

HEATHERS II DECLARATION OF SUPPLEMENTAL CC&Rs

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San Francisco, California 94105-3494
Attn: David B. Franklin

(Total Document Pages = 12)

**DECLARATION OF SUPPLEMENTAL COVENANTS, CONDITIONS AND
RESTRICTIONS FOR HEATHERS II SUBDIVISION**

PARTIES TO DOCUMENT:

DECLARANT: **KOHALA RANCH DEVELOPMENT CORP.**, a Hawaii corporation,
whose mailing address is 59-916 Kohala Ranch Road, Kamuela, Hawaii
96743.

TAX MAP KEY: 5-9-010-054 (3) (por.)

THIS SUPPLEMENTAL DECLARATION (the "Supplemental Declaration") is made this 10th
day of January, 2006 by KOHALA RANCH DEVELOPMENT CORP., a Hawaii
corporation, whose mailing address is 59-916 Kohala Ranch Road, Kamuela, HI 96743
(hereinafter referred to as "Declarant").

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real property situate at Kahua 1st, Kahua
and Waika, North Kohala, Island, County and State of Hawaii, more particularly described in

Exhibit A attached hereto and incorporated herein by this reference (the "Heathers II Subdivision"), and

WHEREAS, concurrently herewith the Heathers II Subdivision is being annexed to the lands that are subject to that certain Kohala Ranch Declaration of Covenants, Conditions and Restrictions, dated October 4, 1985, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1327679, as amended and restated by that instrument dated January 8, 1986, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1345901, and as the same has been further amended and may hereafter be further amended from time to time in accordance with its provisions for amendment (the "Master Declaration"); and

WHEREAS, Declarant desires to supplement the Master Declaration for purposes of the Heathers II Subdivision by subjecting the Heathers II Subdivision to the provisions of this Supplemental Declaration; and

WHEREAS, as hereinafter provided in this Supplemental Declaration, Declarant has retained and reserved the right, privilege and option to submit to the provisions of this Supplemental Declaration at a later time and from time to time, additional real property;

NOW, THEREFORE, Declarant hereby declares that all of the property in the Heathers II Subdivision shall be held, transferred, sold, conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, and charges.

ARTICLE I

DEFINITIONS

- 1.01. Definitions. As used herein, unless the context shall prohibit or otherwise require, all capitalized words and terms shall have the meanings ascribed to them in the Master Declaration, adjusted to apply to the Heathers II Subdivision where the context so requires. Additionally, the following words shall have all the following meanings:
- (a) "Additional Property" shall mean and refer to any real property owned or acquired by Declarant in the larger project commonly known as Kohala Ranch as generally depicted on Exhibit B hereto, any of which Additional Property Declarant may annex to this Supplemental Declaration if it also is annexed to the Master Declaration.
 - (b) "Guest House" shall mean and refer to an accessory building used as sleeping quarters for guests of the occupants of the main dwelling and which have no cooking facilities, have a maximum enclosed floor area of 500 square feet, and are not more than twenty feet in height.
 - (c) "Ohana Dwelling" shall mean and refer to a second dwelling unit (one or more rooms designed for or containing or used as the complete facilities for the cooking, sleeping, and living area of a single-family and containing a single

kitchen) built as a separate or as an attached unit on a building site, but does not include a Guest House.

ARTICLE II

PLAN OF DEVELOPMENT

- 2.01. Plan of Development of Property. The Property shall initially consist of forty-one (41) residential and five (5) roadway Lots described in Exhibit A hereof and designated as Heathers II Subdivision. All Lots within the Heathers II Subdivision shall be subject to this Supplemental Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add any Additional Property to the lands subject to this Supplemental Declaration, to make Improvements and changes to all Lots owned by Declarant, including, without limitation, (a) changing the boundaries of any Lots owned by Declarant, (b) relocating or deleting all or any portion of Easements for drainage, utility, access, archeological, equestrian, landscaping or trail purposes described in Exhibit C hereof, which Easements are located within one or more parcels of the Heathers II Subdivision or of the Additional Property, (d) installation and maintenance of any water, sewer, and other utility systems and facilities, and (e) installation of security and/or refuse facilities; provided, however, that none of the foregoing shall substantially affect the size or location of any Lot owned by an Owner other than Declarant.
- 2.02. Plan of Development of Additional Property; Annexation by Declarant. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time Additional Property to the provisions of this Supplemental Declaration. This option to annex may be exercised by Declarant in the same manner as Declarant's annexation rights under the Master Declaration.
- 2.03. Roads and Utility Systems of Additional Property. Declarant shall have the right to connect the roads and drainage and utility systems serving the Additional Property to be annexed to the roadway system and drainage and utility systems within the Development. Declarant also shall have the right to extend the roads and utility systems serving the Heathers II Subdivision to any other property within Kohala Ranch. Such rights may be exercised without the payment of any charge or fee or any consideration of whatever nature to any Owner or to any homeowners' association and without notice to or consent of any Owner or of any homeowner's association.

ARTICLE III

USE RESTRICTIONS AND DISCLOSURES

- 3.01 Purpose. In order to preserve the natural setting and beauty of the Heathers II Subdivision, to establish, preserve, and promote residential uses and purposes within the Heathers II Subdivision, and to protect and promote the value of the Heathers II Subdivision, the Lots and all Improvements located therein or thereon shall be subject to the restrictions set forth in this Article III. Every grantee of any interest in a Lot in the

Heathers II Subdivision, by acceptance of a deed or other conveyance of such interest, will be bound by the provisions of this Article III. All lots shall be kept, improved, used, and maintained in strict compliance with the limitations and conditions specified in this Article III.

- 3.02 Limitations on Secondary Dwellings. Only one single-family dwelling, private garages, one Guest House, structures designed for the protection of animals, and such other improvements as are necessary or customarily accessory to a single-family dwelling shall be allowed on any Lot. No structure or portion of a structure, designed to be rented, sold, used or otherwise transferred as an Ohana Dwelling or as a bed-and-breakfast accommodation shall be permitted on any Lot. The subjecting of any Lot to a Condominium Property Regime is strictly prohibited, so as to prevent the sale, renting, or transfer of a second dwelling separate from the primary dwelling.
- 3.03 Septic Systems. At the time a residence is first constructed on a Lot, the Owner of such Lot shall cause an individual aerobic treatment system ("Septic System") which complies with the R-2 standard for wastewater systems established by Hawaii Administrative Rules (HAR) Title 11, Chapter 62-26, or any successor thereto, as is then in effect, to be installed to provide waste water treatment for such Lot. No Lot Owner shall abandon a Septic System at any time. Declarant or the Kohala Ranch Community Association, or the successor in interest to either of them, shall enter into, and maintain in full force and effect at all times, a contract with a third party for the continuous maintenance of the Septic Systems within the Heathers II Subdivision. The cost incurred under such contract and any associated administrative costs will be charged to the Owners and will be separate from and in addition to the fees assessed from time to time by the Kohala Ranch Community Association.
- 3.04 Streets and Other Facilities. The County of Hawaii (the "County") is not obligated to construct any public facilities within the Subdivision. All infrastructure, streets, and facilities within the Subdivision shall be developed and maintained privately. The streets within the Subdivision have not been built to the standards required for streets which are to be dedicated to the County of Hawaii. Accordingly, such streets will not be accepted for dedication unless they are brought into compliance with the requirements for dedication as of the time they are offered for dedication. The County is not responsible for maintenance of streets which have not been dedicated to the County.
- 3.05 Agricultural Activities. Real property surrounding or near the Heathers II Subdivision is zoned for agricultural use. Lots within the Heathers II Subdivision may be subject to odors, noise, dust, and other impacts arising from existing or future agricultural activities conducted on such real property. The limitations under Chapter 165 of the Hawaii Revised Statutes (the Hawaii Right-To-Farm Act) on circumstances under which farming activities may be deemed a nuisance shall apply to the Heathers II Subdivision.
- 3.06 Design Guidelines. Each Owner's construction of Improvements shall be subject to approval of the Architectural Control Committee pursuant to Article VII of the Master Declaration, including the Design Guidelines referenced in Section 7.06 of the Master Declaration (the "Master Design Guidelines") as supplemented by the Kohala Ranch

Heathers II Custom Home Design Guidelines (the "Heathers II Design Guidelines") adopted by Declarant for the Heathers II Subdivision and incorporated herein by this reference. In the event of any conflict between the Master Design Guidelines and the Heathers II Guidelines, the Heathers II Guidelines shall control with respect to the lands subject to this Supplemental Declaration.

- 3.07 Short-term Rental and Shared Ownerships. The Heathers II Subdivision expressly is a residential project and is not a "resort area" and "time share units" are not permitted under the Hawaii County Codes Chapter 25 and Hawaii Revised Statutes Chapter 514E. Furthermore, notwithstanding any revision to said Codes or Statutes, no Lot or portion of a lot, including without limitation, any rooms within the residence on a Lot, shall at any time be used, occupied or possessed by any person or group of persons, other than social guests of the Owner, for less than a sixty consecutive day period, whether by lease, license, cotenancy, private residence club, time share use or ownership plan or other means of sharing the ownership, use or enjoyment of the property.

ARTICLE IV

GENERAL PROVISIONS

- 4.01. Amendments by Declarant. Prior to the filing with said Assistant Registrar of the Land Court of the first deed or other conveyance of a Lot or any interest therein, Declarant may, by instrument in writing filed in said Office of the Assistant Registrar of the Land Court, amend all or any part or parts of this Supplemental Declaration or terminate and cancel this Supplemental Declaration; including without limitation, adding Lot Diagrams establishing view corridors, building height limitations and other development restrictions for each Lot. Any amendment made pursuant to this Section 4.01 shall be certified by Declarant as having been duly approved by Declarant and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Following conveyance of the first Lot or any interest therein, this Supplemental Declaration may be amended in the same manner as the Master Declaration but with the applicable Owners being limited to those subject to this Supplemental Declaration.
- 4.02. Duration. The provisions of this Supplemental Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, personal representatives, successors, and assigns, and shall be and remain in effect for a period commencing with the date of the filing of record of this Supplemental Declaration and continuing for so long as the Master Declaration remains in effect, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Without limiting the generality of the foregoing, the provisions of Article III hereof shall continue in effect until such time as the Owners determine to terminate them and the County of Hawaii agrees to such termination.
- 4.03. Interpretation. All provisions of the Master Declaration shall apply to the Heathers II Subdivision except to the extent inconsistent herewith or inconsistent with the urban zoning of the Heathers II Subdivision.

IN WITNESS WHEREOF, the duly authorized officer(s) of the undersigned Declarant have executed this Supplemental Declaration on the day and year first above written.

Declarant:

KOHALA RANCH DEVELOPMENT CORP.,
a Hawaii corporation

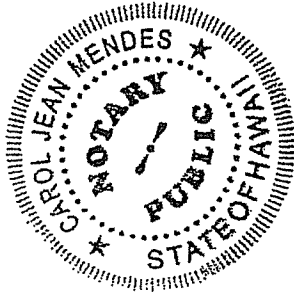
By: William L. Moore
Print Name: WILLIAM L. MOORE
Print Title: VICE PRESIDENT

STATE OF HAWAII)
)
COUNTY OF HAWAII)

SS:

On this 10 day of January, 2006, personally appeared William L Moore

_____, 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 capacity shown, having been duly authorized to execute such instrument in such capacity.



Carol Jean Mendes

Notary Public, in and for
County and State

Carol Jean Mendes
Expiration Date: January 26, 2007

Print Name: _____

My Commission Expires: _____

ZZ303CJM
CJM:adv

99250tges (rev. 11/2000)

Exhibit A
Legal Description of Heathers II Subdivision

All of those certain parcels of land situate at Kahua 1st, Kahua and Waika,
District of North Kohala, Island and County of Hawaii, State of Hawaii,
described as follows:

Lots 800 through 845, as shown on Map 123, filed in the Office of the
Assistant Registrar of the Land Court of the State of Hawaii with Land Court
Consolidation No. 117 of Kahua Ranch, Limited, as set forth by Land Court
Order No. 164365, filed December 20, 2005.

Being portions of the land described in Transfer Certificate of Title No.
757,223 issued to Declarant herein.



KOHALA RANCH

Legend

----- Equestrian Trails

Scale 0 2000

FEET

NORTH

Maka



Maka

Kohala 1st Kohala & Waia, North Kohala, Hawaii

Kohala Mountain Road

To Hana

Route 250

To Kapaemahu

MAKALEIY'S SECURITY STATION

The Meadows (Project II)

The Summit (Project I)

The Meadows II (Project III)

Project IV*

Proposed Golf Course and Residential Project

The Heathers II

The Heathers (Project I)

The Master Plan

* Property presently owned by Kohala Joint Venture to be conveyed in the future pursuant to the Declaration of Covenants, Conditions, & Restrictions. Property is being rezoned non-agricultural, re-subdivided, and developed by developer.

Akoni Pule Coastal Highway

To Hana

To Kawahae & Kona

Route 270

MAKALEIY'S SECURITY STATION

Waialeale Bay

Exhibit C
Common Area Easements

All references are to Easements and Lots as shown on Land Court Map 123, except for those Easements noted as shown on Land Court Map 12

Easement 1022, area 2.892 acres, for drainage purposes, affecting Lots 804, 805, 810, 811, 812, 813, 814, 815 and 841.

Easement 1023, area 38,599 square feet, for drainage purposes, affecting Lot 846.

Easement 1024, area 12,405 square feet, for drainage purposes, affecting Lots 805, 807, 808, 809, 810 and 841.

Easement 1025, area 14,683 square feet, for trail purposes, affecting Lot 841.

Easement 1026, area 12,408 square feet, for archeological purposes, affecting Lot 841.

Easement 1027, area 12,222 square feet, for road and utility purposes, affecting Lot 841.

Easement 1028, area 9,170 square feet, for road and utility purposes, affecting Lot 844.

Easement 1029, area 1.088 acres, for road and utility purposes, affecting Lot 845.

Easement 1030, area 12,056 square feet, for road and utility purposes, affecting Lot 845.

Easement 1031, area 20,638 square feet, for road and utility purposes, affecting Lot 845.

Easement 1032, area 3,858 square feet, for drainage purposes, affecting Lot 830.

Easement 1033, area 3,466 square feet, for drainage purposes, affecting Lot 832.

Easement 1034, area 8,100 square feet, for drainage purposes, affecting Lots 824 and 846.

Easement 1035, area 1,639 square feet, for trail purposes, affecting Lot 809.

Easement 1036, area 8,189 square feet, for trail purposes, affecting Lot 846.

Easement 1037, area 5,878 square feet, for trail purposes, affecting Lot 846.

Easement 1038, area 240 square feet, for drainage purposes, affecting Lot 800.

Easement 1039, area 100 square feet, for drainage purposes, affecting Lot 836.

Easement 1040, area 177 square feet, for drainage purposes, affecting Lot 845.

Easement 1041, area 205 square feet, for drainage purposes, affecting Lot 831.

Easement 1042, area 20 square feet, for drainage purposes, affecting Lot 833.

Easement 1043, area 185 square feet, for fire hydrant purposes, affecting Lot 844.
Easement 1044, area 174 square feet, for fire hydrant purposes, affecting Lot 845.
Easement 1045, area 215 square feet, for fire hydrant purposes, affecting Lot 831.
Easement 1046, area 183 square feet, for fire hydrant purposes, affecting Lots 833 and 834.
Easement 1047, area 24 square feet, for water meter purposes, affecting Lots 836 and 837.
Easement 1048, area 12 square feet, for water meter purposes, affecting Lot 826.
Easement 1049, area 12 square feet, for water meter purposes, affecting Lot 825.
Easement 1050, area 46 square feet, for electrical purposes, affecting Lot 800.
Easement 1051, area 42 square feet, for electrical purposes, affecting Lot 804.
Easement 1052, area 45 square feet, for electrical purposes, affecting Lot 806.
Easement 1053, area 65 square feet, for electrical purposes, affecting Lot 807.
Easement 1054, area 42 square feet, for electrical purposes, affecting Lot 808.
Easement 1055, area 47 square feet, for electrical purposes, affecting Lot 811.
Easement 1056, area 1 square foot, for electrical purposes, affecting Lot 814.
Easement 1057, area 42 square feet, for electrical purposes, affecting Lot 818.
Easement 1058, area 17 square feet, for electrical purposes, affecting Lot 814.
Easement 1059, area 43 square feet, for electrical purposes, affecting Lots 837 and 838.
Easement 1060, area 54 square feet, for electrical purposes, affecting Lot 845.
Easement 1061, area 42 square feet, for electrical purposes, affecting Lot 826.
Easement 1062, area 48 square feet, for electrical purposes, affecting Lot 831.
Easement 1063, area 49 square feet, for electrical purposes, affecting Lot 845.
Easement 1064, area 26 square feet, for electrical purposes, affecting Lot 839.
Easement 1065, area 444 square feet, for electrical purposes, affecting Lot 825.

Easement 1066, area 52 square feet, for electrical purposes, affecting Lot 825.

Easement 1067, area 4,523 square feet, for access and utility purposes, affecting Lot 820.

Easement 1068, area 3,657 square feet, for access and utility purposes, affecting Lot 823.

Easement 1069, area 5,260 square feet, for access and utility purposes, affecting Lot 834.

Easement 1070, area 3,023 square feet, for access and utility purposes, affecting Lot 801.

Easement 1071, area 6,492 square feet, for access and utility purposes, affecting Lot 829.

Easement 1072, area 1 square foot, for electrical purposes, affecting Lots 802 and 803.

Easement 1073, area 10 square feet, for electrical purposes, affecting Lot 810.

Easement 1074, area 45 square feet, for access and utility purposes, affecting Lot 828.

Easement 149, area 600 square feet, as shown on Map 12, for drainage purposes, affecting Lot 845.

Easement 150, area 1,592 square feet, as shown on Map 12, for drainage purposes, affecting Lot 830.

Easement 151, area 1,203 square feet, as shown on Map 12, for drainage purposes, affecting Lots 807 and 808.

Easement 152, area 1,512 square feet, as shown on Map 12, for drainage purposes, affecting Lot 805.

Easement 153, area 1,988 square feet, as shown on Map 12, for drainage purposes, affecting Lots 805 and 841.

Easement 278, area 4.482 acres, as shown on Map 12, for equestrian trail purposes, affecting Lots 824, 825 and 845.

Easement 279, area 24.889 acres, as shown on Map 12, for equestrian trail purposes, affecting Lots 801, 802, 803, 804, 814 and 815.