

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ONE PALAU'EA BAY

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ONE PALAU'EA ("Declaration") is made this ____ day of _____, 20____, by Palauea Developers LLC, a Delaware limited liability company ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

As the developer of Palauea, Declarant, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance and preservation of One Palau'ea Bay as a planned community.

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A", intends by Recording this Declaration to establish a general plan of development for the planned community known as "One Palau'ea Bay". One Palau'ea Bay is herein sometimes referred to, for convenience as "Palauea."

Declarant intends that the community will integrate residential, cultural, and agricultural components consistent with the requirements imposed by applicable land-use regulations and zoning laws of the County of Maui and the State of Hawaii, including, but not limited to, Chapter 205 of the Hawaii Revised Statutes and Chapter 19.30A of the Maui County Code and Ordinance. This Declaration provides for the overall development, administration, maintenance, and preservation of the real property comprising Palauea. An integral part of the plan is the creation of the One Palau'ea Bay Community Association, Inc. (the "Association"), an association comprised of all owners of real property in Palauea, to own, operate and maintain the Common Areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

This document does not and is not intended to create a condominium under Hawaii law.

1.2. Binding Effect.

All property described in Exhibit "A", and any additional property which is made a part of Palauea in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the

title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Palauea, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 50 years from the date it is Recorded. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by a majority of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration. In the latter case, it shall terminate as of the date specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Hawaii law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

Palauea's Governing Documents consist of:

- this Declaration and such Recorded Supplemental Declarations, if any;
- One Palau'ea Bay Community Association, Inc.'s Articles of Incorporation and By-Laws;
- Restrictions and Rules described in Article III;
- Design Guidelines described in Article IV; and
- the Association's Board of Directors' resolutions;

all as they may be amended.

The Governing Documents apply to all Owners and occupants of property within Palauea, as well as to their respective tenants, guests, and invitees. Any lease on a Lot shall provide that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Throughout the Governing Documents there are diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

Diagram 1.1 identifies the various Governing Documents and their functions.

Articles of Incorporation (filed with the Director of the Department of Commerce and Consumer Affairs)	establish the Association as a non-profit corporation under Hawaii law
By-Laws (the Board of Directors adopts. Initial set attached as Exhibit "C".)	govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
Declaration (Recorded)	creates obligations which are binding upon the Association and all present and future owners of property in Palauea
Supplemental Declaration (Recorded)	Adds property to Palauea; <i>may</i> impose additional obligations or restrictions on such property
Design Guidelines (Declarant adopts)	establish architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping and other items on Lots
Restrictions and Rules (initial set attached as Exhibit "B")	govern use of property, activities, and conduct within Palauea
Board Resolutions (Board adopts)	establish rules, policies and procedures for internal governance and Association activities, regulate operation and use of Common Area

Diagram 1.1 - Governing Documents

Article II Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

“Agricultural Land Conservation”: The occupation and use of any portion of the Property in conformity with this Declaration and requirements imposed by applicable land-use regulations and zoning laws of the County of Maui and the State of Hawaii, including, but not limited to, Chapter 205 of Hawaii Revised Statutes and Chapter 19.30A of the Maui County Code and the Ordinance. Such occupation and use may include, but not be limited to, the planting of soil-nourishing plants and trees, including native Hawaiian plant species, to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration, and the cultivation of crops, including but not limited to flowers, vegetables, trees, and fruits that are propagated for economic or personal use. The areas set aside or designated for Agricultural Land Conservation may be used for pedestrian walking paths as determined by the Declarant and under the governance of the Association.

“Agricultural Products”: Trees and plants including, but not limited to, native Hawaiian plant species produced as a result of Agricultural Land Conservation within the Property.

“Agricultural Reserve”: The portion of each Lot designated for Agricultural Land Conservation.

“Area of Common Responsibility”: The Common Area together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

“Articles”: One Palau’ea Bay Community Association, Inc.’s Articles of Incorporation, filed with the Director of the Department of Commerce and Consumer Affairs, as they may be amended.

“Association”: One Palau’ea Bay Community Association, Inc., a Hawaii nonprofit corporation, its successors or assigns.

“Base Assessment”: Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1.

“Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Hawaii corporate law.

“Building Envelope”: The portion of each Lot within the Potential Improvement Area that is designated at the time of design approvals in accordance with Article IV as the area in which the Dwelling and all related Improvements must be located with the exception of any driveway located on the Lot.

“By-Laws” The By-Laws of One Palau’ea Bay Community Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit “C”.

“Class “B” Control Period”: The time period during which the Class “B” Member is entitled to appoint a majority of the members of the Board as provided in the By-Laws. The Class “B” Control Period shall terminate on the first to occur of the following:

- (a) when not less than 15 of Lots in Palauea shall have been sold and shall have been conveyed to Class “A” Members, and shall have completed Dwellings thereon that are suitable for immediate occupancy.
- (b) 10 years from the date this Declaration is Recorded; or
- (c) when, in its discretion, the Class “B” Member so determines.

“Common Area”: All real and personal property, within Palauea or outside of Palauea, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

“Common Expenses” or “Common Expense”: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless Members representing a majority of the total Class “A” votes of the Association approve.

“Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing at Palauea, or the minimum standards established pursuant to the Design Guidelines, Restrictions and Rules, and Board resolutions, whichever is a highest standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Palauea change.

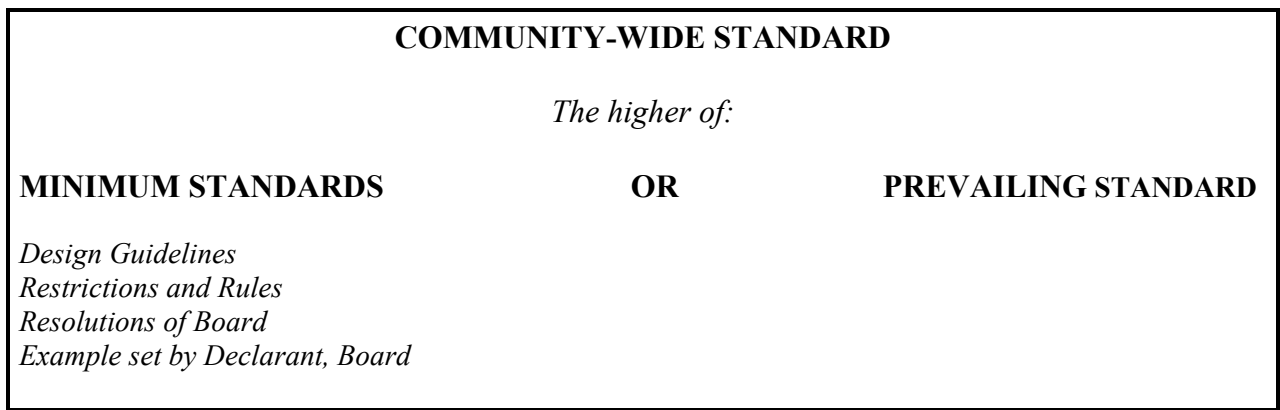


Diagram 2.1. Community-Wide Standard

“Cultural Preserve”: Approximately 20 acres of land adjacent to Palauea that has been or will be dedicated to the University of Hawaii or its designee for education, preservation, Agricultural Land Conservation and other purposes as set forth in Article XIII.

“Declarant”: Palauea Developers LLC, a Hawaii limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibit “A” for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes.

“Design Guidelines”: The site planning, landscape, architectural design, and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended.

“Dwelling”: A single-family farm dwelling located on a Lot in One Palau’ea Bay, as permitted by applicable rules and regulations and the Variance dated September 27, 2001 permitting multiple buildings to comprise a single residence. See also Section 4.1 and the Design Guidelines. A “caretaker’s unit” is an accessory dwelling for use and occupancy by caretaker or guests and containing not more than 800 square feet of enclosed living area.

“Governing Documents”: A collective term referring to this Declaration, the By-Laws, the Articles, the Design Guidelines, the Restrictions and Rules, and Board resolutions and rules, as they may be amended.

“Historical Sites”: Burial grounds and other historically and archaeologically significant sites and features identified and/or existing on Lots, portions of Lots, or Common Areas in Palauea.

“Improvements”: Any thing or device placed or planted on a Lot within the Property that may affect the appearance or use of such Lot. By way of illustration, Improvements include any building, pole, wall, windbreak, fence, driveway, decks, hedges, signs, trees, excavation, fill, grading, tanks, reservoir, pipes, lines, meters, drainage, appurtenances, cables, conduit, utility and any other structures of any kind or type.

“Lot”: One of the seventeen separate parcels of land in Palauea, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as a Dwelling. The term shall refer to the land which is part of the Lot as well as any improvements thereon. Division of ownership or occupancy of a Lot by creation of a condominium property regime is prohibited.

To the extent permitted by Hawaii law, and subject to the express written consent of the Association, two or more contiguous Lots, may be consolidated and treated as a single Lot for the purposes of architectural control pursuant to Article IV and the Design Guidelines, Assessments and Voting rights (but excluding Lots 1 (667), 2 (668) and 3 (669) and Lots 12 through 17 (678 through 683), none of which shall be consolidated), provided that:

- (a) the Lots to be consolidated are all owned by the same Owner;
- (b) only one Dwelling and one caretaker’s unit has or will be constructed on the consolidated Lots and the location of the Dwelling and caretaker’s unit on the Lots may be subject to the degree to which the Potential Improvement Area and the Building Envelope are redesignated or adjusted to provide for an alternate location for the Building Envelope and Potential Improvement Area on the Lots by the Declarant;
- (c) the Owner of the consolidated Lots executes all documents necessary and required;
- (d) the Owner shall pay all costs related to the consolidation of the Lots;
- (e) if a Dwelling exists on the consolidated Lots, or construction has commenced on a Dwelling on the consolidated Lots, the Lots may not be subdivided or otherwise designated as separate Lots without the express written consent of the Association; and
- (f) All height limits and other restrictions applicable to the separate lots shall apply to the combined lot (except building setbacks in the area where the Lot boundary has been eliminated by the consolidation).

“Member”: A Person or Persons entitled to membership in the Association as provided in Section 6.2.

“Mortgage”: A mortgage to secure debt, or any other form of security instrument affecting title to any Lot. The term “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

“Ordinance”: Applicable Maui County Ordinances or Approvals which establish standards, restrictions or requirements for the use and development of One Palau’ea Bay.

“Owner”: One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a Recorded lease with a term of 20 or more years from its commencement date, the Person or Persons having the right of occupancy to such Lot, will be considered an Owner of such Lot during the term of the lease.

“One Palau’ea Bay”: The subdivision that is, or will be developed, on the real property described in Exhibit “A”, also referred to as “Palau’ea”.

“Person”: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

“Property”: All real property described in Exhibit “A” together with such additional property as is subjected to this Declaration in accordance with Article IX.

“Record,” “Recording,” or “Recorded”: The filing of a legal instrument in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or the State of Hawaii Bureau of Conveyances.

“Restrictions and Rules”: The initial restrictions and rules set forth in Exhibit “B”, as they may be supplemented, modified, and repealed pursuant to Article III.

“Reviewer”: The entity having jurisdiction over the matters contained in Article IV as provided in that Article.

“Special Assessment”: Assessments levied in accordance with Section 8.3.

“Specific Assessment”: Assessments levied in accordance with Section 8.4.

“Subdivision Improvements”: The Improvements constructed by Declarant as described in Section 4.8.

“Subdivision Plan” The land use plan for the development of Palauea prepared by Austin, Tsutsumi & Associates, Inc., as it may be amended, which includes all of the property described in Exhibit “A”. Inclusion of property on the Subdivision Plan shall not, under any circumstances, preclude Declarant from withdrawing property from the coverage of this Declaration as provided in Section 10.1, nor shall omission of any property from the Subdivision Plan bar its later submission to this Declaration as provided in Article IX.

“Supplemental Declaration”: An instrument Recorded pursuant to Article IX which subjects additional property to the Declaration and/or imposes additional restrictions and obligations on the land described in such instrument.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, and architecture at Palauea are what give the community its identity and make it a place that people want to call "home." Each Owner and resident, in upholding such standards, can take pride in the results of that common effort. This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for the community standards to evolve as Palauea changes and grows over time.

Article III Use and Conduct

3.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for Palauea, a framework of affirmative and negative covenants, easements, and restrictions which govern Palauea. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology. Therefore, this Article establishes procedures for modifying and expanding the initial Restrictions and Rules set forth in Exhibit “B”. This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to Section 7.1.

3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice by mail or electronic mail to all Owners concerning any proposed action at least fifteen (15) business days prior to the Board meeting at which such action is to be considered.

Such action shall become effective, after compliance with subsection (c) below, unless Members representing more than 50% of the total Class “A” votes in the Association and the Class “B” Member, if any, disapprove. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon such petition of the Members prior to the

effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Members, representing more than 50% of the total Class “A” votes in the Association at an Association meeting duly called for such purpose, may vote to adopt rules which modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Such action shall require approval of the Class “B” Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in Exhibit “B”. In the event of a conflict between the Design Guidelines and the Restrictions and Rules, the Design Guidelines shall control.

(e) No action taken under this Article shall have the effect of unreasonably impeding Declarant's right to develop Palaua.

(f) The procedures required under this Section shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times.

3.3. Owners’ Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Lots and the Common Area is limited by the Restrictions and Rules as amended, expanded, and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his/ her Lot can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Lots are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

3.4. Protection of Owners and Others.

The limitations contained in this Section shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to the Declaration, any amendments to the Declaration adopted in accordance with Article XIX, or the initial Restrictions and Rules set forth in Exhibit “B”. Restrictions and Rules adopted pursuant to the rulemaking authority granted by Section 3.2 shall comply with the limitations contained in Section 3.2 and the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly.

(b) Displays. Owners' rights to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in homes located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the Dwelling.

No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

(c) Household Composition. No rule shall interfere with Owners' freedom to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of Dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(f) Alienation. No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; provided, the Association or the Board may require a minimum lease term. If adopted such minimum lease term shall not exceed 12 months. The Association may require that Owners use lease forms approved by the Association.

(g) Abriding Existing Rights. No rule shall require an Owner to dispose of personal property or any improvement that was in or on a Lot prior to the adoption of such rule if such personal property or improvement was in compliance with all rules previously in force.

Article IV Architecture and Landscaping

4.1. General.

No structure or thing shall be placed, erected, or installed upon any Lot, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within Palauea, except in compliance with this Article and the Design Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of any Improvement on his/her Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structure shall be subject to approval.

All Dwellings constructed on any portion of Palauea shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion. No Owner may construct more than one Dwelling and one caretaker's unit or a cluster of buildings constituting more than one Dwelling and one caretaker's unit on a Lot within Palauea. Any two or more Lots that may be consolidated under the terms of the Declaration shall be deemed to constitute one Lot.

Each Owner acknowledges and agrees that each Lot is comprised of several distinct areas. Initially, each Lot shall consist of two main areas. Those areas shall be designated as the Potential Improvement Area and the Agricultural Reserve (see Diagram 4.1 below). Declarant shall designate the portion of each Lot that shall be Agricultural Reserve. At least 10% of each Lot within Palauea shall be designated as Agricultural Reserve. The Association shall have the right to enter upon the Agricultural Reserve portion of each Lot to conduct Agricultural Land Conservation. The Building Envelope shall be the remaining portion of each Lot excluding the setbacks as provided in the Design Guidelines.

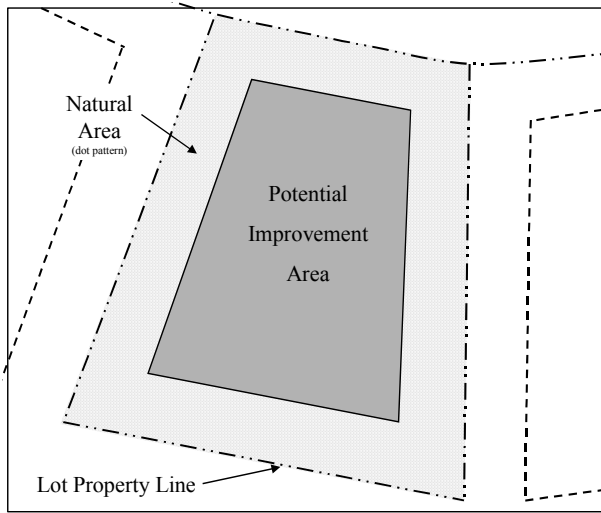


Diagram 4.1: Illustration of Natural Area and Potential Improvement Area on Lot

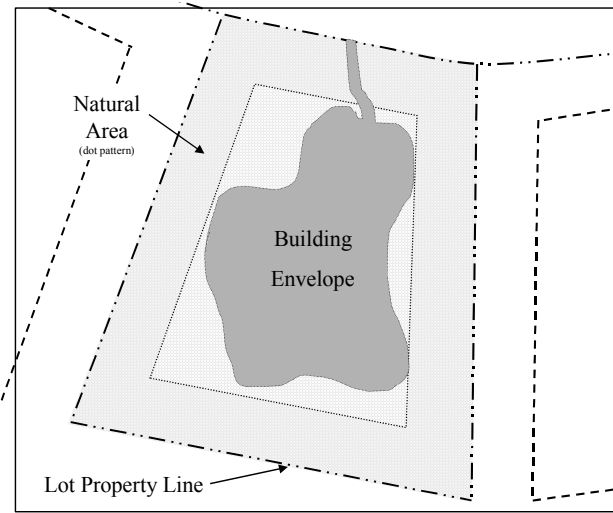


Diagram 4.2: Illustration of Natural Area and Building Envelope on Lot

Note: These diagrams are for illustration purposes only and do not constitute a representation or warranty that actual Lots will be configured in the same manner as these diagrams. Reference to “Natural Area” means the Agricultural Reserve as defined in Article II.

This Article shall not apply to Declarant’s activities, nor to activities of the Association during the Class “B” Control Period.

4.2. Design Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of Palauea, acknowledges that, as the developer of Palauea and as an owner of portions of Palauea as well as other real estate within the vicinity of Palauea, Declarant has a substantial interest in ensuring that the improvements within Palauea enhance Declarant’s reputation as a community developer and do not impair Declarant’s ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner’s Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant’s or its designee’s sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant’s interest and shall owe no duty to any other Person. Declarant’s rights reserved under this Article shall continue so long as Declarant owns any portion of Palauea or any real property adjacent to Palauea, unless earlier terminated in a written instrument executed and Recorded by Declarant.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) a design review committee appointed by the Board of Directors (the "DRC"), or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to it.

(b) Design Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRC, shall assume jurisdiction over architectural matters. The DRC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. Members of the DRC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals who may be compensated in such manner and amount as the Board may establish. After delegation by Declarant, if a licensed architect is not a member of the DRC, the DRC shall engage a licensed architect to assist the DRC in the review and evaluation of plans.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant will prepare the initial Design Guidelines, which will contain provisions applicable to all of Palauea. The Design Guidelines shall specify the minimum size, and may specify the maximum size, of Dwellings within Palauea and other design limitations, and these specifications may change from time to time. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any property subject to this Declaration, notwithstanding a delegation of reviewing authority to the DRC, unless Declarant specifically delegates the power to amend the Design Guidelines. Upon termination or delegation of Declarant's right to amend, the DRC shall have the authority to amend the Design Guidelines with the Board's consent.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. All amendments to the Design Guidelines shall be limited to clarification of ambiguities or incorporating new concepts not previously considered or making minor changes, provided that each such amendment or all amendments taken together shall not alter the essential spirit, intent and design philosophy of the Design Guidelines.

The Reviewer shall make the Design Guidelines available to Owners who seek to engage in development or construction within Palauea. In Declarant's discretion, such Design Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of Palauea other than those of Declarant until an application for approval has been submitted to and approved by the Reviewer. An Owner may submit an application for approval at any time. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; (iii) disapprove the application; or (iv) request additional information and/or documentation.

Until expiration of Declarant's rights under this Article, the DRC shall notify Declarant in writing within three business days after the DRC has approved any application within the

scope of matters delegated to the DRC by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC.

The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the DRC subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond within the time period specified in this Section 4.3(b), approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to this Section. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

Construction shall commence within one year from the date the application is approved. If construction is not commenced within one year from the date the application is approved the approval of the Reviewer shall be deemed to be void, and a new application must be submitted and approved before construction is commenced. Once construction on a project is commenced, it shall be diligently pursued to completion. All work shall be completed within 18 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations or if the Reviewer shall in good faith believe that the variance is in keeping with the general purpose and intent of said guidelines and procedures. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration or any Supplemental Declaration; or (c) estop the Reviewer from denying a similar variance in other circumstances.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Palauea; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the DRC, and the members of each shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance/Limitation on Actions.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

If no enforcement action shall have been initiated by written notice from the Board of Directors to the Owner(s) of a Lot by the end of two years from final completion of a structure or other improvement on said Lot which shall not comply with any design rule, approval or variance, said structure or approval shall be deemed to comply and no action may be thereafter be taken by the Association or any Owner against said structure or improvement on the grounds of its said non-compliance.

4.8. Construction of Improvements.

Declarant has a legitimate interest in assuring that all construction undertaken within Palauea is of the highest quality. Construction of Improvements should be conducted expeditiously with the least possible disruption to adjacent and neighboring Lots and properties so the property values within the Palauea may, at all times, be protected and maintained at the highest possible levels. Construction of any and all Improvements within Palauea, including the Dwelling to be constructed on any Lot, must be undertaken only by builders who are duly licensed by the State of Hawaii as general contractors. Prior to commencement of construction of Improvements on a Lot, the Owner of the Lot, and/or the Owner's general contractor, shall submit a deposit with the Association, in the amount set forth in the Design Guidelines, and secure and maintain adequate public liability and builder's risk insurance. The Owner, the Declarant, and the Association shall be named as an additional insureds on such policies. Prior to commencing construction, a copy of the policy or certificate thereof shall be delivered to Declarant.

No building built by any Owner on his/her Lot shall encroach upon any adjoining Lot or easement beyond the Building Envelope. Declarant shall not be responsible for any encroachment of any such Improvement upon an adjoining Lot or easement. An Owner shall indemnify, defend, and hold Declarant, the Association, their agents and employees, harmless from and against any and all claims, losses, expenses, damages, liabilities, or injuries suffered by reason of any acts, omissions, or alleged acts or omissions arising out of said Owner's performance or non-performance of his/her obligations under this Section, including, but not limited to, the encroachment of any Improvement upon any adjoining Lot or easement, including, but not limited to, any judgment, award, settlement, reasonable attorney's fees and other costs, or expenses incurred in connection with the defense of any actual or threatened action, proceeding, or claim.

Each Owner shall maintain his/her Lot in a neat and orderly condition before, during, and after any construction on the Lot and take all reasonable dust control measures, including watering the Lot, to alleviate the generation of dust. In addition, Owners shall not allow trash and debris to accumulate anywhere on the Lot. Owners shall not store any construction materials on the Lot, except during the period that construction is actually occurring on the Lot. Owners shall keep roadways, easements, and other property within Palauea clear of trash and materials related to construction on the Lots.

Declarant may construct Improvements within or adjacent to Palauea including, but not limited to, berms, swales, drainage facilities, sidewalks, streets, trees, landscaping, fencing, irrigation facilities, lighting, utility lines, gates, curbing, paving, and a residence for an onsite or offsite caretaker or property manager ("Subdivision Improvements"). The Subdivision Improvements may be constructed on the Common Area. Subdivision Improvements may also be constructed on portions of Lots so long as the Subdivision Improvements do not materially impact the Potential Improvement Area. Preservation of Subdivision Improvements contributes substantially to property values in Palauea. Construction and other activities conducted by an Owner shall not result in any damage to or alteration of any Subdivision Improvements. If any damage shall occur, the Owner responsible for such damage shall promptly repair such damage.

Each Owner agrees to indemnify and hold harmless Declarant, the Association, their agents and employees, and other Owners of Lots in Palauea from and against any and all claims, damages, expenses (including reasonable attorneys' fees and court costs), and liabilities of any nature whatsoever asserted against, or incurred by the same, in connection with any damage to or alteration of Subdivision Improvements caused by such Owner, his/her employees, agents, or independent contractors.

4.9. Historical Sites.

Historical Sites exist on various portions of the Property. Declarant has conducted a survey of the Property in a reasonable effort to identify all Historical Sites on the Property. As a result of the survey numerous Historical Sites have been identified ("Identified Sites") however some Historical Sites may exist on the Property that have not been identified ("Undiscovered Sites"). Historical Sites and related cultural features may be located on Lots either as surface or subsurface finds. Such Historical Sites may impact the manner in which an Owner may improve his/her Lot. Some of the Identified Sites may be designated for preservation ("Preservation Sites") while other Identified Sites may be designated for potential data recovery ("Data Recovery Sites"). Preservation Sites shall not be disturbed or removed unless approved by appropriate governmental authorities.

Prior to undertaking any Improvements on a Lot, the Owner of the Lot shall take into account any Preservation Sites on the Lot when designing and constructing Improvements on the Lot. The existence and location of any Preservation Sites on a Lot shall be considered by the Reviewer in evaluating an application for approval. In the event that any Preservation Site exists on the Lot, the Owner shall avoid disruption of the site. Under no circumstances may any Owner or Member, or their licensee, guests, invitees, agents, employees, contractors, representatives, or any other Person deposit construction waste, refuse or any other material on or in any Preservation Site, damage, disrupt or destroy a Preservation Site, or remove material of any kind from a Preservation Site.

In the unlikely event an Owner discovers the existence of an Undiscovered Site after commencing construction of an Improvement, the Owner shall notify all applicable governmental authorities and comply with all regulations and rulings relating to evaluation, testing, data recovery, preservation, and mitigation that may be required by the State of Hawaii Department of Land and Natural Resources regulations as of the date this Declaration. Neither the Association nor Declarant give any warranty, or make any representation, that all Historical Sites that exist within Palauea have been discovered. Undiscovered Sites may affect the manner in which Lots within Palauea may be developed. Neither the Association nor Declarant shall have any liability for any damages, increased construction costs, or delays caused by the existence of, or the discovery of, a Historical Site.

Notwithstanding any other provision of this Declaration, this Section may not be amended or modified without the consent of the State of Hawaii Department of Land and Natural Resources.

4.10. Drainage. As part of the development plan for each Lot, the Declarant's engineers may require or recommend the construction of a drainage retention area, in coordination with the engineered drainage plan for the Subdivision. The owner of each Lot shall comply strictly with such recommendations or requirements and shall construct and maintain such drainage retention area in good order and repair so that the effectiveness of said area for drainage retention shall not be impaired.

Article V Maintenance and Repair

5.1. Maintenance of Lots.

Subject to the rights and obligations of the Association set forth in this Declaration, each Owner shall maintain his/her Lot and all landscaping and Improvements on the Lot in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. This shall include, but shall not be limited to, the regular trimming of palm trees at intervals of not less than six (6) months.

5.2. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents, or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary, to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his/her Lot, less a reasonable deductible, unless the Association carries such insurance (which they may but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, premiums for such insurance shall be levied as a Specific Assessment against the benefited Lot and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his/her Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

This Declaration establishes the Association as a mechanism by which each Owner is able to participate in the governance and administration of Palauca. While many powers and responsibilities are vested in the Association's board of directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership.

Article VI The Association and its Members

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Hawaii law.

6.2. Membership.

Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary.

6.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.8. All Class "A" votes shall be cast as provided in Section 6.3(c).

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the By-Laws. The members of the Board of Directors appointed by the Class "B" Member need not be Owners. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

The Class "B" membership shall terminate upon the earlier of:

- (i) three years after expiration of the Class "B" Control Period pursuant to the By-Laws; or
- (ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

Upon termination of the Class “B” membership, Declarant shall be a Class “A” Member entitled to one Class “A” vote for each Lot it owns at that time.

(c) Exercise of Voting Rights. Except as otherwise provided in this Declaration and the By-Laws, the vote for each Lot owned by a Class “A” Member shall be exercised by such Class “A” Member. Unless otherwise provided herein, voting within Class “A” shall require the affirmative vote of a majority of Class “A” Members. In any situation where a Member is entitled to exercise the vote for his/ her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. The votes may be cast by mail, facsimile transmission, electronic mail, teleconferencing, or any other reasonable method, or combination of methods, as may be determined by the Board in its discretion.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

The Association may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants, and residents of Palauea.

Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, including but not limited to road lots, on-site and offsite easements and other interests which may benefit or in any way relate to Palauea, its occupancy or operation. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines or to dedicate to governmental authority or public utility provider.

The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area;
- (b) landscaping within public rights-of-way within or abutting Palauea and within the Agricultural Reserve;
- (c) such portions of any additional property included within the Area of Common Responsibility as may be determined by Declarant, dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;
- (d) all common drainage areas designated by Declarant or shown on the subdivision plan;
- (e) all Subdivision Improvements including but not limited to gates, roads, curbs, sidewalks, and residence for an onsite or offsite caretaker or property manager within or adjacent to Palauea;
- (f) all portions of the stormwater drainage system for Palauea, including improvements and equipment installed thereon or used in connection therewith, if any;
- (g) all portions of any equipment and fixtures installed by Declarant or on behalf of Declarant to provide services to the Property (e.g. phone, electrical, cable, sewer, and water) including but not limited to pipes, lines, and pump stations unless and until the equipment and fixtures is conveyed to another Person or the responsibility for maintaining such equipment and fixture has been assumed by another person; and
- (h) the sewer line, pump station, and appurtenant facilities and easements to be shared with the subdivision abutting Palauea to the south. Said facilities may be held and managed by the Association, the homeowners' association of said abutting subdivision or by a separate association which may be formed for the joint use and benefit of said subdivisions. All operating expenses, capital costs and reserves shall be allocated between the two subdivisions and management responsibilities shall be also allocated as shall be determined by Declarant in a written agreement with the developer of said other subdivision, a copy of which shall be filed with the Association and which shall be binding on the Association and all Owners. All assessments allocated to the Association shall be Common Expenses, a copy of the existing contract provisions are attached as Exhibit "D". Under the Agreement attached as Exhibit "D" and under the terms of the easement with Wailea Golf Resort Inc. and Wailea Resort Company Ltd., (the "Wailea Companies") the Association has the obligations to indemnify the Wailea Companies in the event of loss or damage and to fund a replacement reserve, which may require Special Assessments against the Owners from time to time. Notwithstanding anything to the contrary in Section 8.3 below, such Special Assessments shall be levied by the Board and shall not require the vote or approval of the Association or the Members. The Association has the authority to improve and dedicate all or part of the sewer system to the County of Maui.

(i) any other property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, undeveloped Lots and property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in Exhibit "A" of this Declaration.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration or agreements with the owner(s) thereof.

7.3. Insurance.

(a) Required Coverages. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be a Common Expense unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Wailea area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in Hawaii which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the Association's name as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to, or destruction of, Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4. Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a

hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any facilities within the Common Area; provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(iv) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in Palauea; and

(viii) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

(b) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his/ her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

(c) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(d) The Association, by contract or other agreement, may enforce applicable city and county ordinances, if applicable, and permit Maui County to enforce ordinances within Palauea for the benefit of the Association and its Members.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except where a vote of the membership is required by the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

7.6. Indemnification of Officers, Directors and Others.

Subject to Hawaii law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation, and Hawaii law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association.

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. As a Common Expense, the Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7. Safety and Security.

All Owners and occupants of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Palauea. The Association may, but shall not be obligated to, maintain or support certain activities within Palauea designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within Palauea, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Palauea, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands that he/she shall be responsible for informing his/her tenants and all occupants of his/her Lot that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Palauea assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

7.8. Provision of Services.

The Association may provide, or provide for, services and facilities for the Members and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant or Persons affiliated with Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, an onsite or offsite caretaker or property manager, concierge service, transportation, fire protection, utilities, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services shall not exempt any Owner from the obligation to pay any assessment under the Governing Documents.

7.9. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

At least 60 days before the beginning of each fiscal year in which assessments are imposed, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through

the levy of Base Assessments and Special Assessments against the Lots, as authorized in Section 8.3.

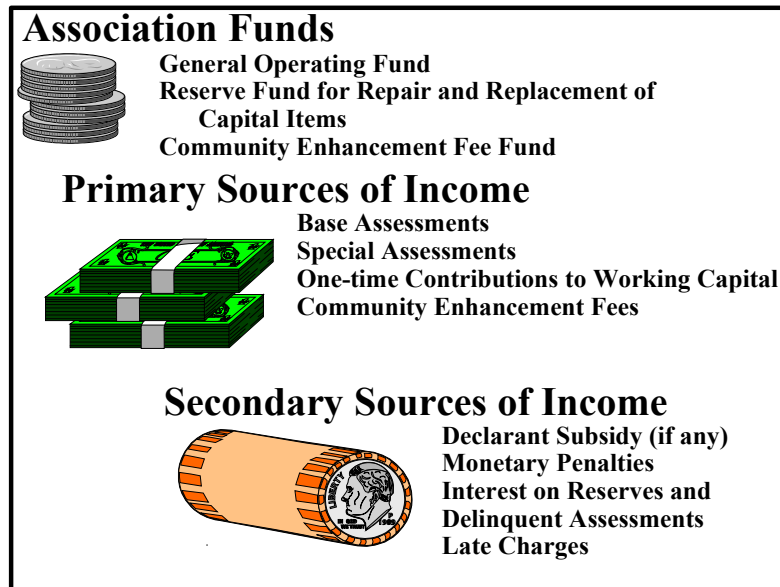


Diagram 8.1 - Funding Sources

The Association is authorized to levy Base Assessments equally against all Lots subject to assessment under Section 8.5 to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6(b)), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant’s discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send notice of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget and make copies available upon request. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total Class “A” votes in the Association and by the Class “B” Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2. Budgeting for Reserves.

After assessments have commenced, the Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 8.1 a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing more than 50% of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.8). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to levy any fines assessed by the Board of Directors against said Lot in the event of any violation of the Governing Documents as provided in Section 7.4(a)(i) and to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors,

employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

8.5. Authority to Assess Owners; Time of Payment.

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.6. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of Palaua, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 12% per annum or such higher rate as the Board may establish, subject to the limitations of Hawaii law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his/ her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or

Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may satisfy its obligation for assessments on Lots which it owns either by paying such assessments in the same manner as any other Owner or by paying the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

8.7. Lien for Assessments.

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

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

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and

(c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

8.8. Exempt Property. Any Common Area or other property not included within any Lot shall be exempt from payment of any Base Assignment and Special Assessment.

8.9. Capitalization of Association: Start-up Fees Payable at Lot Closings.

Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of \$2,500.00. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws. In its sole discretion, the Board of Directors may increase the amount of this fee.

8.10. Historic Archaeological Enhancement Fee.

(a) Authority. On behalf of the Association, the Board shall have the authority to establish and collect a transfer fee from the transferring Owner upon each transfer of title to a Lot in Palauea (except as provided in subparagraph (d) below), which fee shall be payable to the Association at the closing of the transfer and shall be secured by the Association's lien for assessments under Section 8.7. Owner shall notify the Association's Secretary of a pending title transfer at least seven days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information as the Board may require.

(b) Fee Amount. The transfer fee shall be 0.5% of the "Gross Selling Price" of the property as shown on the public record or as otherwise reasonably determined by the Board based on the estimated true value of the consideration for the transfer. The Gross Selling Price shall be the total cost to the purchaser of the property, excluding taxes and title transfer fees as shown by the amount of tax imposed on transfers of real property by the State of Hawaii and the County of Maui.

(c) Purpose. All transfer fees which the Association collects shall be donated to the University of Hawaii Foundation.

(d) Exempt Transfers. Notwithstanding the above, no transfer fee shall be levied upon transfer of title to a Lot:

- (i) by or to Declarant or any affiliate of Declarant;
- (ii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;

(iii) to the Owner's trust, estate, surviving spouse, child or trust beneficiary upon the death of the Owner;

(iv) to an entity wholly owned by the grantor; provided, upon any subsequent transfer of an ownership interest in such entity, the transfer fee shall become due;

(v) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage; or

(vi) to the Association upon foreclosure of lien for assessments pursuant to Section 8.7.

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to Declarant in order to facilitate the smooth and orderly development of Palauea and to accommodate changes in the Subdivision Plan which inevitably occur as a community the size of Palauea grows and matures.

Article IX Expansion of the Community

9.1. Expansion by the Association.

The Association may subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

9.2. Additional Covenants and Easements.

Declarant may subject any portion of Palauea to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.3. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it owns property subject to this Declaration, to remove one or both of Lots 16 (682) and 17 (683) from the coverage of this Declaration, provided such withdrawal does not have a material adverse effect on the general scheme of development for Palauea. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Marketing and Sales Activities.

Declarant may construct and maintain upon portions of the Common Area, or any Lot owned by Declarant, such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model units, and sales offices. Declarant shall have easements for access to and use of such facilities at no charge.

10.3. Right to Develop.

Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

10.4. Right to Approve Additional Covenants.

No Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of Palauea without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

10.5. Right to Approve Changes in Palaua Standards.

No amendment to or modification of any Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration.

10.6. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.7. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Palaua in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct its own inspection.

10.8. Termination of Rights.

The rights contained in this Article shall not terminate until the earlier of (a) 20 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use facilities within the Common Area (A) for any period during which any charge against such Owner's Lot remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration (subject to approval by vote of the Association); and
 - (iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (subject to approval by vote of the Association); and

Any Owner may extend his/ her right of use and enjoyment to the members of his/ her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his/ her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease.

11.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit "A" of this Declaration, the right to grant to the Association, utility providers (including, but not limited to any publicly owned and operated

utilities) and any other grantees, perpetual non-exclusive easements throughout Palauea (including Common Areas and Lots, even if sold, but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing and operating utilities and infrastructure to serve Palauea, including, but not limited to, water, sewer, electricity, telephone, fiber optics, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, drainage systems, drip irrigation systems for streetscapes, or street lights.

(ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any property described in Exhibit "A". The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with construction, use and enjoyment of the Dwelling on the Lot.

11.4. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over Palauea as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.5. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Palauea, including Lots, and a perpetual, nonexclusive easement of access throughout Palauea to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a Dwelling shall be permitted without the Owner's consent.

11.6. Easement for Maintenance of Agricultural Reserve.

Declarant reserves for itself and grants to the Association its successors, assigns, and designees, the nonexclusive right and easement of ingress and egress over the portions of Lots designated as Agricultural Reserve as necessary for the purpose of removing, replacing, installing, and maintaining trees, plants, and other Agricultural Products.

The cost of conducting activities under this Section shall be a Common Expense. No tree, plant, or other vegetation installed pursuant to this Section, including but not limited to, trees, plants, and other Agricultural Products, shall be modified, pruned, cut, or removed without the approval of the Declarant. Except as otherwise provided by the Declaration this easement shall not include the right to enter the Building Envelope or any Dwelling on a Lot.

11.7. Easement for Drainage.

The Property is burdened with a perpetual and nonexclusive easement over, through, and across the Property as necessary to accommodate drainage from or across property adjacent to Lots in its currently existing and natural pattern and flow, or as the pattern or flow may be altered by any of Declarant's landscaping activities undertaken pursuant to Section 10.7. Declarant reserves the right to designate additional drainage easements over, through, and across the Property including, but not limited to, portions of Lots (but not over, through or across any area designated for the construction of any building). Each Owner assumes all liability for damage to persons or property caused by interference with the flow of drainage from, over, through, or across such Owner's Lot in connection with Owner's activities on all or any part of such Lot, and agrees to indemnify, defend, and hold harmless Declarant and the Association from and against any liability, claim, demand, action, or suit arising out of, or in connection with, any such interference with drainage.

11.8. Easement for Effects of Agricultural Use.

Each Owner and occupant acknowledges that portions of Palauea (including Agricultural Reserve and Common Areas), shall be utilized for Agricultural Use. An easement is hereby reserved over Common Area and Lots (whether developed or undeveloped) within Palauea for the benefit of the Declarant, the Association, and their respective authorized agents, successors, and assigns for Agricultural Use and related activities conducted by Declarant, the Association, and their respective agents, successors, and assigns. Such easement shall include, but not be limited to, the transmission, discharge, or emissions of surface water runoff, noise, vibration, smoke, soot, dust, exhaust, noxious vapors, odors, and other substances which are created as a result of activities incidental to one or more of the following: (a) cultivation of flowers, trees, plants, vegetables, fruits, foliage, forage, and other Agricultural Products; (b) planting of soil-nourishing plants and trees to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration; and (c) buildings and uses including but not limited to, storage facilities, roadways, and maintenance facilities that are normally considered necessary and appropriate for the uses described in (a) and (b). Each Owner and occupant further acknowledges that the Association and Declarant, shall not be held liable for any nuisance, personal injury, illness, or

any other loss or damage which is caused by the presence and operation of Agricultural Use within Palauea.

11.9. Easement for Historical Sites.

Declarant reserves for itself and the Association a nonexclusive, perpetual easement over the Common Areas and Lots to (a) travel to and from the Historical Sites, and (b) inspect, evaluate, perform data recovery, maintain and preserve the Historical Sites that may be identified on the Property from time to time. Such easement shall affect only such portions of the Common Area and Lots as Declarant or the Association, as the case may be, deems reasonably necessary for such purposes. Declarant further reserves for itself and the Association the right to grant nonexclusive easements over the Common Area and Lots to (a) travel to and from such Historical Sites, (b) inspect, evaluate, perform data recovery, maintain and preserve such Historical Sites and/or (c) perform traditional, cultural and/or religious practices at such Historical Sites, to any Person who is or may be entitled under Hawaii law to exercise any such rights. Such easements shall affect only such portions of the Common Area and Lot as Declarant or the Association, as the case may be, deems reasonably necessary for such purposes and may be subject to such reasonable terms, conditions and restrictions that Declarant or the Association may impose consistent with Hawaii law. The Declarant reserves for itself and the Association the right to grant additional easements or modify existing easements under this Section for Historical Sites that may be discovered and as necessary to comply with Hawaii law, or the requirements of any governmental or quasi governmental entity that has jurisdiction over matters involving such Historical Sites.

Due to the sensitive nature of this type of easement, the potential exists for conflict between Persons using easements pursuant to this Section and Owners. In order to avoid or eliminate any potential conflicts that may arise, an environment of mutual respect between Persons using the easements and Owners must prevail. Owners should exercise caution to avoid disruption of Historical Sites and should take no action to prevent or hinder access to Historical Sites. Persons utilizing easements pursuant to this Section should do so in a careful, considerate and conscientious manner and take reasonable steps to avoid disturbing Owners. Neither the Association nor Declarant shall have any liability for any damages, increased construction costs, or delays caused by the existence of, or the discovery of, a Historical Site or the designation or use of an easement related to such Historical Site.

Article XII Agricultural Land Conservation

12.1. Acknowledgment of Agricultural Land Conservation.

Portions of the Property shall be designated for Agricultural Land Conservation. The portions of the Property utilized for Agricultural Land Conservation may include, but not be limited to, the Agricultural Reserve and Common Area. Such Agricultural Land Conservation shall be of perpetual duration except as otherwise provided in this Article. Under no circumstances shall the Agricultural Land Conservation include the raising, breeding or keeping of llamas, horses, cattle, pigs or any other livestock nor chickens, turkeys, or any other poultry. In addition to the provisions of this Declaration, the Association and each Owner much comply

with all laws, conditions, permits, and regulations that are applicable to Agricultural Land Conservation for the project district encompassing One Palau'ea Bay.

12.2. Maintenance of Agricultural Land Conservation.

The Association shall maintain the Agricultural Land Conservation within the Property. The cost of such maintenance shall be a Common Expense of the Association.

12.3. Right of Access.

The Association, its agents, affiliates, employees, designees, and assigns shall have a right and nonexclusive easement of access and use over the Common Area and Agricultural Reserve as reasonably necessary to conduct Agricultural Land Conservation on the Property. The Association, its agents, affiliates, employees, designees, and assigns shall not enter the Building Envelope, or any Improvements thereon, without the Lot Owner's permission, unless otherwise provided by this Declaration. No Owner may interfere or otherwise obstruct the access to, or use of, the property designated for Agricultural Land Conservation. No Owner may cut, remove, damage, or destroy any Agricultural Product cultivated on any portion of the Property including the Agricultural Reserve on such Owner's Lot.

12.4. Declarant's Right to Designate Agricultural Land Conservation.

To the fullest extent permitted by applicable Maui County ordinances and Hawaii law, Declarant, during the Class "B" Control Period, may unilaterally assign portions of the Property for Agricultural Land Conservation. To the fullest extent permitted by this Declaration, and all laws, conditions, permits, and regulations that are applicable to Agricultural Land Conservation, Declarant, during the Class "B" Control Period, may designate what Agricultural Land Conservation may be conducted on the Property. In the event that any local, state, or federal law or regulation requires an increase in the amount of Property within Palau'ea that must be utilized for Agricultural Land Conservation, the Association, by a majority vote, may increase the amount of Common Area used for Agricultural Land Conservation.

12.5. Termination of Agricultural Use.

In the event that Agricultural Land Conservation on the Property is no longer required through rezoning of the Property, change in state or local law, decision of a governmental entity, or through any other cause, the Agricultural Land Conservation on the Property may be reduced or eliminated. In order to effectuate a reduction or elimination of the Agricultural Land Conservation on the Property, a vote of 66% of the Class "A" Members shall be required. In addition, the Class "B" Member must consent to any such reduction or elimination, so long as the Class "B" membership exists.

Article XIII Cultural Preserve

13.1. Establishment of the Cultural Preserve.

On land adjacent to Palauea Declarant has established the Cultural Preserve, consisting of approximately 20 acres of land dedicated to the University of Hawaii or its designee (“University”) to provide the University with the opportunity to preserve the historic and cultural resources located on the Cultural Preserve and to utilize those resources for educational purposes involving a partnership among programs and units of the University.

13.2. Acknowledgement of the Existence of the Cultural Preserve.

Each Owner and/or occupant of a Lot within Palauea acknowledges the existence of the Cultural Preserve and the activities that will be conducted thereon. Such activities may result in runoff, noise, dust, smoke, exhaust, odors, vibrations, automobile and pedestrian traffic, and other annoyances. Neither Declarant, the Association, nor the University shall have any liability for any damages or claims of any nature arising from the existence of the Cultural Preserve or the activities conducted thereon.

13.3. Activities Within the Cultural Preserve.

The programs and activities conducted within the Cultural Preserve shall include, but not be limited to, activities related to community service, instruction, research, preservation of Historical Sites, as well as activities designed to raise community awareness of the preservation of cultural resources and the history of the *moku*, or district, and *ahupua'a*.

13.4. Easement for the University.

Each Owner acknowledges that the University, its students, affiliates, and employees shall have a right of access to the Cultural Preserve. Therefore, Declarant reserves for the University, its students, affiliates and employees the right of ingress and egress over portions of the Common Area designated by Declarant for access to, and use of, the Cultural Preserve. The Association shall have no authority to restrict or change the University’s right to access except with the consent of the University. No Owner may interfere or otherwise obstruct access to, or use of, the Cultural Preserve.

13.5. Maintenance of the Cultural Preserve.

The Association may, with the consent of the State of Hawaii, maintain certain portions of Cultural Preserve including, but not limited to, the ridgeline within the Cultural Preserve. The cost of the maintenance performed by the Association shall be a Common Expense of the Association.

At its expense, Declarant at its option may construct Subdivision Improvements within and around the Cultural Preserve. These Subdivision Improvements may include, but not be limited to, a caretaker’s cottage (“Cottage”), a laboratory (“Lab”), a garage with office space (“Office”), parking areas, utilities, roads, walls, lighting, gates, storage facilities, and fences. With the exception of the caretaker’s cottage and, the garage with the office space, which shall remain the property of the Declarant, the Subdivision Improvements constructed within the Cultural Preserve shall be the property of the University. The cost of maintaining the Cottage

and the Office shall be a Common Expense of the Association and the cost of maintaining the Lab shall be the University's obligation, the remaining Subdivision Improvements within the Cultural Preserve serving only the Cultural Preserve shall be maintained by the University unless otherwise agreed in writing between the Association and the University.

13.6. Restrictions on Use.

No Owner or Member shall have any right of access to or use of the Cultural Preserve unless such Owner or Member is granted permission by the University or is a student, affiliate, or employee of the University. No Owner, or such Owner's tenants, guests, invitees, employees, or contractors shall take any action to damage or harm the Cultural Preserve in any manner including, but not limited to, dumping rubbish or construction waste, committing acts of vandalism, removing any rocks, earth, vegetation, artifacts, or any items of historical or archeological significance, or interfering with the University's right of access to the Cultural Preserve.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Palauea as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

Article XIV Dispute Resolution and Limitation on Litigation

14.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), and agrees to submit such Claim to the alternative dispute resolution procedures set forth in Section 14.2.

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

(i) the interpretation, application, or enforcement of the Governing Documents;

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

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review.

(c) The following shall not be considered “Claims” pursuant to this Article unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

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

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

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

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

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

14.2. Dispute Resolution Procedures.

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

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

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

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

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

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

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 14.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Maui.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to initiate arbitration proceedings on the Claim, as provided in Section 14.2(e).

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

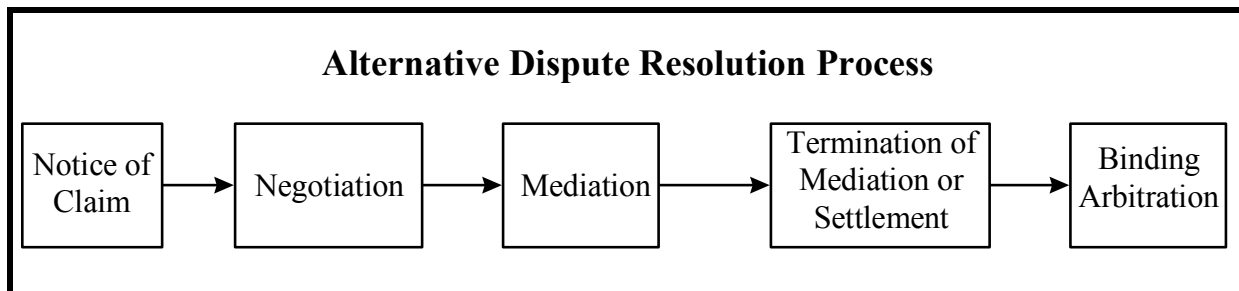


Diagram 14.1 - Alternative Dispute Resolution Process

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

(e) **Mandatory Arbitration.** Any parties that have failed to reach the settlement of a Claim through negotiation and mediation as provided by this Article may submit the Claim to arbitration. The party, or parties, that desire to submit a Claim to arbitration shall promptly so notify the other party in writing. Any Claim submitted for arbitration shall be submitted to arbitration to Dispute Prevention and Resolution, Inc. (“DPRI”) or such other dispute resolution agency as the parties to the dispute may mutually select (“Arbitrator”).

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

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

14.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless, prior to initiation of the proceedings, 75% of the total Class "A" votes in the Association are cast in favor of commencing such proceeding. Notwithstanding the foregoing, no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless 75% of the total Class "A" votes in the Association are cast in favor of such amendment.

Article XV Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots in Palauea.

15.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an “Eligible Holder”), will be entitled to timely written notice of any:

(a) Condemnation loss or any casualty loss which affects a material portion of Palauea or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or Occupant which is not cured within 60 days;

(c) Lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Proposed action which would require the consent of a specified percentage of Eligible Holders.

15.2. Other Provisions for First Lien Holders.

To the extent not inconsistent with Hawaii law:

(a) Any restoration or repair of Palauea after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

15.3. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.4. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as Palauea are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change; as the residents age and change over time; and as the surrounding community changes. Palauea and its Governing Documents must be able to adapt to these changes while protecting the things that make Palauea unique.

Article XVI Changes in Ownership of Lots

Any Owner desiring to sell or otherwise transfer title to his/ her Lot shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article XVII Changes in Common Area

16.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or may be subject to the Declaration) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, so long as Declarant owns any property subject to the Declaration, and Members representing at least 75% of the total Class "A" vote of the

Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

16.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

16.3. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Maui County, State of Hawaii, or to any other local, state, or federal governmental or quasi-governmental entity. Upon such dedication becoming effective, the title to the land, easement or other property interest so dedicated shall automatically and without further documentation, be free and clear of this Declaration and any Restrictions or Rules, or any encumbrance thereof.

Article XVIII Disclosures

17.1. Ongoing Construction and Sales Activities.

Construction activity by Declarant or other Lot Owners may continue within Palauea, as well as on properties, adjacent to and in the vicinity of Palauea. Such construction activity may result in the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, odors, noxious vapors, chemicals, vibrations, and other annoyances, as well as pose certain risks of injury to an Owner and his/her guests and visitors, and may limit the Owner's access to portions of Palauea. Additionally, Declarant's sales activities, including the use of signs and extensive sales displays and activities, will continue in Palauea until the sale of the last Lot in Palauea. Declarant shall have an easement over and upon each Owner's Lot and over Palauea to construct Subdivision Improvements for Palauea and for the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, noxious vapors, odors, chemicals, vibrations, or other substances or nuisances over Palauea which are created by or result from such construction activities. Declarant may do such things as may be reasonably required in connection with the construction of such improvements, including, but not limited to, grading; excavation; depositing fill material; installing drainage systems; and installing sewer, water, electrical, gas, telephone, fiber optic, and/or television cable lines.

17.2. Hazardous Materials.

Each Owner assumes all risks of Hazardous Materials (as used herein, the term “Hazardous Materials” means all substances identified, listed, or defined as a “hazardous substance” under any federal, state or local environmental laws or otherwise regulated as a dangerous, hazardous, toxic, or carcinogenic substance) existing on, about, around, under, over, or within his/her Lot, including all risks of: (a) any and all enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any Hazardous Materials Law affecting the Lot; (b) all claims made or threatened by any third party against an Owner or Declarant relating to damage, contribution, compensation, loss, or injury resulting from any Hazardous Materials; and (c) having sole responsibility for, and defending, indemnifying, and holding harmless Declarant and its partners, officers, directors, employees, agents, successors, and assigns (each of said parties herein called an “Indemnitee”), from and against all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses, and costs (including attorneys’ fees and costs) which may arise out of or may directly or indirectly be attributable to the use, generation, manufacture, treatment, handling, refining, production, storage release, discharge, disposal, or presence of any Hazardous Materials on, about, around, over, or within the Lot or Palauea.

This indemnification shall not apply to claims, demands, actions, losses, damages, liabilities, costs, and expenses caused by any Indemnitee’s proven gross negligence, willful misconduct, or violation of applicable laws, established by a final, nonappealable judgment of a court of competent jurisdiction. This provision shall not apply to any institutional lender, investor, or federal housing agency (including any successors or assigns) who holds a mortgage or a deed of trust covering the Lot or who takes title to the Lot upon foreclosure or by way of deed in lieu of foreclosure or otherwise.

17.3. Impacts on Lot.

Each Lot, and the Improvements thereon, may be affected periodically by various hazards and by noise, dust, smoke, earthshock, soot, ash, odor, noxious vapors, transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions created by or attributable to surrounding construction, development, commercial and other non-residential uses and activities.

17.4. View Impairment.

The activities conducted on the Property pursuant to Article IV may diminish or impair views within the Property. Therefore, views within Palauea are not protected, and any negative impact to any Owner’s view caused by such activities shall not provide a basis for any claim or right of action; provided, however, that nothing herein shall constitute a waiver of or limitation on any claims based on breach or violation of any height limits or other landscaping regulation set forth herein, in the Design Guidelines or in any Supplemental Declaration applicable to structures or vegetation on any Lot. Neither Declarant nor the Association shall have any obligation to prune or thin landscaping or trees, and shall have the right, in their sole and

absolute discretion, to add landscaping and trees from time to time and to change the location, configuration, size, and elevation of trees and landscaping from time to time (subject in all events to the limitations referred to in the preceding sentence). Any such additions or changes may diminish or obstruct views from Lots. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Neither Declarant nor the Association shall have any obligation to remove or modify any Subdivision Improvements or structures, and shall have the right, in their sole and absolute discretion, to add Subdivision Improvements and structures from time to time. In addition, Declarant and the Association may, in their sole and absolute discretion, change the location, configuration, size, and elevation of Subdivision Improvements and structures from time to time. Any such additions or changes may diminish or obstruct views from Lots. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

17.5. Roadways.

Roadways and related improvements within Palauea (the “Roadways”) will remain as Common Area which the Association shall own and be responsible for unless and until the Roadways are dedicated to Maui County, and Maui County accepts such dedication. In order for Maui County to accept dedication of the Roadways, the Roadways must be in a condition that meets the standards of Maui County for such dedications. The Association shall be liable for the Roadways, and shall indemnify and hold Maui County harmless from any and all claims and actions arising from, or out of, the Roadways, so long as the Roadways remain Common Area. This Section shall not be interpreted to require the Association to dedicate the Roadways to Maui County, nor shall it be interpreted to require either the Association or Declarant to construct and maintain the Roadways in a condition that meets the standards of Maui County for such dedications.

17.6. Wells and Irrigation Systems.

No Owner or Member may construct, drill, install, or maintain any sprinkler or irrigation systems or wells of any type which draw upon ground or surface waters within Palauea, except that Declarant and the Association shall have the right to draw water from such sources.

17.7. Drainage Area.

A portion of Palauea has been designated as a drainage area. This portion of the Property contains a ravine that is potentially a dangerous condition that may pose certain risk of personal injury or property damage to Owners and Members as well as their guests and visitors. Owners and Members as well as their guests and visitors are prohibited from entering this portion of the Property. By taking title to a Lot within Palauea each Owner acknowledges the existence of this dangerous condition and the prohibition from entering this portion of the Property.

17.8 Nuisances.

Activities by the owner or occupants of the Cultural Preserve including but not limited to construction, maintenance, agricultural activities, public functions, social functions, conferences and the like may result in noise, traffic and other nuisances which may disturb the owners and occupants of Lots in Palauea. The owners and occupants of the Cultural Preserve shall have an easement to carry on said activities and to create such nuisances and no owner or occupant of any Lot shall have any right or claim with respect thereto against any person or entity, including Declarant, Declarant's agents, the Association, or anyone in possession of the Cultural Preserve. See also Article XIII.

Article XIX Amendment of Declaration

18.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may, unless otherwise prohibited by Hawaii law, unilaterally amend this Declaration for any purpose. Thereafter, so long as Declarant owns any property described in Exhibit "A", Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

In addition, so long as the Declarant owns any portion of the property described in Exhibit "A" for development as part of Palauea, it may also unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon a material right of any Owner.

18.2. By Members.

Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long Declarant owns any property subject to this Declaration .

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

18.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

18.4. Exhibits.

Exhibit "A" attached to this Declaration is incorporated by this reference, and amendment of such exhibit shall be governed by this Article. Exhibit "B" is attached for informational purposes and may be amended as provided in Article III. Exhibit "C" may be amended as provided therein.

Article XX Interpretation of Declaration

19.1. Interpretation of Terms and Phrases.

The terms and phrases used in this Declaration, other than those capitalized terms given specific meanings, shall be interpreted to have their ordinary, usual, and customary meaning. In the event a question arises as to the meaning of such a word or phrase, the word or phrase shall have the meaning provided for such term or phrase in Black's Law Dictionary or Webster's New World Dictionary (Current Edition). In the event a term or phrase in a provision of the Declaration may be interpreted to have more than one meaning, the meaning that provides for enforceability and/or validity of the provision shall be the meaning of the term or phrase in question.

19.2. Choice of Law.

The Declarant, the Association, and the Members intend that all provisions of this Declaration shall be given full force and effect to the maximum extent permitted by Hawaii law. In preparation of this Declaration the Declarant and all Owners who take subject to it, in addition to applicable principles of Hawaii law, relied upon the Restatement (Third) of Property (Servitudes) (Tentative Draft No. 7, 1998) (hereinafter "the Restatement of Servitudes"). The parties intend that this Declaration shall be interpreted in accordance with the Restatement of

Servitudes without regard to technical objections, if any, as might exist under Hawaii law from time to time.

The Declarant intends by this reference to select the Restatement of Servitudes as its choice of law applicable to the interpretation, enforcement, and validity of this Declaration to the maximum extent Hawaii law permits.

[SIGNATURES ON FOLLOWING PAGE]

DECLARANT:

PALAU EA DEVELOPERS LLC,
a Delaware limited liability company

By: Palauea Investors LLC, its Manager

By: Maui Quest LLC, its Managing Member

By: Dowling Company, Inc., its Managing Member

By: _____

Everett R. Dowling

Its: President

STATE OF HAWAII)

) SS.

COUNTY OF MAUI)

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

Notary Public, State of Hawaii

Printed Name: _____

My Commission Expires: _____

EXHIBIT "A"

[Attach legal description of Lots 1 through 17 and Road Lots 19 and 20]

EXHIBIT "B"

Initial Restrictions and Rules

The following restrictions shall apply to all of Palauea until such time as they are amended, modified, repealed, or limited pursuant to Article III of the Declaration.

1. General. Palauea shall be used only for residential and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of property described in Exhibit "A", offices for any property manager retained by the Association, or business offices for Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within Palauea unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking any vehicles on public or private streets or thoroughfares, or parking commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area;

(b) Raising, breeding, or keeping animals, livestock, or poultry of any kind. A reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Lot; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the Dwelling. Pets shall be registered, licensed and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Lots;

(d) Any activity which violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuing hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Lot;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Lots;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a Dwelling on a Lot;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes;

(i) Dumping grass clippings, leaves, or other debris; petroleum products; fertilizers; or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within Palauea, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff, and Declarant may dump and bury rocks and trees removed from a building site on such building site;

(j) Accumulating rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(k) Obstructing or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;

(l) Subdivision of a Lot into two or more Lots, changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and Recorded, or dividing the ownership of a Lot by a condominium property regime, except that Declarant shall be permitted to subdivide or replat Lots which it owns;

(m) Use of any Lot for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years, except that co-ownership or cooperative ownership of a Lot shall be permitted under an arrangement permitting each co-owner and his or her family and non-paying guests to occupy the Dwelling on the Lot for a portion of each year, which shall be not less, in the aggregate, than 90 days of permitted occupancy;

(n) Discharging firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(o) On-site storage of gasoline, heating oil, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of gas grills, tiki torches, lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any above ground propane, LNG or similar tank or underground fuel tank authorized pursuant to Article IV of the Declaration;

(p) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Lot may conduct business activities within the

Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the business activity conforms to all zoning requirements for Palauea; (iii) the business activity does not involve door-to-door solicitation of Palauea residents; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in Palauea which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of Palauea and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Palauea, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by with respect to its development and sale of Palauea or its use of any Lots which it owns within Palauea;

(q) Capturing, trapping, or killing wildlife within Palauea, except for fishing and other activities authorized by the Association or in circumstances posing an imminent threat to the safety of persons using Palauea;

(r) Any activities which materially disturb or destroy the vegetation, wildlife, or air quality within Palauea or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(s) Converting any carport or garage to finished space for use as an apartment or other integral part of the living area on any Lot without prior approval pursuant to Article IV;

(t) Operating motorized vehicles on pathways or trails maintained by the Association;
and

(u) Constructing, erecting, placing, or modifying any thing, permanently or temporarily, on the outside, or inside if visible from the outside, portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; temporary or above-ground swimming pools; dog runs, animal pens, or similar structures or fences of any kind.

(v) Installation of satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Lots, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Palauea, should any master system or systems be utilized by the Association and require such exterior apparatus.

3. Prohibited Conditions. The following shall be prohibited at Palauea:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Palauea;

(b) Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated, or otherwise fallen into disrepair;

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within Palauea, except that Declarant and the Association shall have the right to draw water from such sources;

(d) Curb cuts, or other means of vehicle access to Lots, other than those constructed by the original Declarant or constructed with the written consent of the Declarant.

4. Leasing of Lots. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Lot by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term (which shall be not greater than 12 months). Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules.

EXHIBIT “C”

By-Laws of Palauea Community Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

ONE PALAU'EA BAY

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