



R-215 STATE OF HAWAII
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/s/ CARL T. WATANABE
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TMK (2) 4-7-1:02 (por.)
 (2) 4-7-4:04 (por.)

Second Amendment to
 Amended and Restated
 Makila Plantation

Declaration of Covenants, Conditions and Restrictions

Declarant: Makila Land Co., LLC
 33 Lono Avenue, Suite 450
 Kahului, Hawaii 96732

SECOND AMENDMENT TO AMENDED AND RESTATED MAKILA PLANTATION
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Second Amendment is dated this 18th day of November, 2003 and is executed by MAKILA LAND CO., LLC, whose principal place of business is 33 Lono Avenue, Suite 450, Kahului, Maui, Hawaii 96732 (the "Declarant"). Reference is made to the Amended and Restated Makila Plantation Declaration of Covenants, Conditions and Restrictions dated September 16, 2003, recorded in the State of Hawaii Bureau of Conveyances as Document No. 2003-227086, as amended by the First Amendment, undated (the "First Amendment"), recorded as Document No. 2003-246052 (collectively the "Amended Declaration").

RECITALS: The purpose of this Second Amendment is to expand the scope of the First Amendment to delete additional limitations and restrictions with respect to the 24 agricultural lots within Makila Plantation - Phase II (as defined in the Amended Declaration), in order to avoid any possible violation of Act 5, adopted by Special Session of the Hawaii Legislature, effective July 8, 2003 ("Act 5").

AMENDMENT: Pursuant to the rights reserved by Declarant in Sections 11.01 and 11.04 of the Amended Declaration, Declarant hereby further amends the Amended Declaration as follows:

1. Scope and Applicability. The following amendments shall apply only to the 24 agricultural lots in Makila Plantation - Phase II. With respect to the agricultural lots in Makila Plantation Phase I, all of the terms of the Amended Declaration shall apply, as if this Second Amendment had not been executed and recorded.

2. Changes. The following provisions in the Amended Declaration are hereby deleted as to the 24 agricultural lots in Makila Plantation - Phase II:

(a) Sections 2.03, 3.02, 3.04, 3.05, 3.07, 3.10, 3.13 and 3.23 are deleted in their entirety. (Note: Section 3.14, 3.15, 3.16 and all Sections in Article 4 were deleted by the First Amendment.)

(b) Section 3.03 is amended to restrict its application and scope to non-agricultural vehicles only.

(c) Section 6.01, the second full paragraph, is amended by referring to the Grant of Non-Exclusive Easements for Drainage, Access and Utilities for Makila Plantation - Phase II and Amendment of Existing Grant dated September 16, 2003 as "to be recorded" (but not concurrently with

the Amended and Restated Declaration).

(d) Section 7.01 is amended by deleting all reference to rules and regulations relating to road use. The phrase "...all subject to such reasonable rules and regulations as Declarant or the Association (through its Board of Directors) may establish from time to time" is deleted from the first sentence of Section 7.01.

(e) The last sentence of Section 8.01 is hereby deleted, which reads "Each owner of a Property by taking title to said Property, thereby waives all such rights and claims."

(f) Section 11.01 is amended by deleting the phrase "...or any ruling of the Architectural Design Committee," from the first sentence of that section.

(g) Section 11.02 is amended by deleting the parenthetical clause at the end of the first paragraph, which reads "(except as otherwise provided in Section 4.04 relating to the finality of certain decisions by the Architectural Design Committee)."

(h) A new Section 11.09 is added to read as follows:

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

11.02, any arbitrator, or any regulatory body or court of law having jurisdiction."

3. Reservation. In all other respects the Amended Declaration shall remain in full force and effect and unmodified.

Executed the day and year first above written.

MAKILA LAND CO., LLC

By: *Peter K. Martin*
Peter K. Martin
Its: President

"Declarant"

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 18th day of November, 2003, before me personally appeared **PETER K. MARTIN**, 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.

lw

Kristi Lyn ES. Uoka
Notary Public, State of Hawaii
Printed Name: *Kristi Lyn ES. Uoka*
My Commission Expires: *May 1, 2005*