

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
HAWAIIAN SHORES RECREATIONAL ESTATES

The owners of those certain parcels of land known as Hawaiian Shores Recreational Estates, Waiakahiula, District of Puna, County and State of Hawaii and described on attached Exhibit 1, declare that under the control of the corporation of owners known as the Hawaiian Shores Community Association, 15-2793 South Honu Street, Pahoa, Hawaii 96778, each of said lots shall be subject to the following Covenants, Conditions and Restrictions (CCandRs).

1.) DESIGN REVIEW COMMITTEE:

The Design Review Committee (DRC) shall review and either approve or reject all plans for construction based on their compliance with these Covenants, Conditions and Restrictions (CCandRs). NO STRUCTURE OF ANY KIND, including walls or fences greater than six (6) feet in height, shall be erected, renovated, remodeled or added to until the plans for and location on the property of said structure, renovation, remodel, addition, wall or fence have been approved in writing by at least two members of the DRC.

At least two members of the Board of Directors (BOD) shall serve on the Design Review Committee (DRC) at all times. Additional members at large may from time to time be appointed to the DRC at the discretion of the BOD.

The powers and duties of the DRC and its designated representatives shall continue and be exercised for an indefinite period of time.

2.) DESIGN REVIEW AND PERMIT FOR CONSTRUCTION

Design Review and Permit for Construction is a two (2) step process.

STEP ONE (1): DESIGN REVIEW

The owner or his/her agent or representative shall submit Concept/Schematic Design drawings to the Design Review Committee (DRC) for review. At a minimum, this submittal shall include a site plan with all HSCA easements, water line and water meter location indicated; floor plans with floor areas indicated and at least one building section or exterior elevation, with roof pitch indicated, sufficient to establish proposed project height per Paragraph 13 below. All drawings shall be to scale: site plan minimum 1"=10'0"; floor plans, elevation, section minimum 1/8"=1'0".

STEP TWO (2): PERMIT FOR CONSTRUCTION

Prior to the construction, reconstruction, or alteration of any structure, foundation, or wastewater system, the owner or his/her agent or representative shall submit the following documents to the DRC for review and approval

- a) A copy of the "Job Site Plan" and engineered septic system plan, as approved by the State and County of Hawaii.

- b) A copy of the original building permit and if proposed construction includes alteration of any portion of an existing septic system, an engineered septic system permit must be submitted.

All submittals to the DRC as stipulated in this paragraph of the CCandRs shall be submitted to the HSCA office no less than 5 business days prior to the next regularly scheduled DRC meeting in order to be placed on the agenda for that meeting.

3.) PLAN APPROVAL – No structure of any kind shall be erected until the plans and location of said structure on the lot have been approved in writing by at least two members of the DRC.

4.) TIME LIMIT FOR PLAN APPROVAL – Each step of Plan Approval requires action by the DRC. Said action must commence within 45 days of submittal. In the event the Committee fails to commence action within that time, such approval will not be required and this covenant will be deemed to be fully complied with, provided concept/schematic design plans have been submitted for Step 1 and County approved job site plans, septic system plot plan, and the building permit as required for Step 2, have been submitted prior to beginning construction.

5.) STRUCTURAL DEFECTS RESPONSIBILITY – Neither the declarants, their successors nor any member of the Association or DRC shall be responsible for any structural defects neither in said plans and specifications nor in any buildings or structure erected in accordance with such plans and specifications.

6.) TIME LIMIT FOR COMPLETION – Any structure on which construction, repair, alteration or rebuilding is commenced shall be completed within 24 months and in accordance with county codes. The time for completion may be extended at the election of the Association for delays from causes beyond the reasonable control of the owner. Homes sold before construction is completed (including driveway and carport with storage), shall be completed by the new owner within 6 months after purchase or within the initial 24 month period, whichever allows more time for completion.

7.) LAND-CLEARING and PROPERTY MAINTENANCE -

At least 2 working days prior to any PROPERTY MAINTENANCE by any equipment, including hand held equipment on unimproved properties, the owner or his/her agent or representative shall notify the Association in writing of their intent to work on the property and shall specify the limits of said work.

At least five (5) working days prior to the commencement of any LAND CLEARING or EXCAVATING activities on any lot, the owner or his/her agent or representative shall notify the Association in writing of their intent to do work on the property. Such written notice shall include either:

- a) A "Notice of Intent to Build" including a proposed schedule for construction, or
- b) "Maintenance Schedule" sufficient in scope and schedule to eliminate the propagation of invasive plants over time.

- c) Owners shall not dispose of any material or debris from land-clearing on any other lot or road shoulder in the association without prior approval of the landowner of that property.

8) EASEMENTS – Owners are responsible for keeping easements clear of obstructions. Any obstructions on easements will be removed at the expense of the owner.

9.) LOT DESIGNATION –

- a) The designation and purpose for each lot is that of a single (one) family residence only.
- b) Structures such as shade houses, greenhouses, workshops, propagating sheds and/or equipment sheds used exclusively for the lot may be constructed in addition to and in an architectural style and finish that is congruent to that of the residence.
- c) If the owner of two adjacent lots uses one lot for a single family residence, the second lot may be used as additional yard or utilized as in paragraph b above except that:
 - i. Structures shall not encompass more than 25% of the area of the lot and shall be set back from the front street side property line a distance of not less than one third the depth of the lot.
 - ii. If either lot is sold separately, the non-conforming lot must be brought back into the single family residence designation.
- d) Determination of allowable uses other than those described above shall be made on a case by case basis through the DRC to the Board of Directors.

10) PARKING AREAS – Each residence shall have a minimum of a 2-car off-street parking area; one of which shall be a carport or garage and shall be completed prior to or during the completion of the residence. All vehicles under repair or restoration shall be kept only in the carport or garage. Road shoulders may be used for parking registered, insured, and operable vehicles only on a temporary and non-regular basis. Any vehicle parked on road shoulder that does not comply with the above stated requirements, shall be towed away at owner's expense. Special circumstances may entail temporary exceptions, but must be made in writing to the Board of Directors at least one (1) week prior to proposed hardship. Exceptions to parking vehicles on road shoulder shall not exceed thirty (30) days.

11.) MINIMUM and MAXIMUM AREAS – All residences with less than 1000 square feet, including covered lanais, or greater than 3500 square feet of enclosed living area, exclusive of uncovered porches, lanais, decks, and covered garages and carports, will require approval from neighboring property owners and the HSCA Board of Directors according to the HSCA variance policy.

12.) TEMPORARY STRUCTURES – No building, other than the principal residence shall be used for habitation. No trailer, mobile home, tent, garage, shed, temporary building or partially completed buildings shall be used, built and/or placed on lots prior to or during

construction of a permanent residence except for temporary construction storage shed. If a temporary construction storage shed will be used, it must be constructed only after a valid building permit has been received for the residence and be removed when the residence is completed.

13.) NATURAL GROUND– Natural ground is defined as that point of ground/grade (dirt or rock) which exists at the time of the Step 1 Review Application unless there is evidence of excavation or filling that can be reasonably documented. Lots cannot be back filled to artificially increase grade in an attempt to elevate the height of the structure except when the lot is below the pavement grade. Natural ground shall be referenced to a permanent datum point which will remain unchanged during the course of land clearing, excavation and construction.

14.) HEIGHT LIMITATION –No structure of any type shall be erected that will exceed 24 feet in height from a datum point determined by the following formulae:

For lots that have elevations above the pavement edge at any point:

The difference between the highest point of natural ground on any actual property line and the relative height of the actual roadway pavement at the midpoint of the property line abutting the road, divided by two.,

For lots that are completely below the height of the pavement edge:

Lots can be back filled to create reasonable drainage at a rate of 1/4" per foot of lot depth.

15.) CONSTRUCTION AND NOISE NUISANCE – Generators shall not be used to provide continuous power during the course of construction. Generators shall not be used except during times of power outage, or declared County, State, or Federal emergencies. Any recurring noise emanating from any source not related to permitted construction that exceeds 65 dB when measured from the closest abutting property line, shall be considered a nuisance which may be subject to fining as described in CC& R 30.

16.) SANITATION – All construction activity shall have access to an on-site existing operable bathroom or portable sanitation device (Porta Potty or Porta Lua).

17.) EXTERIOR LIGHTING – All exterior lighting shall be of shielded, recessed or of such other type and location so that it does not interfere with vehicular traffic or become a nuisance to the neighbors. Motion activated security lighting with a maximum 15 minute on-cycle will be considered on its individual merit.

18.) MATERIALS – All materials used in the construction of any improvement upon any portion of the land shall be new materials except when used architectural decorative or structural materials are used to enhance the appearance of the building. All bare surfaces on buildings shall be painted, stained, or sealed so as to prevent corrosion or deterioration. All structures on property shall be in a style and finish that is congruent to main residence.

19.) FOUNDATIONS – No conventional sub floor framing shall be exposed from any side of any structure. All sub floor framing shall be concealed in a manner that will be acceptable to the DRC.

20.) DRIVEWAYS – Driveways shall be paved of concrete or asphalt and must be completed prior to or during completion of the residence and carport or garage. Driveways must lead from the edge of the street pavement to the active carport or garage and must be twelve (12) feet wide at the edge of street pavement.

21.) ROOFS – All metal roofing material shall have a factory applied color finish or be otherwise painted and sealed.

22.) SIGNS – No sign of any kind shall be displayed to the public view that exceeds one square foot in size, except for one sign of not more than five square feet advertising the property for sale or rent. Sign content is limited to warnings, property address, name, builder signs, for sale/rent, or political signs. All political signs may be displayed no more than thirty (30) days prior to elections and must be removed within three (3) days after elections.

23.) MAINTENANCE & REPAIR -

- a) Each lot and/or residence shall be maintained in such a manner as to prevent it from falling into disrepair and/or becoming unsightly or a hazard.
- b) Owners are responsible for the removal of large trees and/or roots that may pose a hazard to neighboring properties, power lines, the water system, or roadways. If such a hazard is presented, a written notice with timeline shall be presented to owners for the remedy of said hazard. Failure to comply with request shall result in property owner being held liable for the full balance of required work to remedy the hazard. A fine(s) in accordance with Paragraph (30) of these CCandRs may be instituted if restitution for work is not made within the established timeline.

24.) LIVESTOCK, POULTRY, PETS – No animals, livestock or domestic poultry of any kind shall be raised, bred or kept on any of said lots except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Owners will assure that pets do not become a nuisance to the neighborhood in any way.

25.) RUBBISH, GARBAGE, & WASTE – Owners will not accumulate on their lot, any derelict or inoperable vehicles, vehicle bodies, vehicle parts, rubbish, garbage or trash. Garbage or waste shall be kept in containers for this purpose and hidden from the street-side view. Inoperable vehicles on property shall be hidden from street view or stored under a carport.

26.) NUISANCES – No noxious or offensive activity shall be carried on upon any of said lots, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Nuisance shall include, but not be limited to loud music, violations of any provisions of these CCandRs which concern the physical appearance and upkeep of properties, excessive animal noise, or offensive conduct.

27.) TENANT & LESSEE COMPLIANCE – Owners will assure that tenant and/or lessees comply with all portions of the Association's CCandRs.

28.) VARIANCES – Variances to these CCandRs may be considered by the DRC upon receipt of a written request from the owner or his/her representative outlining his/her specific reason(s) for the variance request. The Board may develop in its variance policy procedures for membership notification for any DRC variance review meetings.

Variances will be considered, granted or rejected based upon individual merit. A variance granted to one individual will not be considered a precedent for other such requests.

29.) APPEALS –

- a) The owner or his/her representative may appeal a decision of the DRC to the Hawaiian Shores Community Association Board of Directors (BOD) by submitting a petition in writing to the BOD within 10 business days after receiving said decision from the DRC.
- b) The BOD shall have the right and authority to review the matter de novo and shall either confirm, modify or reverse the decision of the DRC. The decision of the BOD shall be final and conclusive.

30.) FINES - The Board of Directors, at its sole discretion, is empowered by section 7.01 of the Bylaws to enforce compliance with these CCandR's. The Board of Directors may adopt Administrative rules that contain a schedule of fines and describe the process for assessing fines, appealing fines, and payment thereof in order to enforce the CCandR's.

31.) COMPLIANCE WITH ALL LAWS – Each owner shall faithfully observe, perform and abide by all governmental laws, statutes, ordinances, rules and regulations applicable to his/her/its lot, including but not limited to all lawful requirements of all health authorities. Construction of any building, garage, fence or wall and any alterations thereto shall be in accordance with all applicable governmental laws, statutes, ordinances, rules and regulations, including but not limited to building codes, zoning and land use laws.

32.) CONVEYANCE – No deed, mortgage, lease, agreement of sale, or other document conveying, mortgaging, leasing, assigning or demising any interest in the above described parcels of land or any part thereof shall be made or delivered unless such document contains, or is expressly made subject to, the same restrictive terms, covenants and conditions as in this indenture set forth.

33.) BREACH OF COVENANTS – The foregoing restrictions shall operate as covenants running with the land and the breach of any such covenants or conditions or the continuance of any such breach may be enjoined, abated or remedied by declarants or their successors in interest.

34.) OWNERS REQUIREMENT AND ACCEPTANCE – The owner of each of the described lots is required to become a member of the corporation and to inform the corporation of any changes in the title or ownership. The owner accepts and agrees to abide and be bound by the terms and provisions of the charter and bylaws of the association, copies of which are attached hereto as Exhibits II and III respectively, and herein incorporated by reference. Any assessment, special assessment or special individual assessment imposed against an owner as provided in the bylaws of the association shall constitute a lien upon such lot in favor of the association and such lien

may be enforced by suit for money judgment or may be foreclosed by the association in the same manner as a real estate mortgage may be foreclosed as set forth in Chapter 667 and Section 501-118, Hawaii Revised Statutes 1959, as the same is now or may hereafter be amended; provided that no action shall be brought to foreclose such a lien arising from an assessment or special assessment unless written notice thereof shall be mailed to the delinquent member of the association and no action shall be brought to foreclose on a lien arising from a special individual assessment unless the owner shall have been provided notice and an opportunity to be heard as set forth in Article X, Section 10.10 of the bylaws.

35.) AGREEMENT OF MEMBERS, ENFORCEMENT – Owners agree that the lot or lots to which their memberships pertain will not be used for any purpose in violation of the provisions of the Declaration of Covenants, Conditions & Restrictions. The corporation may take any lawful action to enforce the foregoing restrictions and all reasonable attorney's fees and costs incurred in so doing may be recorded as a lien against said lots as more fully set forth in Article X Section 10.10 of the bylaws.

36.) DEFINITION OF "OWNER" – As used herein, the term "owner" shall include without limitation, the bona fide holder of any recorded deed or agreement of sale for any of said lots. Each and all of said restrictions shall be binding upon and enforceable and effective against any owner whose title is acquired through foreclosure, delinquent property tax sale or trustees' sales, as well as the successors in interest of any such owner.

37.) SEVERABILITY – Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

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EXHIBIT I

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS refers to those certain parcels of land situated at Waiakahiula, District of Puna, County and State of Hawaii.

The tract of land known as HAWAIIAN SHORES RECREATIONAL ESTATES subdivision and shown on the map thereof filed in the Bureau of Conveyances as File Plan 737, are listed in lot sequence as follows:

Lot Numbers – Inclusive

75 – 89
94 – 109
114 – 129
134 – 151
154 – 155
157 – 170
208 – 217
222 – 233
238 – 251
256 – 271
276 – 293
298 – 307
308 – 317
322 – 331
332 – 343
423 – 430
450 – 459
460 – 474
479 – 488
489 – 505
516
518 – 528
529 – 547
559 – 572
573 – 593
601 – 614
615 – 637
647 – 663
664 – 666
667
668 – 688
695 – 712
713 – 736
743 – 760
761 – 786
795 – 814
815 – 844
853 – 872

Third Division, Tax Keys, Inclusive

1-5-100 : 1 – 8 and 13 – 19
1-5-099 : 43 – 50 and 55 – 62
1-5-099 : 23 – 30 and 35 – 42
1-5-099 : 1 – 9 and 14 – 22
1-5-098 : 29 and 31
1-5-098 : 15 – 28
1-5-098 : 1 – 5 and 10 – 14
1-5-102 : 61 – 66 and 71 – 76
1-5-102 : 43 – 49 and 54 – 60
1-5-102 : 23 – 30 and 35 – 42
1-5-102 : 1 – 9 and 14 – 22
1-5-097 : 15 – 24
1-5-103 : 41 – 50
1-5-097 : 1 – 5 and 10 – 14
1-5-103 : 29 – 40
1-5-096 : 17 – 24
1-5-096 : 1 – 5 and 10 – 14
1-5-103 : 1 – 15
1-5-095 : 70 – 74 and 79 – 83
1-5-104 : 64 – 80
1-5-095 : 53
1-5-095 : 47 – 52 and 65 – 69
1-5-104 : 45 – 63
1-5-095 : 22 – 28 and 40 – 46
1-5-104 : 24-44
1-5-095 : 1 – 7 and 15 – 21
1-5-104 : 1 – 23
1-5-094 : 49 – 56 and 63 – 71
1-5-105 : 60 – 62
1-5-094 : 72
1-5-105 : 51 – 59 and 63 – 74
1-5-094 : 25 – 33 and 40 – 48
1-5-105 : 27 – 50
1-5-094 : 1 – 9 and 16 – 23
1-5-105 : 1 – 26
1-5-093 : 85 – 94 and 103 – 112
1-5-106 : 91 – 120
1-5-093 : 57 – 66 and 75 – 84

Lot Numbers – Inclusive

873 – 902
911 – 930
931 – 960
969 – 988
989 – 1006
1027 – 1044
1045 – 1076
1115 – 1128
1129 – 1158
1163 – 1176
1177 – 1199
1204 – 1217
1218 – 1238
1285 – 1294
1295 – 1316
1321 – 1330
1331 – 1345
1350 – 1359
1360 – 1371
1376 – 1385
1386 – 1395
1434 – 1443
1444 – 1453
1458 – 1467
1468 – 1482
1487 – 1496
1497 – 1515
1528 – 1537
1538 – 1559
1578 – 1585
1586 – 1609
1626 – 1631
1632 – 1655
1670
1672 – 1673
1674 – 1693
1738 – 1739
1740 – 1745
1748 – 1749
1750 – 1797
1813 – 1815
1816 – 1835
1852 – 1857
1858 – 1881
1890 – 1892
1893 – 1905
1918 – 1923
1924 – 1956

Third Division, Tax Keys, Inclusive

1-5-106 : 61 – 90
1-5-093 : 29 – 38 and 47 – 56
1-5-106 : 31 – 60
1-5-093 : 1 – 10 and 19 – 28
1-5-106 : 7 – 24
1-5-092 : 55 – 72
1-5-107 : 75 – 106
1-5-092 : 37 – 43 and 48 – 54
1-5-107 : 45 – 74
1-5-092 : 19 – 25 and 30 – 36
1-5-107 : 22 – 44
1-5-092 : 1 – 7 and 12 – 18
1-5-107 : 1 – 21
1-5-091 : 43 – 52
1-5-108 : 38 – 59
1-5-091 : 29 – 33 and 38 – 42
1-5-108 : 23 – 37
1-5-091 : 15 – 19 and 24 – 28
1-5-108 : 11 – 22
1-5-091 : 1 -5 and 10 – 14
1-5-108 : 1 – 10
1-5-090 : 51 – 60
1-5-109 : 57 – 66
1-5-090 : 37 – 41 and 46 – 50
1-5-109 : 42 – 56
1-5-090 : 23 – 27 and 32 – 36
1-5-109 : 23 – 41
1-5-090 : 1 – 5 and 18 – 22
1-5-109 : 1 – 22
1-5-089 : 100 – 107
1-5-110 : 99 – 122
1-5-089 : 77 – 82
1-5-110 : 75 – 98
1-5-089 : 12
1-5-089 : 9 and 11
1-5-110 : 21 – 32 and 67 – 74
1-5-089 : 5 and 8
1-5-110 : 61 – 66
1-5-089 : 1 and 4
1-5-110 : 1 – 20 and 33 – 60
1-5-088 : 92 – 94
1-5-111 : 84 – 103
1-5-088 : 64 – 69
1-5-111 : 60 – 83
1-5-088 : 45 – 47
1-5-111 : 47 – 59
1-5-088 : 37 and 40 – 44
1-5-111 : 14 - 46