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WAIEHU KOU PHASE 3

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DECLARANT:

WK 3 LLC  
a Hawaii limited liability company  
2005 Main Street  
Wailuku, Hawaii 96793

# WAIEHU KOU

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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## WAIEHU KOU PHASE 3

### Declaration of Covenants, Conditions and Restrictions

This Declaration is dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is executed by WK 3 LLC, a Hawaii limited liability company, the principal place of business of which is 2005, Main Street, Wailuku, Maui, Hawaii 96793 (the "Declarant").

#### 1. RECITALS

The land to which this Declaration applies is the land described in Exhibit A attached hereto and made a part hereof. This land has been subdivided into 115 residential lots, certain road lots (Lots 122 through 126), two open space lots (Lot 90 and 121), two drainage basin lots (Lots 119 and 120), a pump station (Lot 91), and an access lot (Lot 118), all to be known as "Waiehu Kou Phase 3". This Declaration and each covenant will run with the land and will be binding upon and will inure to the benefit of each subdivided lot within said land (except road and widening lots and any other facilities after conveyance to a governmental body) and all of its successive owners and occupants.

It is the Declarant's intention to create a common development plan, enforceable by the Declarant or any property owner within the said land, in accordance with this Declaration. The acceptance of a homestead lease from Department of Hawaiian Home Lands by any person of any property or any interest in any property within the subdivision shall constitute acceptance of these covenants, regardless of whether or not said instrument is expressly made subject hereto. This Declaration shall be binding upon and enforceable against each purchaser, homeowner, lessee, owner/occupant and other occupants of all or any part of said land, including each Property (defined in Section 2.06 below) and their respective successors in interest; and shall be deemed incorporated in each lease or other instrument by which any right, title or interest Property is granted, devised or conveyed, whether or not expressly referred to therein. Waiehu Kou Phase 3 is herein sometimes referred to for convenience as "Phase 3".

#### 2. DEFINITIONS

The following terms shall have the following meanings:

2.01 "DHHL" means the Department of Hawaiian Home Lands.

2.02 "Declarant" means WK 3 LLC, and its successors and assigns who may be identified as such in an instrument executed by Declarant (or a

successor or assign of Declarant), to be recorded in the Bureau of Conveyances of the State of Hawaii.

2.03 "Declaration" means this Declaration of Covenants, Conditions and Restrictions as it may be amended from time to time.

2.04 "Common Area" means (i) all planting strips along the roadways and along Kahekili Highway and (ii) such other assets, properties, facilities, and property rights, if any, which may in the future be designated as Common Area by Declarant or transferred to or acquired by the Association (defined below).

2.05 "Association" shall mean the Waiehu Kou Phase 3 Association, Inc., a Hawaii non-profit corporation, as more particularly described in Article 4 below.

2.06 "Property" and "Lot" means each of the subdivided Lots numbered 1 through 89 and 92 through 117, inclusive, described on the Plan. DHHL may in its discretion, by amendment to this Declaration to be executed and recorded by Declaration or DHHL (without the consent or joinder of any lot owner or the Association), add or subtract lots from the status of "Property" and "Lot" hereunder.

2.07 "Neighborhood" and "Phase 3" mean the Waiehu Kou Phase 3 subdivision as described on the Plan, including but not limited to all Properties and all roads and other Common Areas (whether now or in the future designated as such) shown on the Plan.

2.08 "Owner" of a Property means any person who holds a leasehold interest in said Property under a homestead lease issued by the Department of Hawaiian Home Lands (DHHL).

2.09 "Plan" means the final subdivision plat for Waiehu Kou Phase 3 prepared by Austin, Tsutsumi and Associates, as approved by the County of Maui Department of Public Works and Waste Management.

2.10 "Utility" includes electricity, telephone, cable television, water, sewer and any other existing or future use normally considered a utility.

### 3. COVENANTS

3.01 Residential Uses. All lots will be used for single family residential purposes.

3.02 No Commercial Use. No Property shall be used for any commercial, professional or business use, except work in a home office or workshop not visible from any other Property or the road and not involving visits to the Property by any customer, client or any other person, except on an incidental or occasional basis (provided that such use shall not violate applicable law).

3.03 Animals and Pets. All animals will be confined to the borders of their Owner's Property at all times when out of doors and shall be controlled so as not to disturb any occupant of the neighborhood. Only those animals which are generally recognized household pets shall be permitted and only in reasonable numbers. Other animals generally recognized as farm or food animals, such as pigs, goats, chickens or other fowls (other than pet songbirds), are prohibited. Owners will comply with all applicable laws, rules and regulations applicable to animals, and shall prevent their animals from causing any nuisance or disturbance to others.

3.04 Vehicles and Parking. There shall be no parking on any street in the Neighborhood except for temporary parking of vehicles of guests and visitors. Parking on each Property shall be limited to the area paved as a driveway/parking area and there shall be no parking on any lawn or landscaped area within any Property. No vehicle of any kind which is inoperable may be kept or stored on any Property. For purposes of this section, a vehicle shall be considered "stored" if it is put upon blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days. School buses, heavy trucks and heavy equipment shall not be parked on any Property except on a temporary basis in connection with construction or site work being conducted on said Property.

3.05 Nuisances. No noxious or offensive activity shall be carried on upon any Property, nor shall anything be done on any Property which may be or may become an annoyance or nuisance to any occupants of the Neighborhood, including but not limited to activities which cause unreasonable noise, dust, or odors or unreasonably violate privacy or violate any applicable laws, rules or regulations.

3.06 Maintenance of Structures, Properties and Drainage Reserves and Landscaping Requirements. All structures located on each Property shall be kept in attractive condition, in good order and repair, and free from visible deterioration. All grass and vegetation on each Property (whether vacant or

improved with a dwelling) will be kept neatly trimmed and hedges and other vegetation pruned. The Owner of each Property will maintain any drainage area on the Property in accordance with all County of Maui requirements and will refrain from dumping grass clippings or debris therein and shall keep said area free of buildings, paving and obstructions which would reduce or interfere with its operation as a drainage facility.

Within one year after commencement of occupancy of each Property, the Owner of said Property shall plant and maintain grass or other ground cover over all open areas of the Property which shall be visually attractive, sustain dust control and prevent erosion.

Dumping of all kinds is prohibited on any drainage basin land or open space area within Phase 3.

3.07 Hazardous Materials. No Owner shall use, generate, store or dump any hazardous materials on any Property or in any other portion of the Neighborhood. "Hazardous materials" means those materials and substances which are identified as hazardous, toxic or otherwise regulated under applicable federal, state or local environmental laws, rules or regulations.

3.08 Antennas. An exterior antenna or satellite dish is permitted provided that such apparatus is screened so as to be invisible from other Properties and from roads.

3.09 Storage of Materials; Garages; Clotheslines. Trash, garbage and other waste shall not be kept on any Property except in sanitary containers, stored inside the dwelling or the garage not visible from any street or other Property. No new or used building materials shall be stored on any Property except during active construction and all construction waste will be removed promptly after construction is complete. No Property shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. No Owner shall openly store furniture, appliances, automobiles, boats, jet skis, personal watercraft, and other goods and chattels not in active use so as to be visible from a neighboring lot, and no Owner shall keep outside clothesline or other outside clothes drying or airing facilities except within the back yard and not easily visible from any other Property or from any roadway.

No Owner shall use a garage for other than the parking of motor vehicles and boats unless the garage is enclosed so as not to be visible from a neighboring lot and normally kept closed. No Owner shall use a garage as a laundry area for hanging clothes or for storage purposes unless the garage door is closed.

3.10 Exterior Tanks. There shall be no above-ground storage tanks of any kind on any Property (except for standard propane tanks which are screened as to be invisible from other Properties and from roads).

3.11 Exterior Lighting. All exterior lights shall be appropriately screened so as not to cause any unreasonable glare visible from adjoining Properties or roads.

3.12 Swimming Pools. Any swimming pool on any Property will be installed with appropriate fencing and landscaping.

3.13 Grading, Drainage and Utility Lines. No Owner of any Property will alter the grade or topography of any Property in a manner which would materially increase or change the location or direction of the flow of drainage from the Property to any adjoining Property or to any road. All grading, construction and improvements are subject to DHHL's prior approval in accordance with each Owner's homestead lease from DHHL. No Owner shall install a power, telephone or other utility line (wire or conduit) on or under any lot, which would be visible from a neighboring lot. The Association shall, in the event of any violation of the provisions of this subsection, restore such lot to its state existing immediately prior to such violation, including the removal of any unauthorized power, telephone or other utility line. The owner of the lot shall reimburse the Association for all expenses incurred by the Association in performing any curative action under the subsection and for all other expenses of the Association incurred in connection with each violation of this section by said Owner. Care shall be taken to conceal conduits.

3.14 Completion of Construction. Once the construction of any building or structure on a Property has commenced, said building or structure shall be pursued in good faith and with due diligence to completion within the shortest reasonable time and in all events said building or structure and all surrounding grass, planted areas and other landscaping shall be completed not later than one (1) year from the date of commencement.

3.15 Building Height. The height of any building or structure on a property shall not exceed the lower of (a) two stories or (b) 30 feet measured vertically from existing grade.

3.16 Reflective Materials. No building, improvement or structure located on any lot shall have a roof consisting of a highly reflective material or incorporate mirrored glass on the exterior of such building, improvement or structure. Tinting is allowed provided the reflectivity of the material is no more than a medium grade and is approved by the Architectural Design Committee.



3.17 Temporary Structures. No temporary buildings or structures, sheds or trailers of any kind shall be erected or permitted to remain on any Property except (a) during periods of construction and only incidental to construction and (b) tool sheds which are approved by the Architectural Design Committee. Tents for social gatherings and family recreation are permitted provided that they shall be removed at the end of each use or social function.

3.18 Primary and Secondary Units. Only one (1) single-family detached residential unit shall be permitted on each Lot. No secondary dwelling unit or "ohana" unit will be permitted on any Lot.

#### 4. WAIEHU KOU PHASE 3 ASSOCIATION, INC.

4.01 Membership. The Owners of each Property shall automatically be members of the Association and said membership will be mandatory. Said membership may be transferred or encumbered only with and to the same extent as the Property to which it is appurtenant is transferred or encumbered. In the event leasehold title to a Property is transferred without mention of said membership, said membership shall be deemed to be automatically transferred with said Property.

4.02 Government and Control of Common Areas. The Association shall hold, control, manage and operate, as a common expense, all Common Areas and facilities, from and after the time when ownership or use thereof shall have been transferred to the Association (or the Association acquires rights with respect thereto), and may exercise all reasonable management rights, powers and authority with respect thereto including, but not limited to, (a) the power to enter into contracts for, or otherwise to implement, the maintenance, operation, repair, replacement and sale of such assets and facilities; (b) the power to maintain appropriate casualty and liability insurance; and (c) the power to adopt, implement and enforce reasonable rules and regulations to govern the orderly use and operation thereof. Such dominion, control and authority shall cease with respect to any road, water line or sewer line, or other facility to the extent that such dominion, control and authority shall be transferred to or reserved by any governmental authority, DHHL, any designee of DHHL, or any commercial utility provider. Each Property has an easement for the common use of the Common Areas for the purposes for which they are designed and intended. The Association shall not be authorized to mortgage the Common Areas.

4.03 Common Expenses. Each Property shall be subject to the obligation to pay all assessments for common expenses assessed to said Property by the Association in accordance with the Articles of Incorporation and Bylaws

thereof. The Association, by its Board of Directors, shall be responsible for establishing the amount of such assessments in accordance with the Bylaws of the Association and 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 by the Association through DHHL in the same manner as provided under Section 216 of the Hawaiian Homes Commission Act or any successor statute or by power of sale in the same manner as a mortgage is enforced under Hawaii law, as amended from time to time (but in all cases subject to the terms of Section 208 of the Hawaiian Homes Commission Act, the homestead lease and the rules of DHHL). The Association may file a notice of said lien with DHHL and 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 priority to (a) the lien of any mortgage or other encumbrance which shall have been in existence prior to the date the Association's notice of lien, attachment or pending litigation is recorded, and (b) all rights and interests of DHHL under the homestead lease or in the Property.

In order to implement and enforce the lien described in this Section 4.03 and to collect unpaid common expenses effectively and efficiently, it may be necessary to amend these covenants. Notwithstanding anything to the contrary in Section 6.04 below, this Declaration may be amended by the Board of Directors of the Association at any time for the purpose of confirming, establishing or changing the lien and enforcement procedures and requirements and better empowering the Association to assess, collect and enforce common expense obligations of the Owners. Each such amendment shall be approved with the assistance of legal counsel and signed by a majority of the members of the Board of Directors then serving, shall be approved by DHHL and shall be recorded in the State of Hawaii Bureau of Conveyances. Each such amendment shall not require the vote or consent of the Owners or the Association. Each such amendment shall be binding on each Owner and each Lot.

**4.04 Declarant's Control.** Notwithstanding anything herein to the contrary, Declarant and its appointees may elect at Declarant's option (but shall not be required to) act in all respects as and on behalf of the Association and its Board of Directors in all voting and management matters until all homes in Phase 3 are constructed and sold homestead leases shall have been issued for all Properties in Phase 3, and the control and management of the Association may conveniently

be transferred to the Board of Directors to be elected by the Property Owners (or earlier in Declarant's discretion).

So long as Declarant shall control the Association, approval in writing of U.S. Department of Housing and Urban Development or the Veterans Administration, as the case may be, is required prior to any amendment hereto which shall annex any additional properties, or authorize any mergers, and consolidations, mortgaging of Common Areas, dedication of Common Area, or amendment of these Covenants, if and to the extent that rules of such agencies or either of them, shall require such approval under the circumstances.

#### 4.05 Architectural Controls

(a) Purpose. The purpose of the architectural controls set forth in this Section 4.05 is to regulate an owner's new construction, improvement, alteration, repair or other work on each Property. It is understood that the judgment of the Architectural Design Committee (defined below) in these matters may not be perfect or even consistent, and that some degree of taste and subjectivity will necessarily be involved. The power to exercise and to delegate the exercise of these controls is reserved to the Architectural Design Committee and may be exercised and delegated at its option only. The Architectural Design Committee shall have no liability to any buyer or owner if it shall elect not to exercise said controls or shall fail to enforce said controls as to some or all of the Properties or if it exercises said controls in whole or in part in a manner which a buyer or owner of any Property feels is inappropriate, inconsistent or otherwise objectionable.

(b) Restriction and Scope. No new construction, improvement, alteration, repair or other work which is or will be visible from a road or from any other Property may be performed or installed without the prior written approval of the Architectural Design Committee (defined below); and no such feature may be externally remodeled, or otherwise visually altered to any material extent without the prior written approval of the Architectural Design Committee. The Owners of each Property shall comply with and abide by all proposals, plans and specifications submitted to and approved by the Architectural Design Committee with respect to said Property.

Notwithstanding the foregoing, the following shall not be subject to prior written approval of the Architectural Design

Committee under this Section 4.05 or the Design Standards under Section 4.05(d) below: (a) the construction, remodeling or change of any structure, or any other work, by the Declarant (or any designated successor as developer of all or part of Waiehu Kou Phase 3 as part of the development or initial sale of homes and the development of the subdivision; (b) the installation, construction, remodeling or change of any grading, paving, signage, landscaping or structure by Declarant or the Association as part of any Common Area facilities; (c) any activity or change which is commenced after the Termination Date as provided in Section (c) below; and (d) the repair or reconstruction of a damaged structure including signage, parking areas, landscape features or structures in accordance with plans previously approved for the original work or repainting in accordance with a previously approved color and color scheme.

(c) Composition and Duration of Architectural Design Committee. The Architectural Design Committee shall be appointed by the Board of Directors of the Association for such terms as the Board may determine and shall be made up of 3 members and 2 alternates to serve when regular members are absent. The Architectural Design Committee shall continue and the provisions of this Section 4.05 shall continue to apply until this Section 4.05 shall be terminated by the Association (by the affirmative vote of Owners of at least 75% of the Properties).

Notwithstanding the foregoing, the Declarant may, in its discretion, act in all respects as the Architectural Design Committee or appoint any or all members of the Architectural Design Committee during the period from the date of this Declaration to the time homes are completed, sold and transferred to Owners of all of the Properties (or earlier in Declarant's discretion if Declarant desires to turn over the control of the Architectural Design Committee early). Declarant shall appoint all members of the Architectural Design Committee who will take over the authority immediately following Declarant's relinquishment of control, said appointees to serve until the Board of Directors of the Association shall appoint their successors as provided above.

(d) Standards and Procedures of the Architectural Design Committee. All proceedings by the Architectural Design Committee shall be conducted in an orderly manner and a reasonable record of all proceedings shall be maintained.

All applications for approval of the Architectural Design Committee shall be accompanied by plans, specifications and other supporting material as required by the Design Standards (defined below) and which shall be detailed and complete to the point which would, in the Architectural Design Committee's reasonable judgment, enable it to adequately understand and evaluate the location and appearance of the planned work. The Architectural Design Committee may (but is not required to) engage one or more architects, engineers or other professionals to assist in its deliberations and review of applications and may assess to the applicant all reasonable costs and fees incurred. The Architectural Design Committee shall have the right to refuse to consider any application unless and until the application shall have been completed, and no application to said Committee shall be deemed completed until all materials shall have been received by said Committee in accordance with the Design Standards and all rules and requests of said Committee, all requests and rules of said Committee shall have been complied with, and all assessments shall have been paid.

The Architectural Design Committee may in its discretion adopt reasonable rules and regulations to govern its procedures and requirements as it may deem appropriate from time to time.

The approval of the Architectural Design Committee shall not be withheld unreasonably, provided that the following conditions are met: (i) all permissions and approvals of all governmental authorities having jurisdiction shall have been obtained; (ii) the proposal complies with all terms and conditions of this Declaration; (iii) the proposal conforms to the Design Standards attached hereto as Exhibit A as they may be amended from time to time by the Architectural Design Committee (or conforms to any variance granted by the Architectural Design Committee), and (iv) the appearance of the proposed structure, alteration, addition or treatment is not likely to be out of harmony or out of scale with the immediate neighborhood. Any decision of the Architectural Design Committee which involves a subjective conclusion as to taste or aesthetics (such as matters referred to in clauses (iii) or (iv) in the preceding sentence which require an opinion or judgment) shall be final and binding on all concerned and shall not be appealable to any court or tribunal (but any such decision may be reconsidered by the Architectural Design Committee in its sole and absolute discretion).

If no suit or other proceeding shall have been commenced in a Hawaii court of competent jurisdiction within one (1) year after the visible commencement of construction or alteration of any structure or improvement, such construction, alteration or improvement shall be deemed automatically to have complied with all of the provisions of this Section 4.05 and the Design Standards, notwithstanding any actual failure of any person to comply strictly with all of the requirements and procedures of this Article 4.05.

(e) Design Standards. The Design Standards attached hereto as Exhibit A are incorporated herein by reference.

The Architectural Design Committee shall have the authority to amend the Design Standards in its discretion from time to time. It is recommended, but not legally required, that before the Architectural Design Committee shall amend the Design Standards, it shall provide reasonable notice to the owners of all Properties and a reasonable opportunity to comment. No amendment to the Design Standards shall apply to any installation which shall have been previously approved by the Architectural Design Committee and the construction or placement of which (in accordance with said approval) has commenced or will, in the reasonable judgment of the Architectural Design Committee, be commenced by the Owner in good faith and without undue delay.

(f) Responsibility. The members of the Architectural Design Committee shall not be personally liable, and the Architectural Design Committee itself and Declarant (and its officers and agents) shall not be liable, for any of their or its acts or omissions in connection with the performance of (or failure to perform) any duties hereunder so long as such actions or omissions were grounded in the belief that such actions or omissions were in the best interests of the neighborhood.

Neither the Declarant, the Association, its Board of Directors, nor the Architectural Design Committee (nor the agents, officers, members or affiliates of any of them) shall be held liable for any injury, loss or damages arising out of or in any way connected with the integrity, quality or execution of any construction or design, or the failure of any construction or design to comply with any laws, rules or regulations, or the failure to approve or to require the approval of any feature.

(g) Variances. The Architectural Design Committee in its sole discretion may grant variances from the strict requirements of the Design Standards in individual cases if said Committee determines that (a) strict compliance would result in an undue hardship or would serve no reasonable purpose, and (b) the structure, alteration or addition, or its location, as proposed, complies with the general spirit and intent of the Design Standards and this Declaration. The Architectural Design Committee's discretion to grant or withhold a variance in any particular case shall be solely within the Committee's discretion, shall be binding on all parties and shall not be appealable, and shall not bind said Committee as precedent in any other case.

(h) No Protection of Views. No Property shall have any vested rights or easements for the protection of any view from said Property and the Declarant makes no warranties or representations of any kind to the buyer, owner or occupant of any Property concerning the extent, attractiveness or protection of any view over any Property or Common Area from any other Property or Common Area. The Architectural Design Committee shall have no obligation to consider the protection of views in any case before it (including both original applications or variance applications). However, the Architectural Design Committee shall have the unilateral right, in its sole discretion, to consider views in approving proposed structures and improvements.

## 5. EASEMENTS

5.01 Easements Shown on Plan. The Plan specifically describes certain Easements over, across and affecting certain Properties. Each of said Easements is hereby established for those purposes and in those locations ("Easement Areas") which are shown on the Plan. Each Easement shall be non-exclusive and shall be for the benefit of (a) the Property or Properties served by such Easement; (b) the Association and its members or (c) the public or private utility provider whose pipes or lines are installed within any such Easement, each in accordance with the manifest purpose and intent of such Easement. Each Easement shall confer the right to the benefitted Property, person or entity to construct, operate, maintain, repair and replace such improvements and facilities within the Easement Area as may be reasonably necessary or appropriate for the purposes for which the Easement is established as stated on the Plan.

All work within each Easement Area shall be conducted in a reasonable and orderly manner, so as to minimize any disturbance to the Owners

and occupants of the encumbered Property, and all excavations will be filled in and promptly returned to even grade without unreasonable delay.

**5.02 Encroachments.** Upon the completion of the installation of any utility line, water line, sewer line, drainage structure, or other facility which is part of the Common Areas, if it is determined that the location of the line, structure or facility inadvertently encroaches on any Property outside of the Easement Area as defined on the Plan, a nonexclusive, perpetual Easement shall thereafter exist for the maintenance, operation, repair and replacement of such line, structure, or facility in its location as built, provided that its location outside of the Easement Area shall not unreasonably interfere with the reasonable use and enjoyment of the encumbered Property by the Owners and occupants thereof or cause any diminution in value of the encumbered Property.

**5.03 Additional Easements.** Declarant and DHHL hereby reserve for themselves and their successors in interest the right to grant and create further easements within the roads and other Common Areas and in any Property for the purpose of establishing or relocating utility lines, water lines, sewer lines, effluent lines, as well as pumps, controls, access points, meters, poles, anchors, stays and wires or any other equipment necessary or appurtenant thereto, and for establishing any necessary drainage structures or areas; provided, however, that no such additional easement within any Property shall unreasonably interfere with the reasonable use and enjoyment of said Property by the owners and occupants thereof or cause any diminution in value thereof.

The Declarant reserves for itself, the Association, and the designees of each (which may include, without limitation, DHHL and any utility provider) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, roads, walkways, drainage systems, irrigation systems, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on Property which it owns or within easements designated for such purposes. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Property, and any damage to a dwelling resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of this easement shall not unreasonably interfere with development or use of any dwelling and, except in an emergency, entry onto any dwelling shall be made only after reasonable notice to the Owner or occupant thereof.



## 6. ADMINISTRATIVE PROVISIONS

6.01 Right to Abate Violations. If any person or entity shall violate or attempt to violate any of the covenants herein contained or any rules or regulations of the Association, the Board of Directors of the Association or the Owner of any Property may pursue legal action at law or in equity against such person or entity, either to prevent or abate such violation or to recover damages caused by such violation, or both. Said damages may expressly include a judgment for all of the plaintiff's costs of suit, including reasonable attorney's fees.

In addition, said Board of Directors may enforce these covenants and the rules and regulations of the Association and Architectural Design Committee by fines which said Board may adopt from time to time. Said fines shall be a lien on the Property of the violator and may be enforced in the same manner as assessments under Section 4.03 above.

6.02 Disputes. If a dispute arises between Owners of Properties as to any matter relating to any terms, meaning, application or enforcement of this Declaration, said Owners may, by mutual agreement, refer the matter to the Board of Directors of the Association for nonbinding arbitration. The Board of Directors may direct the matter to resolution by a mediator or by ho'oponopono, or may conduct proceedings to hear and consider both sides of the dispute, in accordance with reasonable procedures to be established by the Board of Directors, and may decide any such matter by majority vote of the Board members in attendance. Any decision in such matter shall be advisory only and shall not pre-empt or restrict either party's rights to pursue legal action in said matter. The Board may, in its discretion, for any reason, refuse to hear any matter referred to it under the terms of this paragraph.

If any dispute shall arise between the Association and any Owner or between the Association and Seller or any affiliate of Seller, said dispute shall be referred to binding arbitration in Wailuku, Hawaii under the rules of the American Arbitration Association. However, the preceding sentence shall not apply to proceedings by the Association to collect unpaid assessments, fines or liens pursuant to Section 4.03 or 6.01 above.

6.03 Duration of Covenants. These covenants shall be binding for a period of fifty (50) years from the date this instrument is recorded in the Bureau of Conveyances of the State of Hawaii. Thereafter, they shall automatically be extended without any documentation or any action of any person or the Association, for successive periods of ten (10) years each unless terminated at the end of said initial 50-year period or at the end of any such successive 10-year period by the affirmative vote or written election of Owners representing not less than 67% of all Properties in

the Neighborhood, evidenced by an instrument reciting said vote or election, signed by a majority of the members of the Board of Directors of the Association and recorded in the Bureau of Conveyances of the State of Hawaii.

6.04 Amendment of Covenants. These covenants may be amended at any time by the affirmative vote or the written consent of the Owners of not less than 67% of all Properties in Phase 3. Said amendment shall be effective upon the filing in the Bureau of Conveyances of the State of Hawaii of an instrument which shall (a) recite said amendment; (b) recite that the Owners of not less than 67% of all Properties in Phase 3 voted for, or gave their written approval for, said amendment or termination; and (c) be signed a majority of the members of the Board of Directors of the Association; provided, however that no amendment shall become effective during the period of Declarant's control under Section 4.04 without Declarant's written consent recorded with said amendment.

Notwithstanding anything herein to the contrary, Declarant or DHHL may amend this Declaration unilaterally under Section 2.06, and the Declarant may from time to time amend these covenants unilaterally without the consent of any Owner or mortgagee of any Property, for any of the following purposes:

- (a) to correct any drafting or typographical error; or
- (b) to meet any requirements of the Department of Hawaiian Home Lands.

See also Section 4.03, providing for amendment by the Board of Directors of the Association in certain cases. The Association shall not amend Section 4.03 without the consent and joinder of the Board of Directors recorded with said amendment.

6.05 Severability. Invalidation of any one or more of these covenants by judgment or court order shall not affect any of the other provisions hereof.

6.06 Perpetuities. If any provision of this Declaration shall be void or voidable for violation of the Rule Against Perpetuities in effect in the State of Hawaii, said provision shall continue only until the end of such period as shall not violate the Rule Against Perpetuities.

6.07 Notice of Sale or Transfer of Title. Upon the sale, transfer or successorship of the homestead lease of any Property, the transferee or successor shall promptly notify the Board of Directors of the Association in writing of the name

of each new Owner of said Property and his or her mailing address and home and business phone numbers, and shall comply with all DHHL rules and requirements.

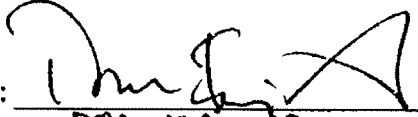
6.08 Records of Ownership and Notices. The Association shall be entitled to rely conclusively on the records of ownership of the Properties provided to the Association pursuant to Section 6.07 and 2.08 above, for all purposes, including, but not limited to, names and addresses for all communications, notices, service of process, approvals, voting and consents, it being the obligation and burden of each Owner of each Property to ensure that the Declarant and the Association have ownership records which are accurate and up-to-date. The Association may also conclusively rely, in the sole discretion of the President of the Association, on the records of ownership and addresses of Owners of each Property as shown on the real property tax records of Maui County in any particular case.

Executed the day and year first above written.

WK 3 LLC, a Hawaii limited liability company

By: Maui Quest LLC, its Member

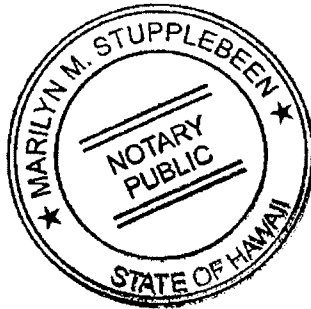
By: Dowling Company, Inc., its Member

By:   
DON FUJIMOTO  
Its: Vice President

"Declarant"

STATE OF HAWAII       )  
                                      )     SS.  
COUNTY OF MAUI       )

On this 31<sup>st</sup> day of December, 2004, before me personally appeared Don Fujimoto, 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.



Marilyn M. Stuppelbeen  
Notary Public, State of Hawaii  
Printed Name: Marilyn M. Stuppelbeen  
My Commission Expires: 4.17.05

## Exhibit A

### Description of Property

#### -ITEM I:-

All of that certain parcel of land (being all of the land described in and covered by Land Patent Grant Number 10,483 to Wailuku Sugar Company) situate, lying and being at Waiehu, District of Wailuku, Island and County of Maui, State of Hawaii, more particularly described as follows:

Beginning at an iron rail at the west corner of this parcel of land, the south corner of L. C. Aw. 8559-B, Apana 21 to W. Lunalilo and on the northeast side of Wailuku Sugar Company's railroad right-of-way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 16,929.86 feet north and 3,335.08 feet west as shown on Government Survey Registered Map 1436 and running by azimuths measured clockwise from true South:

- |    |  |     |         |   |
|----|--|-----|---------|---|
| 1. | 235°   | 18' | 1071.50 | feet along the Ili of Kuunahawelu (L. C. Aw. 8559-B, Apana 21 to W. Lunalilo);                      |
| 2. | 304°   | 33' | 498.00  | feet along the southwest side of a 20-foot road right-of-way (Grant 9428 to Wailuku Sugar Company); |
| 3. | 354°   | 40' | 426.85  | feet along same;  |
| 4. | 55°  | 10' | 30"     | 950.80 feet along government land;  |
| 5. | 130°   | 57' | 248.30  | feet along the northeast side of Wailuku Sugar Company's railroad right-of-way;                     |
| 6. | Thence along a curve to the right with a radius of 804.00 feet along the northeast side of Wailuku Sugar Company's railroad right-of-way; the direct azimuth and distance being: 138° 02' 30" 198.50 feet; |     |         |   |

7. 145 08'

402.30

feet along the northeast side of Wailuku Sugar Company's railroad right-of-way to the point of beginning and containing an area of 21.825 acres.

**BEING THE PREMISES ACQUIRED BY SPECIAL WARRANTY DEED WITH RESERVATION AND EXCEPTION**

**GRANTOR:** WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation (formerly known as Wailuku Sugar Company)

**GRANTEE:** DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

**DATED:** June 12, 1997

**RECORDED:** Document No. 97-086141

**-ITEM II:-**

**-PARCEL FIRST:-**

All of that certain parcel of land (being all of the lands described in and covered by Royal Patent Number 5332, Land Commission Award Number 2542, Mahele 1 to Ulaula, Royal Patent Number 5332, Land Commission Award Number 2542, Mahele 2 to Ulaula, Royal Patent Number 6241, Land Commission Award Number 3275-O, Apana 1 to Kaowao, Royal Patent Number 6241, Land Commission Award Number 3275-O, Apana 2 to Kaowao, Royal Patent Number 6241, Land Commission Award Number 3275-O, Apana 3 to Kaowao, Royal Patent Number 3231, Land Commission Award Number 8819, Apana 1 to Kamai, Royal Patent Number 4102, Land Commission Award Number 5283, Mahele 1 to Kalahouka, and portions of Royal Patent Number 4475, Land Commission Award Number 7713, Apana 24 to V. Kamamalu, Land Patent Grant Number 9428 to Wailuku Sugar Company, Royal Patent Number (None), Land Commission Award Number 8559-B, Apana 21 to W. C. Lunalilo, Royal Patent Number 6145, Land Commission Award Number 4405-C, Apana 1 to Kaaipuni and Royal Patent Number Number 5323, Land Commission Award Number 5276 to Kaai) situate, lying and being on the northeasterly side of Kahekili Highway at Ku'unahaelu, Waihee, District of Wailuku, Island and County of Maui, State of Hawaii, being LOT 1 of the "KU'UNAHAEU LARGE-LOT SUBDIVISION", more particularly described as follows:

Beginning at a point at the northeasterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being

18,542.83 feet north and 3,006.54 feet west and running by azimuths measured clockwise from true South:

1.	346°	41'	202.00	feet along the remainder of Grant 9428 to Wailuku Sugar Co. to a point;
2.	332°	45'	317.00	feet along same to a point;
3.	304°	00'	114.44	feet along same to a point;
4.	323°	00'	147.89	feet along same to a point;
5.	59°	16'	20.02	feet along same to a point;
6.	329°	25'	382.93	feet along same to a point;
7.	55°	18'	1,077.00	feet along Grant 10483 to Wailuku Sugar Co. to a point;
8.	333°	08'	68.40	feet along same to a point;
9.	327°	46'	405.92	feet along same to a point;
10.	128°	30'	765.45	feet along the remainder of R.P. 4475, L. C. Aw. 7713, Apana 24 to V. Kamamalu, being also along Lot 3 (Road Widening Lot) of Ku'unahaelu Subdivision to a point;
11.	Thence along the remainder of R. P. 4475, L. C. Aw. 7713, Apana 24 to V. Kamamalu on a curve to the left with the point of curvature azimuth from the radial point being: 312° 43' 22", and the point of tangency azimuth from the radial point being: 292° 25', having a radius of 715.00 feet, the chord azimuth and distance being:			
	212°	34'	11"	252.08 feet to a point;
12.	202°	25'	1,437.57	feet along the remainders of R. P. 4475, L. C. Aw. 7713, Apana 24

to V. Kamamalu; L. C. Aw. 8559-B:21 to Wm. C. Lunalilo; R. P. 4102, L. C. Aw. 5283 to Kalahouka; R. P. 5323, L. C. Aw. 5276 to Kaai; and R. P. 6145, L. C. Aw. 4405-C:1 to Kaaipuni to the point of beginning and containing an area of 20.777 acres

EXCEPTING AND EXCLUDING from the above described parcel of land that portion thereof conveyed to the STATE OF HAWAII by QUITCLAIM DEED dated September 26, 2000, recorded as Document No. 2000-145812, said portion conveyed is cross-hatched on map attached hereto and marked as EXHIBIT "A".

EXCLUDING, ALSO, from the above described parcel of land the following:

Royal Patent Number 6241, Land Commission Award Number 3275-O, Apana 1, 2, and 3 to Kaowao;

Royal Patent Number 6145, Land Commission Award Number 4405-C, Apana 1 to Kaaipuni; and

Royal Patent Number 4102, Land Commission Award Number 5283, Mahele 1 to Kalahouka.

**BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED**

GRANTOR:	WK 3 LLC, a Hawaii limited liability company
GRANTEE:	DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII
DATED:	--- (acknowledged November 4, 2002)
RECORDED:	Document No. 2002-197594

**-PARCEL SECOND:-**

Royal Patent Number 6241, Land Commission Award Number 3275-O, Apana 1, 2, and 3 to Kaowao;



Royal Patent Number 6145, Land Commission Award Number 4405-C, Apana 1 to Kaaipuni; and

Royal Patent Number 4102, Land Commission Award Number 5283, Mahele 1 to Kalahouka.

**BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED**

**GRANTOR:** WK 3 LLC, a Hawaii limited liability company  
**GRANTEE:** DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII  
**DATED:** --- (acknowledged November 4, 2002)  
**RECORDED:** Document No. 2002-197595

**SUBJECT; HOWEVER, TO:**

**1. -AS TO ITEM I:-**

- (A) EASEMENT 1 for drainage purposes as shown in that certain undated instrument recorded as Document No. 93-178638, and more particularly described as follows:

WAIEHU-KOU SUBDIVISION  
EASEMENT 1 (FOR DRAINAGE PURPOSES)  
SITUATED AT KOU, WAIEHU, WAILUKU, MAUI, HAWAII  
BEING A PORTION OF GRANTS 10483 AND 9428 TO  
WAILUKU SUGAR COMPANY  
BEING ALSO A PORTION OF LAND COMMISSION AWARD 8559-B  
APANA 21 TO W. C. LUNALILO

An easement for drainage purposes affecting Grant 10483 to Wailuku Sugar Company and Lot 1, Ku'unahaelu Large Lot Subdivision in favor of the Department of Hawaiian Home Lands, State of Hawaii, and described as follows:

Beginning at the northwest corner of this easement, being also the southerly corner of Easement 2 (For Drainage Purposes), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 18,424.34 feet north and 3,055.15 feet west and running by azimuths measured clockwise from true South:

1. 202° 25' 125.38 feet along Lot 2, Ku'unahaelu Large Lot Subdivision;

2.	346° 41'	202.00	feet along the remainder of Grant 9428 Wailuku Sugar Company;
3.	332° 45'	317.00	feet along the remainder of Grant 9428 to Wailuku Sugar Company;
4.	304° 00'	114.44	feet along the remainder of Grant 9428 to Wailuku Sugar Company;
5.	323° 00'	147.89	feet along the remainder of Grant 9428 to Wailuku Sugar Company;
6.	59° 16'	20.02	feet along the remainder of Grant 9428 to Wailuku Sugar Company;
7.	329° 25'	382.93	feet along Grant 9428 to Wailuku Sugar Company;
8.	304° 33'	498.00	feet along Grant 9428 to Wailuku Sugar Company;
9.	354° 40'	426.85	feet along Grant 9428 to Wailuku Sugar Company;
10.	55° 10' 30"	17.22	feet along Lot 10, Waiehu-Kou Subdivision;
11.	174° 40'	350.00	feet along the remainder of Grant 10483 to Wailuku Sugar Company;
12.	149° 00'	121.06	feet along the remainder of Grant 10483 to Wailuku Sugar Company;
13.	124° 33'	436.09	feet along the remainder of Grant 10483 to Wailuku Sugar Company;
14.	147° 37'	373.70	feet along the remainder of Grant 10483 to Wailuku Sugar Company and the remainder of Lot 1, Ku'unahaelu Large Lot Subdivision;
15.	127° 09'	219.00	feet along the remainder of Lot 1, Ku'unahaelu Large Lot Subdivision;
16.	144° 54'	167.00	feet along the remainder of Lot 1, Ku'unahaelu Large Lot Subdivision;

17. 160° 00' 255.70 feet along the remainder of Lot 1, Ku'unahaelu Large Lot Subdivision;  
18. 162° 38' 80.54 feet along the remainder of Lot 1, Ku'unahaelu Large Lot Subdivision to the point of beginning and containing an area of 92,194 square feet.

(B) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

**INSTRUMENT:** SPECIAL WARRANTY DEED WITH RESERVATION AND EXCEPTION

**DATED:** June 12, 1997  
**RECORDED:** Document No. 97-086141

(C) Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

2. -AS TO ITEM II:-

(A) Reservation in favor of the State of Hawaii of all mineral and metallic mines.

(B) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

**INSTRUMENT:** DEED

**DATED:** September 28, 1988  
**RECORDED:** Liber 22423 Page 274

The foregoing includes, but is not limited to, matters relating to creation and discharge of emissions, natural drainage and/or flow of water and easement for irrigation and irrigation pipeline, etc.

(C) PRIVATE FIRE PROTECTION SYSTEM AGREEMENT dated October 8, 1990, recorded as Document No. 90-158805, by and between WAIHEE OCEANFRONT HAWAII, INC. ("Applicant"), a Hawaii corporation, and DEPARTMENT OF WATER SUPPLY OF THE COUNTY OF MAUI ("Department").

(D) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: DECLARATION OF CONDITIONS

DATED: ----- (acknowledged: April 19, 1991)  
RECORDED: Document No. 91-050150

Said Declaration was amended by instrument dated July 5, 1991, recorded as Document No. 91-091134 and further amended by instrument dated January 25, 1994, recorded as Document No. 94-014849.

- (E) SUBDIVISION AGREEMENT (LARGE LOTS) dated January 2, 1992, recorded as Document No. 92-005602, by and between WAILUKU AGRIBUSINESS COMPANY, INC. and WAIHEE OCEANFRONT HAWAII, INC. ("Owner") and COUNTY OF MAUI, a body politic and corporate and a political subdivision of the State of Hawaii, (the "County").
- (F) SUBDIVISION AGREEMENT (AGRICULTURAL USE) dated February 3, 1992, recorded as Document No. 92-018877, by and between WAILUKU AGRIBUSINESS COMPANY, INC. and WAIHEE OCEANFRONT HAWAII, INC. ("Owner") and COUNTY OF MAUI, through its Department of Public Works, a body politic and corporate and a political subdivision of the State of Hawaii, ("Department").
- (G) SUBDIVISION AGREEMENT (THREE LOTS OR LESS) dated May 21, 1992, recorded as Document No. 92-091389, by and between WAILUKU AGRIBUSINESS COMPANY, INC. and WAIHEE OCEANFRONT HAWAII, INC. ("Owner") and COUNTY OF MAUI, a body politic and corporate and a political subdivision of the State of Hawaii, (the "County").
- (H) UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING dated November 24, 1992, recorded as Document No. 92-202764, by WAIHEE OCEANFRONT HAWAII, INC. ("Declarant"), a Hawaii corporation.
- (I) Water Rights, claims or title to water, whether or not shown by the public records.

3. -AS TO ITEM II (PARCEL FIRST), ONLY:-

- (A) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: LIMITED WARRANTY DEED

DATED: August 30, 2002

RECORDED: Document No. 2002-155565

- (B) Matters arising out of, including any access and utility rights in favor of, the parcels shown under ITEM II, PARCEL SECOND, of Schedule C herein, and described as Royal Patent Number 6241, Land Commission Award Number 3275-O, Apana 1,2 and 3 to Kaowao, Royal Patent Number 6145, Land Commission Award Number 4405-C, Apana 1 to Kaaipuni, and Royal Patent Number 4102, Land Commission Award Number 5283 to Kalahouka.
- (C) Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

4. -AS TO ITEM II (PARCEL SECOND, ONLY):-

- (A) -AS TO ROYAL PATENT NUMBER 6241, LAND COMMISSION AWARD NUMBER 3275-O, APANA 1, 2 and 3 TO KAOWAO:-

From the original source of title, there are breaks in the chain of title. Thereafter, title descends clear and unbroken for approximately 98 years.

- (B) AS TO ROYAL PATENT NUMBER 6145, LAND COMMISSION AWARD NUMBER 4405-C, APANA 1 TO KAAIPUNI:-

From the original source of title, there are breaks in the chain of title. Thereafter, title descends clear and unbroken for approximately 99 years.

- (C) -AS TO ROYAL PATENT NUMBER 4102, LAND COMMISSION AWARD NUMBER 5283 TO KALAHOUKA:-

From the original source of title, there are breaks in the chain of title. Thereafter, title descends clear and unbroken for approximately 86 years.

- (D) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: QUITCLAIM DEED

DATED: August 30, 2002

RECORDED: Document No. 2002-155566

- (E) Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

5. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
6. Any unrecorded leases and matters arising from or affecting the same.

END OF EXHIBIT "A"

## EXHIBIT "A"

### DESIGN STANDARDS FOR WAIEHU KOU PHASE 3

#### Use of Owner's Lot: Compliance with Master Declaration and Bylaws

##### (A) Use and Site Development Restrictions and Requirements

- (i) Utilities
- (ii) Individual Lot Plot Plans
- (iii) Easements
- (iv) Grading and Filling
- (v) Lot Drainage
- (vi) Temporary Structures and Surplus Materials
- (vii) Fire Hazard
- (viii) Pavement and Play Areas
- (ix) Vehicles, Trailers and Boats
- (x) Vehicle Repair

##### (B) Architectural Standards

- (i) Architectural Character
- (ii) Buildable Area
- (iii) Finished Floor Elevations
- (iv) Building Size and Height
- (v) Garage
- (vi) Roof Materials, Pitch and Overhang
- (vii) Building Surfaces
- (viii) Exterior Lighting
- (ix) Driveways
- (x) Air Conditioning System and Mechanical Equipment
- (xi) Swimming Pools and Water Features
- (xii) Refuse Storage
- (xiii) Antennas and Flagpoles
- (xiv) Mailboxes
- (xv) Exterior Walls/Other Materials/Color
- (xvi) Fences, Walls, Hedges and Enclosures
- (xvii) Laundry Facilities
- (xviii) Signs
- (xix) Setbacks
- (xx) New Materials

##### (C) Landscape Standards

- (i) Required Landscaping
- (ii) Top Soil

##### (D) Construction Standards

- (i) Prior Notice to Committee
- (ii) Performance: General Contractor
- (iii) Materials and Quality

- (iv) Foundations
- (v) Ground Termite Standards
- (vi) Abandoned Construction
- (vii) Utility Lines

(E) Construction Requirements

- (i) Blasting
- (ii) Construction Signs
- (iii) Refuse Disposal Bins
- (iv) Site Preparation
- (v) Portable Toilets

(F) Approvals, Procedures and Requirements

- (i) Architectural Controls
- (ii) Procedures for Submitting Plans
- (iii) Applicable Laws
- (iv) Performance of Work

(G) Reservations and Limitations

- (i) Variances and Amendments
- (ii) Delegation of Authority
- (iii) Nonliability

Introduction.

The following Design Standards are hereby established and adopted for Waiehu Kou Phase 3. All terms herein shall have the same meaning as set forth in the Declaration. "Declaration" means the Declaration of Covenants, Conditions and Restrictions to which these Design Standards are attached as Exhibit B.

"Subdivision" means Waiehu Kou Phase 3. "Committee" means the Architectural Design Committee. "Owner" means a lessee as defined in Section 2.08 of the Declaration.

If there is any conflict or inconsistency between these Design Standards and the Declaration, the Declaration shall control.

Use of Owner's Lot: Compliance with Declaration and Bylaws.

(A) Use and Site Development Restrictions and Requirements

Except as otherwise provided in the Declaration, each owner and occupant of a Lot in the Subdivision shall at all times comply with all applicable laws, and with all of the provisions of the Declaration. Each owner and occupant of a lot in the Subdivision shall be responsible for insuring that the architect, engineer, general contractor and all subcontractors also comply with all applicable laws and with all



of the provisions of the Declaration. In addition, each owner and occupant shall at all times comply with and observe each of the following provisions; provided, however, that in the event of any conflict between or among the provisions set forth below, the provisions of the Declaration and applicable laws, codes or ordinances, the most restrictive provisions or law, code or ordinance shall control.

(i) Utilities

Except for propane gas and trash collection, utility services shall be provided to the boundary of each Lot in a completely underground distribution and/or collection system. Propane gas must be kept underground or within an enclosure, screened from view, approved by the Committee and gas supplier. Trash receptacles shall be screened from view of adjacent properties and roadways.

(ii) Individual Lot Plot Plans

(a) Plot Plans for individual Lots will be furnished to the original owners approximately designating:

- (1) utility locations,
- (2) lot contours,
- (3) building setbacks,
- (4) sightline setbacks,
- (5) building height limits,

All information indicated thereon are approximate and subject to verification by the owner, prior to start of construction.

(b) The Declarant, Association, Board and Committee make no representation and assume no responsibility for the accuracy of the information set forth in the individual plot plans which is approximate and subject to verification by the owner.

(iii) Easements

Easements for the installation and maintenance of utilities and drainage facilities are as set forth in or are as reserved as shown on the deed conveying the Lot to the initial owner of the Lot, and/or the Plot Plan for each Lot.

No improvements, roof eaves or overhangs, or major planting shall be placed on, below or above these easements without the prior consent of the Committee and, if applicable, the entity utilizing the easement or to whom the easement has been granted.

(iv) Grading and Filling

The owner shall accept the condition of his or her Lot in "as is" condition. All subsequent site work performed by the owner shall be in strict compliance with plans as approved by the Committee.

(v) Lot Drainage

- (a) The flow of surface and/or subsurface drainage onto, across or from each Lot, shall not be obstructed. Such run-off shall be managed in a manner which will prevent erosion and damage to adjacent property and will conform to the requirements of Section 3.13 of the Declaration. The design for Lot drainage facilities shall be prepared by an architect or civil engineer registered in the State of Hawaii and shall be subject to the prior approval of the Committee. The design shall incorporate points of acceptance and points of discharge from the individual plot plans.

Drainage designs which, in the Committee's opinion, are impractical or do not adequately consider the possible adverse effects on adjoining property, will be disapproved. Drainage plans which are later proven to be ineffective shall be modified by the owner's consultant and submitted for re-approval to the Committee for reconstruction by the owner's contractor at the owner's expense.

The Committee shall not review the drainage plan for adequacy of engineering technical data or computation. The Committee shall not be responsible for any damage to adjacent property resulting from inadequate or improper drainage and grading, regardless of the Committee's approval of the Lot's drainage plans.

- (b) Certain Lots must accept and/or discharge drainage at specific locations along the Lot boundaries. In addition, the Plot Plans for the Lots may indicate any specific required drainage locations.

(vi) Temporary Structures and Surplus Materials

Subject to written approval by the Committee, temporary structures, trailers and construction materials may be placed on a Lot only at the commencement of construction and are to be completely removed from the Lot no later than thirty (30) days from the "date of completion" as that term is defined in Section 507-43, HRS. Temporary structures, trailers and construction materials shall be placed on the Lot and not on an adjacent lot or common area without the written approval of the landowner, Board and Committee.

(vii) Fire Hazard

Each Lot and all improvements located thereon, shall be maintained by the owner thereof in good condition and repair, and in such manner as to not create a fire hazard, all at owner's expense. It shall be the responsibility of each individual homeowner to maintain front yard landscaping to the acceptable standards of the Committee. Rear and side yard landscaping shall be maintained free of rubbish, trash, weeds and/or offensive plants or material. If owner fails to comply, the association shall have the right to have the work performed and to assess the cost to the owner as a special assessment.

(viii) Pavement and Play Areas

Paved play areas shall not be permitted within setback areas, and all play areas must be adequately screened by landscaping or other acceptable architectural means. Sports courts, including, without limitation, tennis, basketball and racquetball courts are not permitted.

(ix) Vehicles, Trailers and Boats

Vehicles shall not be parked continuously, overnight or regularly on roadways within the Subdivision. Only occasional parking by guests or by vehicles servicing a Lot shall be permitted on such roadways.

Boats or trailers parked on any lot shall not be visible from any adjacent property or roadway and shall not be parked on any roadway.

(x) Vehicle Repair

No vehicle, boat or other equipment, may be dismantled, repaired or serviced on any Lot so as to be visible from adjoining or neighboring lots or from any roadway.

(B) Architectural Standards

(i) Architectural Character

Architectural character of all buildings shall be of a contemporary Hawaiian style featuring generous overhangs, lanais, trellises and building siting oriented to take advantage of prevailing tradewinds for ventilation. Tudor, colonial, Georgian and French provincial styles are prohibited. Also, pole houses and structures with "A-frame" roof lines, shall not be placed on any lot.

The Committee may prohibit other architectural styles, without liability or limitation, when the architectural character of a building is not harmonious and/or detracts from the intended architectural character of the subdivision.

Each home shall be aesthetically designed and shall not be an eyesore; including but not limited to each home which is visible from any roadway or any other Property.

(ii) Buildable Area

The buildable area shall consist of all the area defined by the building setback lines. Buildable areas have been established to reasonably protect open space corridors and to respond to existing topography. All improvements must be confined solely to the buildable areas of each Lot, and may not be located on or encroach on any setback areas. Locations of ohana dwellings shall be determined by the Committee.

(iii) Finished Floor Elevations.

It is the general intent to balance cut and fill volumes. To avoid massive retaining walls on street elevations and to control the height of improvements to reasonably protect open space and views, grading, cutting and filling shall be limited as follows:

- (a) Cuts of greater than 3'-0" or fills of greater than 2'-0" shall require a plan prepared by a civil engineer duly registered as such by the State of Hawaii.
- (b) Cutting and filling shall be kept to a minimum. Grading shall be contoured, with no cut or fill banks greater than thirty percent (30%), unless specifically approved by the Committee to meet unusual site conditions. Pads for homes shall utilize stepped foundations to avoid massive cuts or fills. Cut or fill greater than 1,000 cubic yards shall require special written Committee approval, and will not be permitted except under unusual circumstances. Verification of the amount of cut and fill must be provided by the owner's civil engineer as part of the preliminary design submittal.

(iv) Building Size and Height

Each home shall have not less than 800 square feet of living area.

Roof elevations shall be measured at the highest point of a structure's roof. No structure shall be placed or constructed upon any Lot in excess of the maximum building heights set forth in Section 3.15.

A story is that portion of a residence included between the upper surface of any floor and the upper surface of the next floor or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six (6) feet above grade for greater than fifty percent (50%) of the total perimeter or is more than twelve (12) feet above grade at any point, such space shall be considered a story.

(v) Garage

On each Property, a garage for at least two (2) cars containing not less than four hundred (400) square feet of parking area under roof shall be provided, which may be attached to or detached from the dwelling. Garage doors shall be provided and shall be painted white. Windows in garage doors are acceptable.

(vi) Roof Materials, Pitch and Overhang

(A) Roof Materials

Roofs shall be asphalt shingles in a color approved by the Committee. A sample shall be submitted for Committee approval as to color, style and texture. This shall be the only approved roofing material.

The following roof materials are not permitted: corrugated metal steel or aluminum, rolled roofing, fiberglass, plastic and rubber membrane.

Built up roofing will be permitted only for flat roof construction.

Skylights are to be designed as an integral part of the roof system, utilize safety or tempered glass, and be of a non-reflective color or tint. No mechanical equipment shall be placed on a roof.

Roof material colors are limited to earth tones with shades of browns, grays, blues and greens, and shall be only those colors specifically approved by the Committee

(b) Roof Pitch

Roof pitch shall be a minimum of 5:12 (vertical:horizontal) for single pitched roofs. Double pitched roofs shall have a minimum pitch of 3:12 on the lower portion of the roof and a minimum pitch of 5:12 on the upper portion of the roof. Mansard roofs are not permitted.

(c) Flat Roofs

The area of flat roof shall not exceed fifteen percent (15%) of the total roof area. Only flat roofs of exceptional design and quality will be considered for approval.

The flat roof surface above the second story shall not be utilized as a roof terrace.

(d) **Overhangs**

Roof overhangs, as measured horizontally, shall not extend more than three feet into any building setback area.

(vii) **Building Surfaces**

Articulation of building surfaces is encouraged to soften their appearances and reduce mass. Articulation should be achieved by utilizing various architectural elements including:

- Projections and recesses to provide shadows and depth.
- Lanais
- Sunshading devices such as trellises
- Staggering of wall planes
- Articulated doors, windows and wall openings

Any architectural element used shall be approved by the Committee.

(viii) **Exterior Lighting**

There shall be no exterior lighting of any type, either installed or maintained, the light source of which is visible from neighboring property, except as permitted by the Committee. Security lights activated by movement may be installed with approval of the Committee. Colored lights (non-white), fluorescent, high intensity discharge exterior lights, flashing, exposed bulbs and flood lamps on roof eaves are not permitted.

(ix) **Driveways**

- (a) Driveway aprons shall be paved. Pavement material shall be approved by the Committee. Recommended materials are asphaltic concrete, textured concrete, brick or concrete pavers, bomanite or grasscrete. Driveways with a slope of twelve percent (12%) or more shall be paved with concrete.
- (b) Driveways shall be constructed by the owner following County standards prior to any other work being done, and shall be used during construction to prevent damage to existing concrete gutters,

curbs, sidewalks, sprinkler systems and underground utility lines. Any damage caused by the owner or the owner's contractors, employees or agents shall be the responsibility of the owner, and shall be immediately and completely repaired to the original condition.

(x) Air Conditioning System and Mechanical Equipment

Prior to the installation of an air-conditioning system, swimming pool filter pump unit(s) or other mechanical equipment, the owner shall secure the written approval of the Committee as to the location and type of system. Such air-conditioning, swimming pool filter pump unit(s) or other mechanical equipment system shall be sound treated to prevent noise nuisance.

The level of noise or sound pressure emanating from any Lot shall not exceed the maximum level permitted for single-family residential districts under the County ordinances

All designs shall be reviewed by the Committee. If the proposed noise mitigation measures appear to be insufficient, the Committee may request more information justifying the adequacy of the proposed measures, or the incorporation of additional treatment.

(xi) Swimming Pools and Water Features

Swimming pools and water features design shall be submitted as part of the preliminary and final plans. Swimming pools and swimming pool decks shall have a minimum ten foot setback from property lines, except where stated or delineated on the individual plot plans. Swimming pool equipment and housing shall be enclosed and contained within the buildable area.

Noise mitigation factors shall be utilized to address noise generated by water features. Swimming pools and water features shall be kept operable in accordance with the rules and regulations of the Department of Health. If abandoned or if a pool or water feature becomes a nuisance, the owner shall demolish, remove the pool or water feature, and , insofar as practicable, restore the land to a condition approximating that which existed prior to the construction of the pool or water feature, and properly landscape and maintain the restored area. The method of demolishing the pool or water feature shall be subject to prior written Committee approval. Pool equipment rooms shall be sound treated to prevent noise nuisance in accordance with noise control guidelines.

All pool, pumps and related equipment must be designed to drain into the street upon which the Lot has access. No drainage onto adjacent lots is permitted.

(xii) Refuse Storage

Refuse receptacles are to be located within the buildable area of the Lot. The refuse receptacles must be covered and screened completely from view of adjoining lots and common areas either by landscaping or other screening material which is compatible in design and color with the main structure. Such receptacles shall be designed to accommodate the sorting of recyclable products.

(xiii) Antennas and Flagpoles

Except as otherwise permitted in the Declaration, no visible antennas, television, radio or otherwise are allowed, and miniature satellite dishes not to exceed 24" in diameter may be permitted only after specific written approval of the Committee. One flag pole per lot shall be allowed within the buildable area. Pole height shall not exceed twenty feet (20') nor extend beyond the building envelope. No commercial flags shall be allowed.

(xiv) Mailboxes

All mailboxes shall be designed per postal regulations and specifications established by the Committee. House number and name signs shall be of an attractive and superior quality design and installed flush with wall surfaces where possible, and shall in no event exceed an aggregate of one square foot in size.

(xv) Exterior Walls/Other Materials/Color

All materials shall be either stucco, stone, cast concrete, board and batten, or shiplap siding. All wood siding shall be clear redwood, cedar, douglas fir, or an approved cement fibrous material such as "Hardie Plank". Samples of the siding shall be submitted as part of the preliminary plan application. No vinyl, pre-finished metal siding, plain surfaced or grooved plywood siding, composite or presswood siding are permitted.

All exterior wall materials must be continued down to within six (6) inches of finish grade so that unfinished foundation walls will not be exposed.

Subtle "earth" colors and tones are permitted with complementary accent colors for architectural features, but color chips must be submitted to the Committee for review and prior written approval. All flashing, sheet metal, vent and pipes shall be finished to match or complement building surfaces. No garish, reflective, stark white or fluorescent colors shall be allowed on any exterior surface. Light reflectance value (gloss) in the exterior paint shall not exceed a range of forty four percent (44%) to sixty nine percent (69%).



Light reflectance value (gloss) in the exterior trim elements shall not exceed a range of twelve percent (12%) to sixty eight percent (68%).

(xvi) Fences, Walls, Hedges and Enclosures

Fences, walls hedges and enclosures, located along the street right-of-way, with a height of one and one-half (1 1/2) feet or more shall be setback a minimum of three (3) feet from the abutting property line.

Fences, walls and hedges located along side property lines shall not exceed six (6) feet in height from the original grade. The retaining wall portion of a wall along side property lines shall not exceed three (3) feet in height from the original grade.

Retaining walls and foundations of more than three (3) feet in height or where placed upon embankments of filled areas, shall be designed by an architect or civil or structural engineer duly registered as such by the State of Hawaii. The maximum height of any exposed face of any retaining wall shall be six (6) feet as measured from the finished grade on either side at the wall's base.

All walls shall be constructed of lava rock, blue rock, concrete or concrete block. Wall finishes shall be lava rock, blue rock or stucco. No exposed unfinished concrete walls shall be permitted.

All other walls, fences and incidental garden structures shall be designed so as to be attractive from all viewable sides, and shall have a height limit of six (6) feet as measured from finished grade level.

Exposed cement mortar for rock walls shall be of standard gray or charcoal color. No white or other coloring agents shall be applied or mixed with the exposed cement mortar. If a wall is located at the street frontage or rear yard frontage, the area between the wall and the property line shall be attractively landscape irrigated and maintained.

Highly detailed wood or approved vinyl fences are permitted whenever appropriate. The wood fence shall be of an attractive design, have a high quality finish and must be approved in writing by the Committee. Fencing shall be designed to be equally attractive from both sides.

A forty (40) foot sightline setback for walls, fences, structures, hedges and vertical plantings is required on corner lots from the point where the curbing forms the tip of any equilateral triangle.

Chain link fences are permitted.

Property line fences shall be developed in common with adjacent property owners to eliminate double fencing, wherever possible.

(xvii) Laundry Facilities

Laundry facilities and any service or utility area, including any area for hanging clothes, must be screened from view from any adjacent property and roadways.

(xviii) Signs

Except as otherwise permitted by the Declaration, no signs whatsoever shall be erected or maintained upon any lot; except:

- (a) Such signs as may be required by legal proceedings.
- (b) Such signs as required for house numbers and name signs in accordance with item (xiv) (mailbox) above, provided that such signs shall not exceed one square foot maximum
- (c) Any sign which does not comply with the above must obtain specific written approval of the Committee and the Board.

(xix) Setbacks

No structure shall be located closer than 15 feet from the road front lot line nor 6 feet from side and rear lines.

(xx) New Materials.

All construction materials must be new. No used or second hand lumber shall be allowed.

(C) Landscape Standards

(i) Required Landscaping

Each lot owner shall be responsible to landscape the front, side and rear yards. The Owner of each Property shall maintain all landscaping in neat, attractive, irrigated and trimmed condition. Refer also to Section 3.06.

(ii) Top Soil

Top or fill soil material brought to the site by the owner shall be free of clay, termites and/or other deleterious matter.

(D) Construction Standards

(i) Prior Notice to Committee

The owner shall give the Committee two (2) weeks advance written notice of the owner's intent to commence any construction or site improvements whatsoever. Prior to commencement of construction, the owner will deposit a copy of the County building permit with the Committee. Additional items which must be submitted to the Committee are described below.

(ii) Performance: General Contractor

All work to or upon a Lot shall be expeditiously and with due diligence prosecuted to completion. All work must be performed by a contractor duly licensed to perform such work under the laws of the State of Hawaii or by owner-builder in accordance with applicable law.

(iii) Materials and Quality

The materials used for structures shall be new and of a quality consistently associated with that used on custom-designed homes. No used materials are permissible except where specifically approved in writing by the Committee to achieve a desired aesthetic effect.

All lumber shall be pressure treated against termite infestation and shall be guaranteed in writing against such infestation for a period of five (5) years. All field cuts of lumber and materials shall be field treated.

(iv) Foundations

The owner and owner's architect, engineer and contractor shall give due consideration to the design of the foundation systems of all structures (home, walls, swimming pools, etc.). It is the owner's responsibility to conduct an independent soils engineering investigation. The Committee may request that the owner submit an independent soils engineering report as part of the design review process.

(v) Ground Termite Standards

(a) Soil under all concrete slabs on the ground and under all building floors, whether on ground or over air space, and under all footings and masonry foundation walls, shall be treated against subterranean termites by a reliable, established and duly licensed termite control company.

- (b) Treatment shall be guaranteed in writing by said company against termite infestation for a period of three (3) years. The guarantee shall include annual inspection and re-treatment of infested areas. A copy of this guarantee shall be delivered to the Committee.
- (c) Chemicals used outside of the dwelling or in accessible spaces under the dwelling shall be applied in a safe manner to mitigate exposure to humans, plants and pets.

(vi) Abandoned Construction

If construction of a dwelling is at any time abandoned, the Lot owner shall cause the Lot to be cleared and landscaped so as to present a neat appearance, and shall thereafter so maintain the Lot until the re-commencement of construction. "Abandonment" shall mean the cessation of substantial construction activity for a period of thirty (30) consecutive days.

(vii) Utility Lines

All utility lines, including but not limited to electrical, telephone, sewer and television service shall be underground. Meters and service panels shall be screened from public view.

(E) Construction Requirements

(i) Blasting

All blasting must be performed by a licensed contractor. Twenty-four hours prior written notice must be given to the Committee and all owners and occupants of property within a radius of five hundred (500) feet from the property line of the Lot on which the blasting is to occur.

(ii) Construction Signs

No construction signs (i.e., signs identifying the name of the contractor, architect, construction lender, etc.) are permitted on any Lot.

(iii) Refuse Disposal Bins

A refuse disposal bin shall be placed on a Lot only at the commencement of construction and are to be completely removed from the Lot no later than thirty (30) days from the "date of completion", as that term is defined in Section 507-43, HRS. The refuse disposal bin shall not be placed on an adjacent lot or common area without approval of the landowner, Board and Committee.

(iv) Site Preparation

Driveway curb cuts must be made, and the grade of the driveway apron to the property line must be completed prior to the start of construction. All irrigation lines within the medial strip must be sleeved and reburied, and all associated irrigation leads moved as necessary.

(v) Portable Toilets

A portable toilet in fully operating condition must be maintained on the construction site at all times during construction and serviced in accordance with applicable State Department of Health and County Sanitation standards.

(F) Approvals, Procedures and Requirements

(i) Architectural Controls

No structure or other improvement shall be erected, placed or altered on any Lot and no grading or filling shall occur until (a) the preliminary and final construction plans and specifications referred to in subparagraph (iii) below, prepared under the immediate and direct supervision and stamped by a duly licensed Architect, have been submitted to and approved by the Committee, and (b) the landscape plans for the Lot have been submitted to and approved by the Committee. It is recommended that the approvals described above be obtained before any materials are ordered or purchased for such structure or improvement on the Lot.

In the event the proposed improvement or alteration is for repainting (decorating the exterior of any structure in a manner affecting only the exterior color thereof), it shall only be necessary to obtain written Committee approval of the color scheme prior to the commencement of such work.

The approval of the Committee, in its sole discretion, may be withheld without limitation or liability, upon any of the following grounds:

- (a) The work of construction or alteration shown on the plans and specifications and other materials submitted, fail to comply with the conditions, covenants and restrictions set forth herein or in the Declaration or in any other applicable document which is administered by the Committee.

- (b) The improvements shown on the plans and specifications and other materials submitted are deemed unsatisfactory in location, design, exterior design or color, or would not be in harmony with the Subdivision.
- (c) The proposed work does not comply with the Declaration, these Design Standards or spirit and intent of all other relevant documents as applied by the Committee.

The approval of any plans, specifications or variances shall not be deemed to waive the right of the Committee to object to the same or similar plans or specifications or any feature or element embodied therein, if and when the same or similar plans, specifications, features or elements are submitted for approval for use on other Lots in the Subdivision.

(ii) Procedures for Submitting Plans

Each owner shall submit to the Committee not less than the following items for the Committee's review and approval prior to commencing any construction or other work upon the owner's Lot:

(a) Preliminary Plans (1 bound set)

Preliminary plans must include but are not limited to the following:

- 1) One 1/8" scale floor plan.
- 2) One 1/8" scale exterior elevations with materials indicated.
- 3) One 1/8" scale site/building cross sections, elevations and roof height elevations noted.
- 4) One 1/8" scale site plan showing building placement, roof overhangs, building square footage, vehicle access, percentage of allowable buildable area covered, finish floor elevations with adjacent exterior corner grade elevations, drainage design, existing and proposed preliminary grades, conceptual landscape plan, compass, tradewinds and solar orientations, driveway, retaining walls, fences, lanais, decks, patios, easements and building setbacks, existing street tree locations, utility hookups, all site dimensions and lot number, swimming pools, spas, equipment rooms, mail boxes and any other information which may be requested by the Committee.
- 5) Calculations on building square footage, percentage of buildable area covered, floor area ratio, cut and fill volumes,

any other calculations which may be required by the Committee.

- 6) Topographic survey of the existing contours at two foot intervals.
- 7) Samples of proposed exterior finishes, if known.
- 8) Proposed construction schedule.
- 9) Variance requests, in writing, for any nonconforming portion of the plan. Any variance requested shall be discussed with the Committee prior to submittal of the preliminary plans.
- 10) List of consultants including, but not limited to, the architect, engineers and landscape architect.
- 11) A Design Review fee if required by the Architectural Design Committee.

Approval shall be in compliance with the standards and restrictions set forth herein. The review shall consider:

- 1) Compliance with all relevant documents and regulations;
- 2) Siting and orientation of the house structure;
- 3) Setback lines and height restrictions;
- 4) Building shapes; and
- 5) Architectural character.
- 6) Drainage and site engineering considerations.

(b) Final Plans (1 bound set)

Final plans must include but are not limited to the following:

- 1) Final working drawings.
- 2) Landscape and irrigation plans.
- 3) Specifications.

Upon securing the Committee's written approval of all of the above, the owner shall submit a copy of the building permit and a letter of intent to begin construction at least two (2) weeks prior to beginning any work whatsoever.

(iii) Applicable Laws

The owner or the owner's architect, engineer, contractor or other professionals shall be responsible for all submissions to the appropriate state and county agencies and for complying with all applicable laws, regulations, ordinances and codes, and shall acquire all permits necessary before commencement of any construction.

(iv) Performance of Work

All construction, alterations and landscaping performed or placed on the Lot shall be performed or place in strict compliance and conformity with the final plans and specifications therefore approved by the Committee and any deviation from such plans and specifications shall require the prior written approval of the Committee.

All construction, alterations and landscaping performed or placed on the Lot shall be performed or placed in compliance and conformity with the guidelines of this document and those of the Declaration.

Work must commence within one hundred eighty (180) days of final approval or approval shall be automatically revoked without notice. In the event final approval is revoked, the owner must resubmit the plans for final approval and obtain final written approval prior to commencing construction. The Committee shall not be bound by decisions made by prior approvals.

Work must be completed within twelve (12) months of the date of final approval. The owner shall provide a Certified Survey As-Built Plan indicating all improvements, roof heights and setbacks.

(G) Reservations and Limitations

(i) Variances and Amendments

The Committee shall have the right at any time in its sole discretion to amend, modify, waive, grant variances to or not enforce any of the provisions and requirements herein specified with respect to any Lot or Lots without any liability whatsoever to the owners or occupants of the lot to which the waiver, variance or non-enforcement applies, or to the owners or occupants of any other lots, or to any other person, and without impairing or otherwise affecting the application or enforcement of such requirements with respect to all other lots. See Section 4.05(g) of the Declaration.



(ii) Delegation of Authority

The Committee shall have the right to delegate the administration (including the right to approve or reject designs, colors, plans and specifications) and/or enforcement of all or any part of the provisions and requirements of those standards to any other person, including Declarant. The written decision or disposition of any such delegatee shall be binding upon the Committee.

(iii) Nonliability

No review or approval by the Committee of any item submitted to the Committee pursuant to this Declaration or any recorded instrument shall in any manner constitute the Committee's (or any Committee member's), Declarant's, the Board's or the Association's representation, warranty or agreement that such item (1) has been prepared free of defects or is of good workmanship or design, or will result in improvements which are readily marketable or free of design or construction defects, or (2) complies with any or all applicable laws (including building code requirements), or (3) will result in any government entity's or any other person's approval of the same. Neither Declarant nor the Committee nor any director, officer, employee, agent or member of Declarant or the Committee shall be liable to the Association, or to any owner, or to any other person, for any damage, loss or prejudice suffered or claimed on account of (i) the approval or rejection of, or the failure to approve or reject any plans, drawings and specifications or other request submitted by an owner pursuant to this Declaration whether or not defective, and whether or not in compliance with the provisions and requirements of this Declaration, (ii) the construction of any improvement or performance of any work, whether or not such construction or performance complies with this Declaration, or the terms of any approval of the Committee, (iii) the development or manner of development of any other lot or land within the Subdivision, (iv) the erroneous execution of an estoppel certificate, (v) the failure of any plans, drawings, specifications or other item approved by the Committee to comply with the provisions and requirements of this Declaration or applicable laws, regulations, ordinances or codes, (vi) the Committee's failure to require the owner's or owner's architect or contractor to comply with the provisions and requirements of this Declaration, or (vii) any other matter, decision, act or omission; provided that such director, officer, employee, agent or member shall have acted in the belief that such actions or omissions were in the best interests of Waiehu Kou Phase 3 (or the Declarant, in any case where action is taken by Declarant acting as the Committee).

END OF EXHIBIT "A"