

KEHALANI COMMUNITY ASSOCIATION

**NEW CONSTRUCTION COMMITTEE
"NCC"**

DESIGN GUIDELINES

Adopted on _____, 2005

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KEHALANI COMMUNITY ASSOCIATION

**NEW CONSTRUCTION COMMITTEE
DESIGN GUIDELINES**

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KEHALANI COMMUNITY ASSOCIATION

NEW CONSTRUCTION COMMITTEE DESIGN GUIDELINES

1.0. KEHALANI DESIGN PHILOSOPHY

1.1. Preservation of Community. In a master-planned community, Owners have contractually agreed to surrender some of their freedom of expression in improving their properties, and have accepted an obligation to conform to architectural and landscaping standards established in accordance with the Master Declaration and these Rules and Guidelines, in order to preserve and maintain the character of the community in which they have chosen to reside. These standards are protected by the Master Declaration for the ultimate benefit of all Owners.

1.2. Design and Construction Oversight. There are two committees that are responsible for establishing and enforcing architectural and construction standards. The New Construction Committee ("NCC") has jurisdiction over all original construction in Kehalani and has the task of assuring that the construction of Improvements by both individual Owners and project developers conform to the prevailing these standards. The NCC consists of three to five members who have been appointed by the Declarant under the Master Declaration. The Modifications Committee ("MC") has the overall responsibility for preserving and maintaining architectural and landscaping standards with respect to alterations and additions to existing Improvements.

1.3. Responsibility. The decisions of the NNC made pursuant to these Design Guidelines involve areas where individual impressions, personal preferences and subjective opinions may lead individual Owners to disagree with some of the standards incorporated in this document. Nevertheless, the NCC is mindful of its responsibility to use its collective knowledge and experience to establish and maintain architectural and construction standards that will balance the needs of the community and those of individual Owners.

2.0. PURPOSES OF GUIDELINES; ADOPTION AND AMENDMENT

2.1. Purposes. These Design Guidelines are intended to provide guidance to Owners and their builders regarding matters of particular concern in considering applications for approval of design and construction of new improvements on property within the Kehalani community. They reflect the currently prevailing aesthetic views of the New Construction Committee as to the design and construction of new Improvements, Landscape and Hardscape. These Design Guidelines elaborate upon the broad, conceptual framework outlined in the Land Use Design Criteria, the Architectural Guidelines and the Landscape Guidelines approved by the County of Maui in connection with Project District Development Approval Application (Phase II) for Wailuku Project District No. 3.

2.2. Adoption and Amendment. These Design Guidelines have been adopted by the New Construction Committee at its organizational meeting, pursuant to Article IX of the Kehalani Master Declaration. They are not set in stone, however, and the New Construction Committee may, in its sole discretion, adopt amendments from time to time to reflect the evolution and further articulation of its aesthetic sentiments. Therefore, the extent to which these Design Guidelines may be amended over the years as the Kehalani community matures is unlimited. Nevertheless, any such amendments will operate prospectively only and will not apply to require modifications to or removal of Improvements previously approved and completed.

3.0. DEFINITIONS

Except for the terms defined below, capitalized terms used in these Design Guidelines shall have the same meanings as such terms in the Master Declaration.

Air Conditioners: Both window or wall mounted units and split system units. The condenser and all associated piping for a split system shall be considered as part of the air conditioner.

Association: Kehalani Community Association, a Hawaii nonprofit corporation, its successors or assigns.

Board of Directors or Board: The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Hawaii corporate law.

By-Laws: The By-Laws of the Association, as they may be amended.

Declarant: Hawaii Land & Farming Company, Inc., a Delaware corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" of the Master Declaration for the purpose of development and/or sale and which is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

Design Guidelines: These New Construction Design Guidelines, adopted by the NCC at its initial organizational meeting pursuant to Section 9.3(a) of the Master Declaration, as amended from time to time.

Excavation: Any disturbance of the surface of the land (except temporarily for planting) which results in the removal of earth or rock for a depth of more than 18 inches.

Fill: Any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than 18 inches.

Front of House: The side of the house fronting the street used for the address of the house. This street will also be known as the front street.

Garage: An enclosed or semi-enclosed area used for the purpose of parking vehicles and storing personal effects.

Improvements: Residences, buildings and additions thereto, outbuildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, patio slabs, hedges, windbreaks, planted trash surrounds, poles, signs and any other structures of any type or kind.

Landscape: To adorn, improve, or arrange the grounds attractively by clearing, grading, contouring the land and planting grass, ground cover, flowers, shrubs, and/or trees. Approved landscape shall mean landscape which meets the guidelines described in Table I (Kahalani Landscape Guidelines) and are included in Table II (Kahalani Recommended Plant List).

Light Source Visibility: Visibility of the filament of the light source from neighboring property.

Master Declaration: The Declaration of Covenants, Conditions and Restrictions for Kehalani dated March 17, 1995, filed in the Bureau of Conveyances of the State of Hawaii as Document No. 95-040251.

Master Plan: The master development plan for the development of Kehalani, as it may be amended from time to time.

Modifications Committee ("MC"): The committee created pursuant to the Master Declaration, whose duty it shall be to consider and act upon all proposals and plans relative to modifications to existing Improvements, including architecture, design, construction relating thereto, and to modifications of an existing Landscape.

Neighborhood: Each separately developed residential area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each condominium, townhouse development, development containing homes with common driveways, cluster home development, and single-family detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined below) having concurrent jurisdiction over the

property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 3.4 of the Master Declaration.

Neighborhood Association: Any owners association having concurrent jurisdiction with the Association over any Neighborhood.

New Construction Committee ("NCC"): shall mean the committee created pursuant to the Master Declaration, whose duty it shall be to consider and act upon all proposals and plans relative to new construction, including the architecture, design and construction relating thereto, and to the design and installation of a new Landscape.

Owner: One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

Person: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

Properties: The real property described on Exhibit "A" of the Master Declaration, together with such additional property as is subjected thereto.

Public Records: The Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as appropriate.

Residence: A building or buildings used for residential purposes, together with any garage, carport or similar outbuilding appurtenant thereto, whether or not a part of the same structure.

Retaining Wall: Any structure constructed for the purpose of containing or supporting any embankment, fill or other earthen form.

Single-Family: One or more persons, all related by blood, marriage or legal adoption, living and cooking on the premises together as a single, non-profit housekeeping unit; or unrelated persons living and cooking on the premises as a single, non-profit housekeeping unit; provided, however, that the number of persons living on the premises shall not exceed the standards and requirements set forth in the Housing Code of the County of Maui.

Supplemental Declaration: An instrument filed in the Public Records pursuant to Article VII of the Master Declaration, which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 3.4(c) of the Master Declaration, which designates Voting Groups.

Unit: A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area, common property of any Neighborhood Association, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by the Declarant, whichever is more recent, until such time as a subdivision plan or map or condominium map is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plan or map shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plan or map shall continue to be treated in accordance with this paragraph.

Visible from Neighboring Property: With respect to any given object or activity, such object or activity is or would be in line of sight originating from any point six (6) feet above the adjoining property, excluding contiguous property owned by the owner of the property involved, but including common areas and streets, assuming that such adjoining property has an elevation equal to its actual elevation or the highest elevation of the ground surface of that portion of the property upon which such object or activity is located, whichever elevation is lower.

Visible from Street: With respect to any given object or activity, such object or activity is or would be visible from any point of a street fronting the Unit or adjacent Unit.

4.0. DESIGN PRINCIPLES

Kahalani strives to create a residential community unified by aesthetic architectural themes. The community encourages a freedom of high-quality architectural expression within a defined framework of Hawaiian styles and promotes a quietly understated elegance in architectural design. It will insist upon high-quality standards to establish lasting value for residences within the community. As an outgrowth of these principles, architectural expressions will combine well with the environment and suggest openness. Improvements should fit into the natural terrain by stepping with the topography, orienting to maximize views of the Owner and neighbors alike, and blending indoor and outdoor spaces by incorporating gardens, terraces, courtyards and lanais, thereby fostering the customary Maui living style.

5.0. REQUIRED APPROVAL: STANDARDS, RIGHT TO WITHHOLD, MEANING AND EFFECT

5.1. Required Approval. No new Improvements shall be placed, erected, or installed upon any Unit, and no staking, clearing, excavation, grading, fill work or other site work, planting or removal of landscaping materials, shall take place prior to the final written approval of the NCC. Any Improvements placed or made in violation of these Design Guidelines shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, the Owner of the nonconforming Improvements shall, at their own cost and expense, remove such Improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

5.2. Standards of Approval; Right to Withhold Approval. The NCC shall use reasonable judgment in approving or disapproving any item submitted to the NCC for its approval or consent under these Design Guidelines. In reviewing each request for design and construction approval, the NCC may consider the quality of workmanship and the design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Decisions of the NCC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as NCC members change over time. The NCC shall have the right to withhold its approval or consent, without liability to the person requesting such approval or to any other person, if:

5.2.1. The item, materials or documentation submitted to the NCC does not conform to or satisfy the provisions or requirements set forth in these Design Guidelines, the Master Declaration, any Supplemental Declaration or other Public Record applicable to the Unit;

5.2.2. The proposed Improvements or work does not conform to or satisfy the provisions or requirements set forth in these Design Guidelines, the Master Declaration, any Supplemental Declaration or other Public Record applicable to the Unit; or

5.2.3. The proposed Improvements or work is not compatible with Kehalani or the Neighborhood in which such Improvements are to be located, or with the projects, homes, Improvements and landscaping now or then existing in Kehalani, or with the environment and long-range development of Kehalani.

5.3. Approvals Deemed Conditional. Unless otherwise specified in writing by the NCC, all approvals granted hereunder shall be deemed

conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

5.4. No Representations, Warranties or Agreements. No approval by the NCC of any item submitted to the NCC shall in any manner constitute a representation, warranty or agreement by the NCC, the Declarant, the Board, the Association, and their respective members, duly authorized representatives and attorneys, that such item (1) has been prepared free of defects or is of good workmanship or design, or will result in Improvements that are readily marketable or free of design or construction defects, (2) complies with Applicable Laws (including building code requirements) or (3) will result in the approval of the same by any Government Entity or other person.

5.5. Limitation of Liability. Review and approval of any application pursuant to these Design Guidelines is made on the basis of aesthetic considerations only, and the NCC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee (including, without limitation, the NCC), nor their respective members, duly authorized representatives shall be held liable for any injury, damages, or loss or prejudice suffered or claimed on account of (i) a mistake in judgment or negligence, (ii) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, or other request or item, whether or not defective, (iii) the manner or quality of approved construction of any Improvement or the performance of any work, whether or not such construction or performance complies with these Design Guidelines, the Master Declaration, any Supplemental Declaration or other Recorded Instrument or the terms of any approval of the NCC, (iv) the manner, appearance, style or quality pertaining to the development, improvement, landscaping, maintenance or operation of any Improvements of a Unit in Kehalani, (v) the erroneous execution of any estoppel certificate, (vi) the failure of any plan, drawing, specification or other item approved by the NCC to comply with Applicable Laws or (vii) any other matter, decision, act or omission; provided that such persons described above shall not have acted in bad faith. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6 of the Master Declaration.

5.6. No Waiver of Right to Withhold Approval. The NCC's approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with the construction of Improvements or with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to

withhold approval as to any similar proposals, plans and specifications, drawings, or other matters submitted for any subsequent Improvement constructed upon the Unit or upon any other Owner's Unit, it being understood that the NCC's requirements for approval may be different for different circumstances or times.

5.7. Applicable Laws. Approval of plans does not modify or eliminate the Owner's obligation to comply with all existing laws, ordinances, rules and regulations, and as may be amended, or hereafter made by any governmental authorities or with such terms and conditions required under the Master Declaration, or any deed, lease, or mortgage. In case of conflict, the more stringent requirement shall apply.

6.0. VARIANCES

6.1. Authority. The NCC may authorize variances from compliance with any of these Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, but only in accordance with duly adopted policies.

6.2. Grounds. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

7.0. APPLICATION AND CONSULTANTS FEES

7.1. Initial Application Fee. The NCC shall have the right to charge the Owner a reasonable processing fee for its review of any application.

7.2. Consultants Fees. The NCC may employ the services of an architect, landscape architect, engineer, land planner, attorney, and/or any other consultant to render professional advice, and may charge the fees incurred to the Owner (in addition to the basic application fee); provided that such compensation may be charged to such Person only if he has been informed in advance that such compensation will be charged to him. The consultant may be a member of the NCC. The basic application fee and estimated consultants fees shall be payable by Owner prior to the time that the NCC review the Owner's application.

7.3. Resubmittals. In the event the Owner withdraws its application and subsequently resubmits it to the NCC for approval, the Owner shall pay an additional fifty percent (50%) for the resubmittal, or for any submittal involving changes substantial enough to be considered a new design.

8.0. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND

APPROVAL OF PLANS

8.1 Preliminary Steps: In order to avoid frustration and unnecessary expense, it is strongly recommended that the following procedures be followed in a step-by-step sequence to obtain design approval.

8.1.1 Background Material: Read and understand the following documents:

- a. The Kehalani Phase II design handbook.
- b. The use-restriction section of the Kehalani by-laws.
- c. The County of Maui project district approval process.

8.1.2. Conceptual Meeting. Prior to preparing preliminary or conceptual plans or design schematics for any Unit, the Owner and the Owner's engineer (if any) and architect must meet with the NCC or one of its members or duly authorized representatives to discuss and review the Owner's concepts and plans for development and the NCC's requirements for and standards of review and approval. Only then should you authorize your architect, landscape architect or land planner to do any design work.

8.2. Prior to Step I Approval. Each Owner shall be required to submit to the NCC, and obtain its approval of, plans, specifications and other items listed in this Section 8.2. below in connection with design and construction of new Improvements, prior to the submission of any application to the County of Maui for any Step I Approval. All building plans and specifications must be prepared or reviewed and signed by an architect licensed to practice in Hawaii. All landscaping plans must be prepared by a landscape architect licensed in the State of Hawaii.

8.2.1. Existing site contour lines, utilities and Improvements;

8.2.2. Site plan (scale: 1" = 20') showing:

- a. Proposed contour lines;
- b. Proposed location of buildings, number of stories, roof overhangs and setbacks;
- c. Proposed location, materials, heights, design and terracing of all fences and walls;
- d. Proposed finished grades;
- e. Proposed driveways;
- f. Proposed erosion control and drainage plan;
- g. Single line schematic layout for proposed sewer, water, electricity, communication and drainage; and

- h. Proposed easements and a description of their purposes.
- 8.2.3 Schematic floor plans (minimum 1/4" = 1') and elevations;
- 8.2.4 Drawings showing all elevations of all Improvements;
- 8.2.5 Sections indicating the relationships between buildings on site and major fill and cut areas;
- 8.2.6 Description of exterior materials and color (with samples mounted on 1/2" x 11" cards);
- 8.2.7 Description of provisions for landscaping and planting trees and vegetation and for stabilizing slopes during and after construction;
- 8.2.8 Information on lot coverage and floor area ratio; and
- 8.2.9 The proposed construction schedule.

8.3. Prior to Step II Approval. After receiving Step I Approval from the County of Maui, the Owner shall prepare preliminary plans and specifications for the proposed Improvements, including landscaping and building exterior designs for the Improvements and updated information on lot coverage and floor area ratio. These plans shall include the drawings and descriptions outlined in Section 8.2., but in greater detail. Each Owner shall be required to obtain the NCC's Step II Approval prior to filing any application with the County of Maui for approval of such preliminary plans and specifications.

8.4. Prior to Step III Approval. After receiving Step II Approval from the County of Maui, the Owner shall proceed to prepare final plans and specifications for the proposed Improvements, including landscaping and exterior designs. Each Owner shall be required to obtain the NCC's Step III Approval prior to filing any application with the County of Maui for approval of such final plans and specifications.

8.5. Prior to Building or Grading Permits. Upon receiving (or having received) Step III Approval, the Owner shall be required to obtain the NCC's prior approval of the final plans and specifications for the proposed Improvements prior to applying to the County of Maui for any building or grading permits.

8.6. Prior to All Other Work. Each Owner shall submit the final plans, specifications and sample materials for all other Improvements, landscaping and work not covered by Sections B. through E. above to the NCC for the NCC's prior approval before commencing such Improvements, landscaping or work, if the performance of such Improvements, landscaping or work (i) requires any governmental approval or permit or (ii) will result in any modification of or charge to the exterior of any existing Improvements on, or to the landscaping of, the Owner's Unit (other than modifications or changes which are immaterial or insubstantial).

8.7. Subsequent Changes. Any amendment, variation, change, omission from or addition to any item previously approved by the NCC (other than amendments, variations, changes and additions which are immaterial or insubstantial), shall require the NCC's prior approval.

9.0. MANNER AND TIME OF APPROVAL

9.1 Submittal: Submit two copies of the above described minimum working drawings with architect's or registered engineer's stamp affixed, final specifications, and the \$500 fee payable to the Kehalani Community Association, P.O. Box 1530, Wailuku, Maui, Hawaii 96793. The fee may be adjusted, waived or modified by the NCC depending upon the scope and complexity of the submittal.

9.2 Review of Plans: The approval or disapproval of the NCC of any application shall be given in writing within thirty (30) days after submission of the application and after the Owner's compliance with the requirements set forth in the Design Guidelines. If the NCC disapproves any application, it shall, within the thirty (30) day period, send notice of its disapproval to the applicant at the address set forth in the application. If notice of disapproval is not sent within said thirty (30) day period, the applicant shall notify the NCC in writing of its failure to timely approve or disapprove, and if the NCC thereafter fails to send notice of disapproval within fifteen (15) days after receipt of such written notice, the application submitted shall be deemed to have been approved by the NCC. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the NCC.

9.3 Standards of Review. The NCC shall, in reviewing plans, specifications and other materials submitted to it, consider the suitability of the proposed building, landscaping, grading, or other Improvement or use for the area in which it will be located; their compliance with the By-laws and any applicable Design Rules and Guidelines, the quality of the materials to be used in construction; and the effect of the proposed building, landscaping, grading, or other Improvement or use on Kehalani, including without limitation the effect thereof on view planes of other Lot Owners. The NCC shall require that the overall visual character of Kehalani to be one of natural

materials, natural textures, natural colors and forms compatible with those occurring in the natural landscape and that the roofs and other exterior portions of all buildings and other Improvements in Kehalani conform to aesthetic standards contained in and/or be constructed with materials specified in the Design Rules.

The NCC may grant variances from time to time from the strict requirements of the Design Rules, provided that the variances do not violate any of the standards set forth herein or in the Declaration, and provided also that the proposed building, landscaping, grading or other Improvement would be suitable for the location in which it is to be located. The approval or disapproval of any plans or specifications or other materials by the NCC in any one case shall not be deemed a waiver by the Committee of its right to approve, disapprove, object to or consent to any of the features or elements embodied therein when the same features or elements are embodied in plans submitted in any other cases

10.0. COMMENCEMENT AND COMPLETION; REMEDIES FOR FAILURE TO COMPLY

10.1. Commencement of Construction; Extension. All approvals of the NCC may be revoked by the NCC if the Owner has not commenced the construction of the Improvement or work covered by the NCC's approval within twelve (12) months from the date of the NCC's approval, and if so revoked, the Owner shall be required to comply with such further requirements as may be imposed by the NCC (including the submission of revised plans, drawings and specifications), and the NCC shall not be bound by any approval previously given by the NCC. The Owner shall be deemed to have "commenced the constructions of the Improvement" for purposes of this Article VII when the "visible commencement of operations" (as that term is defined in Section 507-41, HRS) for the construction of the Improvements shall have occurred on the Owner's Unit. The NCC, upon receiving a written request from the builder or developer, at least forty-five (45) days prior to the expiration period, and for good cause, may extend the twelve (12) month period for periods not to exceed an additional twelve (12) month period beginning on the original expiration date.

10.2. Cancellation of Approval for Lack of Progress; Completion of Work. All work approved by the NCC shall be prosecuted to completion diligently and in good faith. If at any time, more than 60 days shall have passed without substantial and significant progress toward completing any project for which the NCC has granted its approval, the NCC may declare its approval null and void, and the Owner must resubmit a new application for NCC approval. The NCC shall not be bound by any previous decision when reconsidering plans and specifications which may come before the NCC as a result of an Owner exceeding the time requirements for completion of any project. Promptly upon the completion of any work for which the approval of the NCC is required, the Owner doing such work or for whom such work was done shall give written notice thereof to the NCC, and within thirty (30) days thereafter the NCC or the NCC's duly authorized representative may inspect such work to determine whether it was done in compliance with the NCC's approval and shall notify the Owner of any non-compliance within such thirty (30) day period, whereupon the Owner shall remedy such

noncompliance within a period of fifteen (15) days after notice of such non-compliance is received by the Owner, or if such non-compliance reasonably cannot be remedied within said 15-day period, the Owner shall begin to remedy such non-compliance with said 15-day period and in good faith and with due diligence shall remedy such compliance as soon as reasonably possible.

10.3. Exclusion for Failure to Comply; Other Remedies. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms of the NCC's approval and the construction of the Improvements approved may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this Section. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the NCC and MC.

10.4. Owner's Certificate. Within thirty (30) days after the work is substantially completed, the Owner and the licensed professional(s) designing and constructing the Improvements approved by the NCC shall certify on the form provided by the NCC that the completed work substantially complies with the NCC-approved application (including the materials, documents and items supporting said application) and with the plans and specifications approved by the County of Maui in connection with the Improvements constructed, the latter being the "JOB SITE" set of drawings, specifications and other calculations, as stamped by the County of Maui.

10.5. Estoppel Certificate. Any Owner may, upon payment to the NCC of a reasonable fee to be determined from time to time by the NCC, request that the NCC deliver to such Owner within thirty (30) days of the request an estoppel certificate executed by any two of its members in form determined by the NCC and suitable for recording in the Public Records, certifying with respect to such Owner's Unit that, as of the date of its execution, either (a) all Improvements and other work done upon such Unit complies with the Design Guidelines, or (b) such Improvements and work does so comply, in which event the certificate shall (1) identify the non-complying Improvements and/or work, and (2) set forth the reason for such non-compliance. Any purchaser or mortgagee of such Owner shall be entitled to rely on the matters therein set forth in such certificate, such matters being conclusive as between the NCC, the Association, the Owner and such purchaser or mortgagee.

11.0. ARCHITECTURAL STYLES

The overall theme for Kehalani will blend traditional Hawaiian Plantation with Contemporary Hawaiian expressions of architectural design. These expressions are characterized by the use of forms and materials that provide relief from the climate, sunlight, wind and rain and meld indoor and outdoor spaces. Solar and rain protection is provided by the use of deep-set windows and doors and interior courtyards. Split-pitched roofs also offer generous overhangs and spacious covered lanais and patios. The

architecture features the use of traditional and contemporary detailing. Building materials include indigenous stone, wood siding, colored stucco, concrete tile roofs and enriched accent materials such as wood shutters, copper, brass and glass.

12.0. DESIGN RULES

12.1. Setbacks; Maximum Building Height and Lot Coverage Ratio. Setbacks shall vary according to the underlying zoning for each parcel. The following are the guidelines for the various setbacks in each zoning category:

ZONING	FRONT SETBACKS		SIDE & REAR SETBACKS		MAXIMUM BUILDING HEIGHT AND LOT COVERAGE RATIO
	House	Garage	1-Story	2-Story	
<i>Single Family</i>					
SF-3	10'	20'	6'	10'	2 Stories, not to exceed 30' .6:1
SF-5	10'	20'	6'	10'	2 Stories, not to exceed 30' .5:1
SF-7	10'	20'	6'	10'	2 Stories, not to exceed 30' .5:1
<i>Multi-Family</i>	<i>All Structures</i>		<i>Side</i>	<i>Rear</i>	
MF	15'		10'	15'	3 Stories, not to exceed 35' .5:1

No more than two adjacent houses may have the same front-yard setback and no houses with identical designs may be placed next to each other. Every effort should be made to maximize usable yard space for both visual and functional purposes. Narrow side yard should be avoided, except where needed for access, ventilation or drainage.

Corner Units shall follow front setbacks for the side on which the garage occurs. The remaining corner frontage shall conform to side yard setbacks. Owners must adhere to all Maui County Codes particularly those regarding sight distance requirements for corner lots.

12.2. No Unsightliness. No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing: (a) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure or appropriately screened from view so as not to be visible from neighboring Units; (b) all agricultural, garden or maintenance equipment and all tractors and trucks of more than one-half ton capacity shall be kept at all times in an approved enclosed structure or screened from view so as not to be visible from neighboring Units, except when in actual use; (c) refuse, garbage and trash shall be kept at all times in a covered container and any

such container shall be kept within an approved enclosed structure or appropriately screened from view so as not to be visible from neighboring Units; (d) service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view so as not to be visible from neighboring Units; (e) to the extent practical, all pipes for water, gas, sewer, drainage or other purposes and wires, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities and gas, oil, water or other tanks, and sewage and disposal systems or devices shall be kept and maintained within an approved enclosed structure or below the surface of the ground; (f) no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an approved enclosed structure or appropriately screened from view so as not to be visible from neighboring Units; (g) no trailer, vehicle or boat shall be constructed, reconstructed, repaired or maintained upon any Lot in such manner that such construction, reconstruction, repair or maintenance is visible from neighboring Units, nor shall any vehicle not in good operating condition be placed, kept or maintained upon any Unit so as to be visible from neighboring Units, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his own trailer, vehicle or boat in his garage or maintenance building; and (h) no garage or accessory building shall be used for other than the parking of vehicles, farm machinery and implements or boats, unless the same is enclosed by a partition, wall, door, or screen normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage or accessory building not so enclosed shall be used for a laundry or for storage purposes or as a hobby shop or carpenter shop.

12.3. Floor Area, Massing and Scale. Each Single-Family Unit shall have a total floor area of not less than 1,500 square feet, exclusive of lanais, porches, patios, garages, exterior stairways, landings and any appurtenant guest facility. The NCC encourages (i) the stepping back of one to two-story volumes along edges to soften transitions, (ii) horizontal architectural elements with projections and recesses, (iii) simple, bold forms with angles in plan and elevation and (iv) broad pitch and split pitch roof with extensive overhangs, covered lanais and balconies. Two-story Units must be architecturally compatible with neighboring dwellings

12.4. Garages and Carports. A two-car enclosed garage with a garage door shall be required for all single family detached homes. A variety of garage entry conditions are encouraged. Split garages will create a courtyard entry in the residence. Tandem garages and side-entry garages are also encouraged. All garages must be within the building envelope. Strongly applied and detailed patterns moldings and bright colors on garage doors are not acceptable. Garage doors should be only one color to soften the impact of this feature. If front-entry garages are incorporated into the design of the home, no more than two garage doors may be on the same plane and garage doors shall be recessed at least 12 inches from the building face. Three-car garages are discouraged, but if a third garage is allowed, it must be set back at least four feet from the first two garages. Carports shall only be allowed in multi-family residential zones.

Carports shall be made of wood or stucco with finishes. Carports that are integrated with patio walls and fences are encouraged.

12.5. Roof Profiles. All roof details should portray a low profile. At least 80% of each house's roof shall have slopes between 4 : 12 and 6 :12. Principal roof forms should be hip and gable, although the latter should be minimized on the front elevation. Mansard and gambrel roof forms shall not be permitted. Flat roofs may be used only to cover small areas. A minimum of 30-inch eaves are required over all wall openings (excluding vents).

12.6. Roof Materials. Acceptable roof materials are flat concrete tile, textured asphalt or fiberglass shingles, and cedar shakes and shingles. Architectural standing rib metal non-reflective roofing are also acceptable. Corrugated metal roofing, flat roofs, composition roll roofing, untextured asphalt shingles, and built-up roofing on pitched roofs are not acceptable nor are metal or plastic awnings. Roofs shall be only those colors approved by the NCC.

12.7. Roof Vents and Chimneys. The adverse appearance of roof vents shall be minimized to the extent possible by installation below ridge lines and in those portions of the roof not facing a street. Fireplace chimneys shall comply with all governmental codes and regulations and shall be approved on a case-by-case basis. Reflective materials used in vents and chimneys shall be subdued with flat, non-reflective black paint.

12.8. Gutters and Down Spouts. Gutters and down spouts will be approved if they are designed to conform to the drainage plans shown in the original construction drawings or with later drainage plans approved by the NCC. Gutters and down spouts must be non-reflective and match the surfaces to which they are attached, provided that copper gutters and down spouts need not be painted. Down spouts must be located so as to discharge the runoff entirely within the Owner's Unit. The proposed location of the down spouts should be clearly indicated on the site plan.

12.9. Antennas and Satellite Dishes.

12.9.1. Definition. As used in these rules, "mast, antenna, or satellite dish" means only those items authorized or required to be permitted under in re: Preemption of Local Zoning Regulation of Satellite Earth Stations & Implementation of Section 207 of the Telecommunications Act of 1996; Restrictions on Over-the-Air Reception Devices; Television Broadcast Service and Multichannel Multipoint Distribution Service, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 96-32a ("FCC Rules") (August 6, 1996). (Examples: masts or antennas for personal communications or amateur radio operation.)

12.9.2 Location. A mast, antenna or satellite dish may only be installed on property which is within the exclusive use or control of the user where the user has a direct or indirect ownership interest in the property. All satellite

dishes and antennas shall be installed in a location which is not visible from the street or an adjoining property unless doing so would impair reception of an acceptable signal. For example, if (1) a satellite dish can be placed in the front yard or the back yard and still receive an acceptable signal and (2) the satellite dish is visible from the street in the front yard but not in the back yard, the satellite dish must be placed in the back yard.

12.9.3. Size. No satellite dish intended to receive signals from direct broadcast satellites (DBS), as defined in the rules of the Federal Communications Commission, shall exceed one meter in diameter.

12.9.4. Visibility. Any antenna which is installed in such a way as to be visible from the street or an adjoining Unit shall be painted to match the color of the trim on the structure to which it is attached. The NCC may also require the screening of any antenna or satellite dish.

12.9.5. Proper Installation. Any mast for an antenna or satellite dish must be properly and adequately guyed to prevent any risk of harm from the structure falling. In addition, no mast, antenna or satellite dish shall be installed in such a way as to (i) come into contact with any power lines or other electrical power sources; (ii) obstruct the view of any drivers of vehicles entering or leaving an Owner's Unit, any adjoining Unit or any street intersections; or (iii) obstruct access emergency vehicles or fire lanes to any Unit. An Owner who installs a mast, antenna or satellite dish shall be completely responsible for any damages caused by the structure. The NCC may request written certification from an engineer or other qualified person that any mast is properly installed and guyed.

12.10. Utilities Service. All residential utility, electric, telephone and TV cable service lines shall be underground.

12.11. Sanitary and Water Piping. All piping shall be concealed.

12.12. Exterior Walls. The exterior walls should be broken up into varying planes. The NCC encourages use of different natural materials such as lava stone, blue moss rock, natural stone, and wood siding, although stucco and plaster are also acceptable.

12.13. Siding, Veneer and Facades. Certain vinyl sidings may be approved by the NCC on a case-by-case basis. White or off-white exterior siding will not be approved. Applications must include color samples. Veneers such as sandstone, lava rock, brick and manufactured stone are not generally appropriate to the basic design of Kehalani homes, but they may be approved on an individual basis if their use is compatible with the architectural and landscaping design of a given Unit and do not detract from architectural standards of adjacent properties and the Kehalani community. Facades, the partial application of sidings or veneers to one area of a dwelling, usually create a "stage set" appearance and are generally unacceptable. Such proposals will be considered on a case-by-case basis under the same criteria as for veneers.

12.14. Trim. Scallops, decorative metal or wood trimmings and ornate "gingerbread" decorations are generally unacceptable.

12.15. Exterior Painting. Colors should be non-reflective, flat or semi-gloss natural tones. Strong and/or bright colors, whites and very light or highly reflective colors will not be approved as primary house colors unless specifically approved as part of the original color palette for the project in question. Owners are cautioned not to select light tint approaching white after selecting one of the lighter "earth tones" from the beige color spectrum, nor should they select paints that tend toward an unacceptable blue tint after selecting colors from among the gray hues. The use of transparent or semitransparent house stains will be considered on individual merit. Responsibility for precisely matching the color samples provided to the NCC ultimately rests with the Owner. "Close to" an approved color is not sufficient.

12.16. Reflective Finishes and Window Tinting. No reflective finishes shall be used on exterior surfaces (other than glass and the surfaces of hardware fixtures) where such exterior surface is visible from neighboring property. Highly reflective window tinting which creates glare on adjacent properties or streets is not to be construed as a "glass" exception to the reflective finish restriction. Such window tinting treatments are specifically prohibited. All window tinting installations are subject to review. While Owners are generally concerned with the levels of light and heat transmission, the NCC focuses on light and heat reflectance. Applications for window tinting should be accompanied by a manufacturer's specification sheet and a minimum 3" x 5" sample. Metallic finishes are discouraged.

12.17. Doors. Front doors should be simply detailed. Doors made of wood with raised wood panels or a combination of materials such as wood and glass are encouraged. Simple, elegant accents such as copper, brass or iron doors are also permitted. A front door should not be an overly dominant feature of the home, but rather should be integrated with the rest of the home. The NCC may approve screen doors provided they are finished in such a way as to match the siding or trim and are kept in good repair. Aluminum and steel screen doors will be reviewed closely and doors with exposed reflective material shall not be approved.

12.18. Air Conditioners. Air conditioners that are visible from the street or adjacent property shall be screened from public view. The use of lattice of any kind for air conditioning screening is prohibited. No bare metal or conspicuous filter elements may be exposed. All exterior piping must be covered or "furred" and painted to match the surface to which they are attached. All exterior wiring must be concealed or painted to match the surface to which they are attached. Any glass removed for the installation of the air conditioner must be replaced with clear glass or Plexi-glass. If the design of the installed air conditioner is such that filter elements may not be painted, the Owner is responsible for providing a design acceptable to the NCC to screen or otherwise enclose the air conditioner in such a manner that it may be painted to blend with the mounting surface.

Air conditioning units shall be maintained at all times in a clean and attractive condition and shall not be permitted to become unsightly. The Owner is responsible for ensuring quiet operation of all installed air conditioning units. If the air conditioning unit operates at an excessively noisy level which is a disturbance to neighbors, the Owner may be required to remove the unit. Only new air conditioning units shall be installed, provided that the installation of used units may be permitted with the prior inspection and written approval of the NCC or its duly authorized representative.

12.19 Solar Units. To the maximum extent possible, solar units shall be integrated into the architecture and design of the residence. No part of the solar panels, piping or any exposed part of the installation may be higher than the nearest roof peak. This will include the roof mounted tank of any system. Where open-ceiling design home prevents a direct run of piping from solar panels to the storage tank, the piping may be run over the peak of the roof for the shortest routing unless other routing is equal or shorter. The highest point of any exposed part of the system may not be higher than twenty-one (21) inches above the surface (sloped or flat) of the roof on which it is mounted. This includes the top of the roof mounted tank of any system. The lowest point of any exposed part of the system may not be more than six (6) inches above the surface (sloped or flat) of the roof on which it is mounted. Reflective surfaces are not permitted for any exposed parts. Other exposed surfaces must be painted to match the surface on which it is mounted. Homeowners will ensure that all painted surfaces are properly maintained to prevent peeling and cracking of paint. Solar panels should be installed as far as possible to the rear of the house. The front slope of the roof of the house or carport may not be used unless no other location is feasible. The same general rules for solar panels apply to roof-mounted solar powered turbo fans.

12.19. Drop Blinds. Drop blinds for lanais and balconies may be used provided they (i) are not garish "loud" colors shall be used, (ii) are maintained in good condition and (iii) are rolled and/or adequately tied down during periods of high winds to avoid slapping and banging. Blinds for multi-family townhouse and condominium projects shall be of a single, standard design approved by the NCC.

12.20. Fences and Walls.

12.20.1. Front Yard Fences and Walls. No fences or walls shall be permitted within the 10' front yard setback. Fences or walls, not more than 3' high, may be located from the front face of the building up to the 10' front yard setback line. Decorative gates may exceed the 3' limit. Shrub plantings approximately one-half the height of the fence or wall should be utilized on the street side of the fence or wall.

12.20.2. Side Yard Fences and Walls. Side yards are encouraged to be used as outdoor living areas. To increase the visual size of the side yard, property line fences and walls shall only be utilized where required for privacy or security. Side yard fences and walls shall be limited to 6' in height from the rear property line to the front face of the building and to a maximum of 3' in height from the front face of the building to within 10' of the front property line.

12.20.3. Rear Yard Fences and Walls. Rear yard property line fences and walls are permitted to a height of 6'.

12.20.4. Combination Fences and Walls. Where fences are used in combination with walls, the 6' maximum height shall apply to the wall and fence combination. (See Exhibit "1"). When an Owner elects to construct a retaining wall and a separate fence, the fence shall be constructed at least 4' from the retaining wall. The area between the fence and wall shall be maintained with approved landscape material. (See Exhibit "2").

12.20.5. Retaining Walls at Adjacent Properties. Owners with sloping grades within their Units may make these areas usable by installing retaining walls, provided that the walls do not exceed the allowable height for the location of the wall. Owners on an upper adjoining parcels may also construct fences at their property lines. Where the grade differential exceeds the allowable height of wall, terracing of retaining walls may be required to stay within the maximum allowable wall height. The terraced area must be at least 4' wide and maintained with approved landscape material. (See Exhibit "3") Owners must obtain approvals of the adjacent property Owners if construction activities will cross the property lines.

12.20.6. Side-by-Side Fences or Walls. Walls or fences will be evaluated on a case-by-case basis if they are to be constructed parallel with adjacent walls or fences. Owners deciding to build separate property line walls/fences instead of developing a common property line wall/fence shall agree to jointly maintain the area between any two walls/fences.

12.20.7. Party Walls and Fences - Joint Ownership and Maintenance Agreement. Whenever two adjacent Owners desire to jointly construct a fence or a wall along and over the property line, it is required that a joint ownership and maintenance agreement incorporating the provisions of Section 5.5 of the Master Declaration be signed and recorded in the Bureau of Conveyances and/or filed in the Office of the Assistant Registrar of the Land Court. (See Exhibit "4")

12.20.8. Materials and Design. All fences and walls shall be opaque (e.g. no chain-link fences) and otherwise be compatible with the perimeter walls and fences of adjacent houses.

12.20.9. Good Side Out. Whenever a fence by nature of its construction and materials has a "good side", the good side shall face outward from the property towards the adjacent property, adjacent street, etc. The unfinished side, if any, which exposes framing, support materials, bracing, etc., shall face inward to the property which may, at the option of the Owner, be finished with an approved material.

12.20.10. Access to Adjacent Properties. Where access is required to an adjacent property for the construction of walls/fences (or any

other reason) written permission must be obtained from the Owner of the adjacent property prior to accessing the adjacent property. (See Exhibit "2")

12.21. Swimming Pools, Whirlpool Baths and Hot Tubs.

Swimming pools, outdoor whirlpool baths and hot tubs may only be constructed in backyards and shall be constructed below grade. All must be fenced in accordance with the "Fences and Walls" section of these guidelines and with County ordinances and regulations. Filter and skimmer noise shall be abated. The pump and the filter and skimmer unit shall be adequately soundproofed and the pool used in such a manner as to prevent a nuisance to adjacent property occupants. Should undue noise result from the operation thereof, Owner shall take immediate steps to curtail the noise by changing operating methods, providing added soundproofing, etc. Should this not be possible, the Owner shall discontinue use until such time as the noise can be abated. Notwithstanding the NCC's right to approve and require adjustment to the filtering unit, the Owner shall have full responsibility therefor and shall hold the Association harmless against any and all claims arising from the maintenance and operations of the swimming pool, whirlpool or hot tub and related equipment and improvements. In addition to compliance with the provisions pertaining to exterior lighting, any underwater lighting shall not constitute a nuisance to Owners of adjacent properties.

12.22. Water Features and Incidental Structures. Fish ponds, waterfalls, and structures incidental to landscaping that are visible from the street or adjacent property may be constructed only upon the prior approval of the NCC. The provisions pertaining to noise, as set forth in Section 12.21, shall apply.

12.23. Built-In Barbecues. Permanent barbecues and barbecue pits that are visible from the street or adjoining property will be considered on individual merit.

12.24. Tanks Above Grade. Tanks for the storage of cooking and heating gas or other tanks may be installed, if permitted by government laws and ordinances, provided they are adequately screened from adjacent street or property by fencing or landscaping. This rule is in no way intended to mean that the Association or the NCC assumes any responsibility for any hazards connected with tanks.

12.25. Solar Units. To the maximum extent possible, solar units shall be integrated into the architecture and design of the building. Solar panels should be installed as far as possible to the rear of the house. The front slope of the roof of the house or carport may not be used unless no other location is feasible. No part of the solar panels, piping or any exposed part of the installation may be higher than the nearest roof peak. Where an open-ceiling design home prevents a direct run of piping from solar panels to the storage tank, the piping may be run over the peak of the roof for the shortest routing unless other routing is equal or shorter. The highest point of any exposed part of the system may not be higher than 21 inches above the surface (sloped or flat) of the roof on which it is mounted. The lowest point of any exposed part of the system may not be more than six inches above the surface (sloped or flat) of the roof on which it is mounted.

Reflective surfaces are not permitted for any exposed parts. Other exposed surfaces must be painted and maintained to match the surface on which it is mounted. Roof mounted tanks are prohibited.

12.26. Dog and Shade Houses; Storage Sheds. Dog houses, dog runs, shade houses, storage and tool sheds and other such structures that are visible from a street or adjoining property will be considered on individual merit.

12.27. Driveways; Exterior Paving Materials. Driveways shall be paved. Pavement material shall be approved by the NCC. Recommended materials are Asphaltic concrete, textured concrete, brick or concrete pavers, bomanite and grasscrete. Driveways of a slope of twelve percent (12%) or more shall be paved with concrete. The NCC encourages use uncolored concrete with sand, trowel or broom finish, brick paver tiles, stamped concrete and other permanent paving materials with matte finishes in neutral or muted earth tones. Asphaltic concrete, other than for driveways, is prohibited.

12.28. Exterior Lighting. All exterior steps, stairs, parkways, parking areas and common walkways shall be lighted and shall conform with the architectural lighting standards listed below. Emphasis should be on the "mood-setting" effect rather than on the intensity of illumination, except for safety and security. Light shall not exceed a lumen level of one foot candle at the ground, unless a greater intensity is required for safety reasons or by applicable laws. The following items shall not be used for any exterior lighting: mercury vapor lamps, or lamps which emit light of a similar character; neon lamps (including light tubing for the creation of a sign); flashing lights or lamps of any type whatsoever; exposed fluorescent lamps that are visible from common areas and adjacent properties; and colored lights, with the exception of approved subdued ambers and grays or similar colors.

12.29. Name Plates and House Numbers. All residences must have easily readable house numbers affixed to the dwelling or, in the case of single-family units, on the mailbox.

12.30. Mailboxes and Newspaper Tubes. Mailboxes and newspaper tubes shall be constructed of material compatible to the residential structure and be in compliance with post office regulations. Reflective surfaces shall be subdued with non-reflective paint. All residences must have easily readable house numbers either on the dwelling or, alternatively, on the mailbox for single family units.

13.0. CONSTRUCTION RULES

13.1. Underground Installations and Easements. The Owner or its builder shall be responsible for determining the location of easements, utility lines and underground installations prior to the start of any construction.

13.2. Grading; Excavation; Fill; Site Work. All grading, excavation, fill and site work shall be done only in accordance with approved drawings

and at the expense of the Owner. Grading and finished elevations shall respect the existing contours of the site. Cut or fill backs greater than slopes with a ratio of one vertical foot to two horizontal feet are generally prohibited. Cuts and fills of greater than five vertical feet shall require a plan prepared by a civil engineer licensed in Hawaii addressing the question of the need for artificial support with respect to adjacent Units. Excavation, footings or drainage areas extending beyond the subject property line will require the written permission of the affected adjacent property Owner(s). The Owner shall obtain, if necessary, a grading permit for cuts and fills as required by the ordinances of the County of Maui and shall abide by all ordinance requirements. All graded areas on improved Units shall be landscaped within the time requirements listed below. Surface runoff shall be dispersed or channeled in such a manner as to prevent erosion damage and/or excessive water and soil flow through adjacent Units. Whenever an Owner excavates or fills Owner's Unit, it shall be done in such a manner as not to adversely affect the drainage of adjacent properties. Whenever excavation or fill creates an unstable or potentially unstable bank condition, the Owner shall take appropriate action to control and retain said embankment. Excavation or fill that creates a high and unsightly retaining wall may be disapproved. In the event that fill or excavation causes destruction of existing drainage swales or natural drainage patterns, it shall be the Owner's responsibility to restore said swales and drainage patterns or to otherwise provide for adequate drainage that does not adversely affect adjoining Units. Graded areas on unimproved Units must be kept free of noxious weeds or vegetation and maintained by the Owner in good and clean condition in such manner as not to create a fire, safety or health hazard. Fill material brought to the site shall be free of adobe, termites and deleterious matter. No accumulated waste plant materials will be permitted on such Units. If necessary, Owners of unimproved Units may be required to plant a non-noxious ground cover to control erosion or water damage to adjacent Units or Common Areas after that date.

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13.3. Disposal of Construction Waste and Debris. Each Owner shall be responsible for promptly disposing of construction waste and debris and for keeping the public, private and common areas surrounding his property free of waste and debris at all times. There is no dump site available within Kehalani.

13.4. Construction Activities. Owners, their contractors and subcontractors, shall keep all public areas clean during periods of construction. Materials shall not be stored so as to block or partially block public access areas. Once the residence has been completed, no construction materials or equipment may be stored in any area visible from adjoining streets. For security purposes, the Owner may be required to furnish a list of all contractors, subcontractors, and employees who are permitted entry into Kehalani, and all architects, contractors, and subcontractors must be registered with the NCC prior to entry onto the Unit. All construction traffic shall enter Kehalani through construction entrance(s), as established by the NCC from time to time. Construction hours are currently set during 7:30 a.m. to 6:00 p.m., six (6) days a week (excluding Sundays and nationally recognized holidays) but are subject to rules and regulations as published by the NCC from time to time. All Owners are required to post and keep on record with the NCC, a twenty-four (24) hour emergency phone number

during the construction period. All Owners are required to provide portable restroom facilities on all job sites. All Owners are required to provide a trash dumpster for buildings under construction. No flags, banners, or signs will be permitted. No hazardous materials or liquids shall be permitted to be stored or drained on any Unit, except materials placed in safety containers. No hazardous materials shall be allowed to drain into any Unit or street, including the rinsing of equipment with water. Infractions of the published construction rules may be cause of a \$500.00 fine per infraction and/or the suspension of an Owner, contractor or subcontractor from the project, including appropriate clean-up charges.

13.5. Ground Termite Treatment. Soil under all concrete slabs on grade and under all building floors, whether on grade or over air space, and all footings and masonry foundation walls shall be treated against subterranean termites. All termite treatment work shall be performed by a properly licensed and qualified pest control operator. Chemicals used outside the buildings or in accessible spaces under buildings shall be used only in strict accordance with all governmental laws and regulations and with the highest regard for the safety of children, plants and pet life.

13.6. Materials. All materials used for structures shall be termite and fungus free and shall not be used or secondhand. Materials shall not be garish by nature or as a result of their use with other materials. A mix of materials will be approved only if the materials in the proposed use will complement one another. The non-availability of materials approved for use is not sufficient justification for substitution of materials, and the use of any materials that vary aesthetically from those approved is not authorized without specific approval by the NCC.

4.0. LANDSCAPE RULES

14.1. Completion. The Owner shall landscape the front yard and planting strip(s) between the sidewalk and the street or curb line within three (3) months after occupancy. The remaining grounds of the Unit shall be landscaped within twelve (12) months after occupancy. The NCC may authorize extensions to these landscaping time requirements when formal application has been made for landscaping improvements which require extensive grading or excavation work, or the installation of retaining walls and/or fences, or the incorporation of driveways, walkways, or patios which are visible from the street and which require NCC approval. In the event that the NCC has approved landscaping plans which incorporate the improvements listed above, it may grant an extension for the landscaping requirement beyond the expiration date of the applicable permit of not more than six (6) months. The NCC may also extend these requirements if the Owner makes a substantial and significant effort to complete the landscaping in a timely manner. "Substantial and significant effort" will be determined by the good judgment of the NCC.

14.2. Approved Materials. The Owner may landscape the grounds using any of the plant materials listed in Table I appended hereto. The NCC must approve the use of any plant materials not listed in Table I and may adopt a list of prohibited plant materials if deemed appropriate.

14.3. Tree Planting. Trees shall not be planted within five feet (5') of property lines and it is recommended that they also not be planted within five feet (5') of utility lines, walls, building foundations and overhangs. Root barriers shall be installed where trees are planted in the vicinity of the building foundations or walls. Trees planted in residential yards shall be pruned so that the canopy does not extend over the property lines unless approved by the adjacent property Owner. Trees with aggressive root systems, large or high canopies, or which drop large quantities of leaves or fruit, such as Monkey pod, Banyan, Autograph Tree, Fichus and Breadfruit, shall not be planted. Poisonous plants, such as Bestille and Oleander, are also not permitted. Fruit trees, including Avocado, Banana, Citrus and Papaya, shall be permitted only in rear yards.

14.4. Obstruction. Homeowners must be considerate of their neighbors when planting and maintaining their landscaping. Trees and shrubs taller than six feet (6') shall not obstruct desirable views from adjacent homes or create safety, trash or maintenance problems in adjoining properties.

14.5. No Removal of Trees or Shrubs. The Owner shall not remove trees, shrubs or similar vegetation from the Common Area without the prior approval of the NCC.

14.6. Vegetable Gardens; Potted Plants. Vegetable gardens are not acceptable as landscaping for yard areas or planting strips located along any adjoining street. More than twenty-five (25) large plants in pots will require formal approval of a landscaping site plan showing plant placement submitted under the provisions of these Design Guidelines.

14.7. Maintenance. Any portion of a Unit visible to street or neighboring properties shall be maintained in a good and clean condition. Owners of properties with electrical transformers or switch gear boxes are responsible for ensuring that the transformer and switch gear box areas are kept in a good and clean condition. What constitutes a "good and clean condition" as it pertains to the maintenance of completed landscaping on any Unit shall be determined by the reasonable judgment of the Covenant Manager and/or a majority of the members of the Covenant Enforcement Committee.

TABLE I
APPROVED PLANT MATERIALS

<u>COMMON NAME</u>	<u>BOTANICAL NAME</u>
<u>Small Canopy Trees</u>	
Allspice	<i>Pimenta dioica</i>
Coral Tree	<i>Erythrina crista-galli</i>
False Olive	<i>Elaeodendron orientale</i>
Harpullia	<i>Harpullia pindula</i>
Hawaiian Kou	<i>Cordia subcordata</i>
Hong Kong Orchid	<i>Bauhinia blakeana</i>
Jaboticaba	<i>Eugenia cauliflora</i>
Kalamona	<i>Cassia glauca</i>
Lignum Vitae	<i>Guaiacum officinale</i>
Pink Tecoma	<i>Tabebuia pentaphylla</i>
Plumeria varieties	<i>Plumeria</i> sp.
Podocarpus	<i>Podocarpus</i> sp.
Puakenikeni	<i>Fagraea berteriana</i>
Silver Trumpet	<i>Tabebuia argentea</i>
Strawberry Guava	<i>Psidium cattleianum</i>
<u>Fruit Trees</u>	
Banana	<i>Musa</i> sp.
Citrus	<i>Citrus</i> sp.
Papaya	<i>Carica papaya</i>
Pomegranate	<i>Punica granatum</i>
Lychee	<i>Lychee chinensis</i>
Mango	<i>Mangifora indica</i>
<u>Palms</u>	
Areca Palm	<i>Chrysalidocarpus lutescens</i>
Bottle Palm	<i>Mascarena lagenicaulis</i>
Coconut Palm	<i>Cocos nucifera</i>
Fiju Fan Palm	<i>Pritchardia pacifica</i>
Fishtail Palm	<i>Caryota mitis</i>
Kentia Palm	<i>Howeia forsteriana</i>
Licuala Palm	<i>Licuala grandis</i>
MacArthur Palm	<i>Ptychosperma macarthurii</i>
Manila Palm	<i>Veitchia merrillii</i>
Rhapis Palm	<i>Rhapis excelsa</i>
Royal Palm	<i>Roystonea regia</i>

COMMON NAME

Shrubs

African Iris
Bird of Paradise
Dwarf Cycad
Dwarf Date Palm
Gardenia varieties
Ginger varieties
Heleconia varieties
Impatiens
Ixora varieties
Kokutan
Monstera
Philodendron
Plumbago
Spathyphyllum varieties
Spider Lily
Ti Leaf

Hedge Materials

Croton
Eldorado
Hibiscus varieties
Leea
Mock Orange
Natal plum
Podocarpus
Snowbush

Vines

Allamanda
Bougainvillea varieties
Cats Claw
Creeping Fig
Galphimia
Huapala
Jade
Mandevilla
Stephanotis
Thunbergia

Grasses

Bermuda
Centipede
Seashore Paspalum
St. Augustine
Zoysia

BOTANICAL NAME

Moraea iridioides
Strelitzia reginae
Cycas revoluta
Phoenix roebeleni
Gardenia sp.
Alpinia sp.
Heleconia sp.
Impatiens sultani
Ixora sp.
Raphiolidip indica
Monstera deliciosa
Philodendron selloum
Plumbago capensis
Spathyphyllum sp.
Crinum asiaticum
Cordyline terminalis

Codiaeum variegatum
Pseuderanthemumreticulatum
Hibiscus sp.
Leea coccinea
Murraya paniculata
Carissa grandiflora
Podocarpus nerifolius
Breynia nivosa rosi-picta

Allamanda cathartica
Bougainvillea sp.
Doxantha unguis-cati
Ficus pumila
Tristellateia australasiae
Pyrostegia ignea
Strongylodon macrobotrys
Mandevilla splendens
Stephanotis floribunda
Thunbergia grandiflora

Cynodon dactylon
Eremochloa ophiuroides
Paspalum vaginatum Swartz
Stenotaphrum secundatum
Zoysia tenuifolia

COMMON NAME

Ground Covers

Agapanthus
Asparagus Fern
Hemigraphis
Joyweed
Lantana
Laua'e Fern
Mondo Grass
Neomarica
Portulaca
Pothos
Rhoeo
Ruellia
Syngonium
Walking Iris
Wedelia

BOTANICAL NAME

Agapanthus africanus
Asparagus sp.
Hemigraphis colorata
Alternanthera amoena
Latana sp.
Polypodium phymatodes
Mondo japonicum
Neomarica gracilis
Portulaca grandiflora
Scindapsus aureus
Rhoeo discolor
Ruellia ciliosa
Syngonium podophyllum
Neomarica bicolor
Wedelia trilobata

NEW CONSTRUCTION COMMITTEE PROCESS AND PROCEDURES

The Covenant Enforcement Manager will coordinate the processing of all New Construction requests through the offices of Management Consultants of Hawaii and the Kehalani Community Association and will serve as the staff assistant to the New Construction Committee. The Kehalani Community Association Office will maintain a file of all documents relating to each request and serve as a permanent record for future reference.

The procedure for processing New Construction requests will include the following:

1. Owners will submit three copies of their plans, specifications, and all other relevant material relating to the construction of new homes in Kehalani along with the \$750.00 processing fee. Note: if the processing fee is not submitted the owner will be informed by letter from the Covenant Enforcement Manager that the plans will not be reviewed by the NCC until the correct amount is received by MCH or the Kehalani Community Association.
2. The Covenant Enforcement Manager will forward two copies of the construction documents to the consulting architect, and two copies of the landscape documents to the landscape consultant for their review and comments. SEND TO: John Fullmer, Mason Architects 119 Merchant Street, Suite 501, Honolulu, Hawaii 96813. Please send a cover letter with the documents to the architect and keep a copy of the cover letter in our files to document the submittal. The Kehalani Community Association Manager will mail the plans and supporting documentation to the Architects.
3. One copy of the documents will be retained in the files at the Kehalani Community Association Offices.
4. The Covenant Enforcement Manager will inform the owner (or the owner's representative) in writing that their documents have been forwarded to the NCC and that the review will be completed within 60 days. A copy of this letter will be retained in the owner's property files at the Kehalani Community Association Office.
5. The consulting architects will forward their comments and recommendations in writing along with a marked up copy of the construction documents to the Covenant Enforcement Manager % the Kehalani Community Association Office. The consulting architects will retain the third copy of the documents in their file, and the second copy of the plans will be sent to Cullen Oesterly of Towne Development in Honolulu.
6. The NCC will review the material and make their recommendation relating to the plans submitted by the owner and the comments and review by the consulting architects.

7. If additional information is required or the NCC rejects the request the Covenant Enforcement Manager will inform the owner in writing of the decision reached by the NCC. The letter will ask the owner to resubmit plans (if the original request was denied) or correct any deficiencies as noted by the NCC and resubmit the changes for an additional review. Please keep a copy of this letter in the office files. In the letter outline the changes requested by the consulting architect, but do not mail the owner a copy of the architect's letter.
8. If the NCC approves the plans the Covenant Enforcement Manager will inform the owner and authorize them to proceed to construction and provide the NCC with a fully executed building permit. The approval letter will come from the New Construction Committee under the signature of Russ Wozniak. Russ is located in the Towne Development trailer in Kehalani. I generally leave the letter for Russ to sign and mail.

Note: If the NCC requires additional information from the owners based upon their review and from the architect consultants review the Covenant Enforcement manager will request specific information from the owner.

9. When the Covenant Enforcement Manager receives additional information as requested by the NCC it will be sent to Mason Architects for the second review.
10. Mason Architects will forward the second review, to the Covenant Enforcement Manager % of the kehalani Community Association Office who will then present the decision to the owner in writing of any other requirements requested by the Architect and the NCC.
11. This process will continue until the NCC has approved the request. When approval is granted the Covenant Enforcement Manager will write a letter from the NCC informing the owner in writing of the decision, and request that they submit to the NCC an executed copy of the building permit.
12. When the home is finished the Owner must submit to the NCC a Notice of Completion at which time a final inspection will be scheduled.
13. The NCC will designate a consultant to review the as built and visually review the final construction to be sure it complies with the approval of the NCC.

This process requires that the NCC meet on a monthly basis in order to meet the 60 day processing time for new construction requests. In those instances in which additional information is required from the owner the Covenant Enforcement Manager will inform the owner (in writing) that an additional 60 days will be required once the re submittal has been received at the offices of the Kehalani Community Association. In the past when the consulting architect (ie NCC) has requested additional information the owners have taken months to respond if at all. In some cases the owners have applied for a building permit and begun construction before receiving final approval from the NCC. In addition, once final approval has been granted please be sure you follow up with the owner to get a valid building permit.