A previous review of your guided tour was found acceptable per our letter dated May 1, 2012. Under review is your request for a guided farm tour package which would consist of a guided farm tour and lunch. We are granting your request with the following provisions.

1. No third party-caterer or catering company shall deliver the food on-site. The lunch and tour are a package. Therefore, the lunch shall be brought with the tour group.
2. No retail sales shall be permitted.
3. No on-site food preparation shall be allowed.
4. The conditions as stipulated in the May 1, 2012 letter for the guided farm tour shall be complied with.

If additional clarification is required, please contact Carolyn Cortez, Staff Planner, by email at carolyn.cortez@co.maui.hi.us or by phone at (808) 270-7813.

Sincerely,

WILLIAM SPENCE
Planning Director

xc: Jay Arakawa, Supervising Zoning Inspector (via email)
Clayton Yoshida, Current Planning Program Administrator (via email)
Carolyn Cortez; Staff Planner (via email)
TMK (2) 3-5-002:010 (KIVA Related Documents)
12/General File

WRS:AHS:CEC:ckk
K:\WP_DOCS\PLANNING\LTR\2012\5331_588KulaiwiDrResponse.doc

LW 009575