

# Declaration of Protective Restrictions, Conditions and Reservation For All Units

## NANAWALE ESTATES RR 4 BOX 2250 Pahoa, HI 96778

### KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, JOHN E. DUFF, E.C. MAZZIE, FRANK GOLDMAN and DONALD G. KENDALL, as General Partners of NANAWALE ESTATES COMPANY, a limited partnership, are owners in fee simple of all that certain real property situated in Pu'ua, Puna, County of Hawaii, and more particularly described as follows:

All that certain parcel of land (being a portion of Royal Patent 7788 Land Commission Award 8452, Apana 15 to A Kaohokaole) situated about 10,000 feet northerly from Pahoa-Kapoho Main Government Road at Pu'ua, in the District of Puna, County and Island of Hawaii, State of Hawaii, subdivided into 4,291 lots, inclusive and containing an area of about 1,131.5 acres.

That for the purposes of regulating the improvement, uses, occupancy and maintenance of said tract of land, a uniform plan of conditions, restrictions and reservations has been adopted to be imposed and binding upon the subsequent owners, their heirs and assigns, of each and every parcel thereof, which conditions and restrictions are declared to be as follows:

#### I. USES OF PROPERTY

- A. Except as otherwise herein provided, all lots in the tract shall be known and described as residential lots and shall be used for single family residence purposes only.
- B. No exceptions.

#### II. GENERAL BUILDING RESTRICTIONS

- A. **TEMPORARY OR SEPARATE IMPROVEMENTS:** No trailer, tent, shack, garage or other outbuildings shall be used for living purposes on any lot beyond completion of a permanent structure, or one year, whichever comes first.
- B. **CONSTRUCTION TIME SPAN:** Construction of any building or structure or addition thereto shall be prosecuted with reasonable diligence continuously from the time of original commencement until fully completed, which time shall not exceed one (1) year.
- C. **SIZE:** No residence shall contain less than eight hundred eighty (880) square feet of living area, exclusive of the carport or garage.
- D. **MATERIAL:** All material used in the construction of any improvement upon any portion of the lots shall be new material, except that used decorative materials may be utilized to enhance the appearance of the improvement.
- E. **SEWAGE DISPOSAL:** No building shall be used for any permitted residential purpose provided herein unless the premises are provided with adequate, modern plumbing appliances. All bathroom and toilet conveniences shall be inside or part of the main building, and all plumbing fixtures, dishwashers, washers and sewage disposal systems shall be connected with a cesspool, septic tank or sewer. No outside privies shall be erected; maintained or used upon

any part of said property except only that a temporary chemical type privy may be permitted during the course of construction of buildings, but not for a period longer than the actual construction.

**F. FOUNDATIONS:** No conventional subfloor framing shall be exposed from any side of any residence.

**G. HEIGHT:** No building shall be constructed that will exceed two (2) stories or twenty-four (24) feet in height from the highest point of land within the perimeter of the main building.

**H. BUILDING PERMIT:** No work shall be commenced upon the construction of any improvement until a building permit has been obtained from the Public Works Department of the County of Hawaii, as required by law or ordinance, and the permit number given to the Nanawale Association Office.

**I. SETBACKS:** All buildings or any part thereof, shall be erected and maintained in compliance with the County of Hawaii Code pertaining to setbacks.

**J. WATERLINES:** Any person or persons intending to install a waterline through an easement shall notify the owner of such property through which it will pass, by advance written statement of intention, and obtain written permission from Nanawale Community Association should it be necessary to cross any Association road or to proceed along the shoulders thereof. All waterlines shall be buried to the depth and in such manner as specified by the County Code, shall be indicated on each lot plan, and the installing property owner shall be responsible for the return of the excavated area to its original condition. The owner or contractor shall be responsible for arranging with the Board of Water Supply for meter installation and connection. The Nanawale Community Association shall not be held responsible for damage to any waterlines in the course of road maintenance or other activities if installation does not conform to the provisions of this paragraph.

### III. NUISANCE

**A. NOISE:** All sources of sound shall be lowered from 10:00 P.M. until 8:00 A.M. Sunday through Thursday, and from 12:00 M until 8:00 A.M. Friday and Saturday nights and nights preceding holidays. At all other times sound shall be held at a reasonably appropriate level commensurate with the environment.

**B. RUBBISH AND TRASH:** None of the lots or roadways shall be used or maintained as a dumping ground for discarded or inoperative vehicles, household trash or garbage. No such material shall be accumulated except in appropriate, covered sanitary containers. No nuisance shall be permitted to exist upon any lot so as to be offensive or detrimental to any property in the vicinity thereof or to its occupants.

**C. ANIMALS:** No animals except the usual household pets (excludes goats and barnyard animals) shall be kept on any lot, and such pets shall be kept reasonably restricted so as to not become a nuisance or annoyance. Commercial kennels are prohibited.

### IV. PROPERTY DAMAGE

**A. ASSOCIATION PROPERTY:** Anyone damaging, defacing, removing, excavating or vandalizing any Common Area, such as, but not limited to the Community Center, equipment, plantings, roads and shoulders, etc., shall be held monetarily liable for damage and/or subject to prosecution.

## V. EXCEPTIONS AND RESERVATIONS

**A. EASEMENTS:** There is hereby excepted and reserved to Nanawale Estates Company, a limited partnership, its successors and assigns, an easement and right of way and the right to enter upon, over, under and through a strip five (5) feet in width along the entire rear and both side lines of each and every lot in said property for the purpose of installing, constructing, inspecting, operating and replacing telephone, telegraph, electric light and power poles, wires, cables, lines of underground conduit, sewage pipes, gas and water pipes, and other similar facilities and equipment, also excepting and reserving the right to convey or lease the whole or any portion of such easements, rights of way or rights of entry to any person, firm, corporation or municipal body.

## VI. NANAWALE COMMUNITY ASSOCIATION, INC.

NANAWALE COMMUNITY ASSOCIATION, INC., A Hawaii non-profit corporation (hereinafter called the "Association") is an association of property owners, organized as a non-profit organization under the laws of Hawaii for the purpose of enforcing any and all of the restrictions, conditions and reservations placed upon the property by this Declaration and for the purpose of maintaining the community improvements thereon. All owners of lots in the property covered by this Declaration shall be members of said Association and shall be subject to the Articles and Bylaws of said Association.

**That said protective provisions, liens and charges are as follows:**

**A. CHARGES AND ASSESSMENTS:** All of said property covered by this Declaration (except the portions thereof which have been dedicated, offered for dedication or set aside for use as street, parks, parkways, community building, community playgrounds, or otherwise for the general use and benefit of the owners of said property or residents thereon) shall be subject to assessment as provided for in the Bylaws of the Association.

**B. LIEN FOR ASSESSMENTS:** The Association shall have the right, but shall be under no duty to file for record with the Bureau of Conveyances, State of Hawaii, at any time within 120 days after delinquency, a claim of lien for the amount of all such charges or assessments, together with penalties as aforesaid which shall have become delinquent. The aggregate amount of all such charges or assessments and penalties shall constitute a lien upon such lot and all improvements thereon, from the date that a claim of lien is so recorded, and such lien shall be prior to any and all existing or pre-existing liens and encumbrances, except the lien of any encumbrance theretofore made in good faith and for value. Upon payment in full of the amount of all such charges and assessments, together with penalties as aforesaid, the Association shall file for record a proper release of any claim of lien theretofore recorded, and such release so recorded shall fully protect any title company or other persons insuring the title to such lot, and any purchaser or encumbrancer for value, relying thereon.

**C. PURPOSES OF ASSESSMENTS:** All moneys received or collected in payment of the foregoing charges and assessments shall be used only for those purposes for which the Corporation is chartered and as provided for in the Bylaws.

**D. EFFECT OF ACCEPTANCE OF DEED ON CONTRACT OF SALE:** The grantee under any conveyance, and the purchaser under any contract of sale, executed by NANAWALE ESTATES CO., a limited partnership, by the acceptance of such conveyance or contract of sale, covenants for himself, his heirs, executors, administrators, successors and assigns, that the Association shall have the right and powers herein reserved, and consents to all protective provisions, conditions, restrictions, covenants, liens and charges herein provided.

## **VII. REMEDIES**

**A. WAIVER:** No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision of this declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

**B. SEVERABILITY:** Every provision of this Declaration is hereby declared to be independent of, and severable from every other provision of this Declaration. If any such provision shall be held to be invalid or unenforceable or not to run with the land, that holding shall be without effect upon the validity, enforceability or running of any other provision of this Declaration.

**C. CAPTIONS:** All captions in this Declaration are for convenience only and do not in any way limit or amplify the provisions hereof.

## **VIII. SCOPE AND DURATION OF RESTRICTIONS**

**A.** That all of the covenants, conditions, restrictions and charges set forth in this Declaration are imposed upon said property for the direct benefit thereof and of the owners thereof as a part of a general plan for the protection, development, maintenance and improvement of said property, and said covenants, conditions, restrictions and charges shall run in perpetuity; provided, however that said restrictions may be removed, altered or amended at any time by written agreement executed and recorded by the then record owners of not less than sixty-five per cent (65%) of the lots in said property then subject to this Declaration.

## **IX. ENFORCEMENT OF RESTRICTIONS**

**A. DECLARANTS OR ASSOCIATION MAY ENFORCE:** Violation of any of the covenants, conditions, restrictions or other provisions herein contained shall give to Nanawale Estates Co., a limited partnership, and/or the Association, the right to enter upon the property upon or as to which said violation exists, and to summarily abate and remove, at the expense of the owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and Nanawale Estates Co., a limited partnership, and/or the Association shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal.