



Design Committee Rules

August 4, 2023

DESIGN COMMITTEE RULES - WAILEA COMMUNITY ASSOCIATION

Use of Owner's Lot - Compliance with Master Declaration and Laws

Alphabetic Listing of Headings..... 4

I. Use and Site Development Restrictions and Requirements

A. Utilities 6
B. Individual Lot Plot Plans 6
C. Easements 7
D. Grading 7
E. Lot Drainage 7
F. Temporary Structures and Surplus Materials 8
G. Fire Hazard 8
H. Pavement and Play Areas 8
I. Vehicles, Trailers and Boats 8
J. Vehicle Repair..... 8

II. Architectural Standards

A. Architectural Character 8
B. Buildable Area 9
C. Building Footprint 9
D. Finished Floor Elevation 9
E. Building Envelope 10
F. Building Height 10
G. Minimum Dwelling Size 10
H. Garage and Storage 11
I. Roof: Materials, Pitch, Overhang, Roof Decks..... 11
J. Building Surfaces 12
K. Exterior Lighting / Tiki Torches 12
L. Driveways 13
M. Air Conditioning System and Mechanical Equipment 13
N. Solar Energy and Heat Pumps 14
O. Swimming Pools and Water Features 15
P. Refuse Storage 15
Q. Antennas, Satellite Dishes, Flagpoles, Towers, Windmills 16
R. Mailboxes 16
S. Exterior Walls/Other Materials/Color 17
T. Fences, Walls, Hedges and Enclosures 17
U. Laundry Facilities 19
V. Signs, Graphics & Murals 19
W. Trellises.....20
X. Outdoor Furniture.....20

III. Landscape Standards

A. Landscape Plans, Hardscape Calculation..... 20
B. Landscape Completion 21
C. Planting Soil 21
D. Root Barriers 21
E. Grass 21
F. Hedges 22
G. Plant Quantities for Single Family Lots..... 22

H.	Ultimate Tree Size	22
I.	Prohibited Trees	23
J.	Other Prohibited Plants (all Lots).....	23
K.	Sustainability (all Lots).....	23
IV.	Construction Standards	
A.	Prior Notice to Committee	23
B.	Performance; General Contractor	23
C.	Materials and Quality	24
D.	Foundations	24
E.	Ground Termite Standards	24
F.	Abandoned Construction	25
G.	Utility Lines	25
V.	Construction Requirements	
A.	Blasting	25
B.	Construction Signs	25
C.	Refuse Disposal Bins	26
D.	Site Preparation	26
E.	Portable Toilets	26
F.	Contractor's Acknowledgement	27
G.	Construction Deposits	27
H.	Construction Fining Policy	27
VI.	Approvals Procedures and Requirements	
A.	Consultation Services/Licensed Architect	28
B.	Architectural Controls	29
C.	Procedures for Submitting Plans	30
D.	Applicable Laws	32
E.	Performance of Work	32
F.	Extensions of Construction Time Frame	33
G.	Construction Not in Compliance.....	34
H.	Pad Elevations	35
VII.	Reservations and Limitations	
A.	Variances and Amendments	35
B.	Delegation of Authority	35
C.	Nonliability	36
D.	Consolidation and Subdivision	36
VIII.	Landscape Maintenance	
A.	Landscape Maintenance of Common Areas.....	37
B.	Landscape Maintenance Standards.....	38
C.	Permitted Landscape Maintenance Hours.....	38
D.	Non-Standard Landscape Maintenance Violations.....	38
E.	Landscape Maintenance Enforcement Policy.....	38
F.	Landscape Maintenance Disputes.....	39
G.	Landscape Maintenance Definitions.....	39

DESIGN COMMITTEE RULES - WAILEA COMMUNITY ASSOCIATION

Use of Owner's Lot - Compliance with Master Declaration and Laws

Alphabetic Listings of Headings

Heading	Page #
Abandoned Construction	25
Air Conditioning System and Mechanical Equipment	13
Antennas, Satellite Dishes, Flagpoles, Towers, Windmills	16
Applicable Laws	32
Architectural Character	8
Architectural Controls	29
Blasting	25
Buildable Area	9
Building Envelope	10
Building Footprint	9
Building Height	10
Building Surfaces	12
Consolidation and Subdivision	36
Construction Deposits	27
Construction Fining Policy	27
Construction Not in Compliance.....	34
Construction Signs	25
Consultation Services/Licensed Architect	28
Contractor's Acknowledgement	27
Delegation of Authority	35
Driveways	13
Easements	7
Extensions of Construction Time Frame	33
Exterior Lighting / Tiki Torches	12
Exterior Walls/Other Materials/Color	17
Fences, Walls, Hedges and Enclosures	17
Finished Floor Elevation	9
Fire Hazard	8
Foundations	24
Garage and Storage	11
Grading	7
Grass	21
Ground Termite Standards	24
Hedges	22
Individual Lot Plot Plans	6
Landscape Completion	21
Landscape Plans, Hardscape Calculation.....	20
Landscape Maintenance Enforcement Policy.....	39
Landscape Maintenance of Common Areas.....	37
Landscape Maintenance Definitions.....	39
Landscape Maintenance Disputes.....	39
Landscape Maintenance Standards.....	38
Laundry Facilities	19
Lot Drainage	7

Mailboxes	16
Materials and Quality	24
Minimum Dwelling Size	10
Nonliability	36
Non-Standard Landscape Maintenance Violations.....	38
Other Prohibited Plants (all Lots).....	23
Outdoor Furniture.....	20
Pad Elevations	35
Pavement and Play Areas	8
Performance of Work	32
Performance; General Contractor	23
Permitted Landscape Maintenance Hours.....	38
Plant Quantities for Single Family Lots.....	22
Planting Soil	21
Portable Toilets	26
Prior Notice to Committee	23
Procedures for Submitting Plans	30
Prohibited Trees	23
Refuse Disposal Bins	26
Refuse Storage	15
Roof: Materials, Pitch, Overhang, Roof Decks.....	11
Root Barriers	21
Signs, Graphics & Murals	19
Site Preparation	26
Solar Energy and Heat Pumps	14
Sustainability (all Lots).....	23
Swimming Pools and Water Features	15
Temporary Structures and Surplus Materials	8
Trellises.....	20
Ultimate Tree Size	22
Utilities	6
Utility Lines	25
Variances and Amendments	35
Vehicle Repair.....	8
Vehicles, Trailers and Boats	8

Use of Owner's Lot- Compliance with Master Declaration and Laws

I. Use and Site Development Restrictions and Requirements

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 Master 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 Master 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 Master Declaration and applicable laws, codes or ordinances, and the requirements of the local Home Owner's Association (HOA) or Association of Apartment Owners (AOAO), the most restrictive provisions or law, code, ordinance, or requirement shall control.

No major building, structure or other improvement shall be placed, altered or permitted to remain on any Lot other than one single-family dwelling and a private garage. No accessory dwellings, guest cottages, servants' quarters or second kitchens may be constructed or placed on any Lot.

A. Utilities

Except for propane gas, trash collection, and approved self-generating energy sources such as photovoltaics, 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.

B. Individual Lot Plot Plans

1. Plot Plans on file in the WCA offices for individual lots will be furnished to the Owners. All grades, contours, utility locations, etc. indicated thereon *are approximate and subject to verification by the Owner, prior to start of construction, to include the following:*
 - a. Utility locations.
 - b. Lot contours.
 - c. Buildable area of the lot.
 - d. Maximum buildable area footprint.
 - e. Building setbacks.
 - f. Sightline setbacks.
 - g. Building height limits.
 - h. Building envelope.
 - i. Grading elevations.
 - j. Specific drainage locations for accepting and/or discharging surface runoff
 - k. Number of stories.
2. It shall be the Owner's responsibility to examine the Plot Plans, to arrange for subsurface soil investigation and to design and construct the Owner's structure accordingly. Each Owner is advised to obtain a comprehensive soil report prior to commencing any construction upon a lot.
3. The Developer, 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.

C. Easements

Easements for the installation and maintenance of utilities and drainage facilities are as set forth in or are as reserved as shown on:

1. Land Court Map(s) applicable to the easement filed with Land Court;
2. Land Court Order applicable to the Subdivision;
3. The deed conveying the lot to the initial Owner of the lot; and/or
4. 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.

D. Grading

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.

E. Lot Drainage

1. The flow of surface and/or subsurface drainage onto, across or from each lot, shall not be unreasonably obstructed. Such run-off shall be percolated, dispersed or channeled by surface swales or other facilities in such a manner as to prevent erosion and damage to adjacent property. 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 Owner shall be responsible for the design of all drainage facilities for the Owner's lot and will be liable for all claims for any resulting damages. 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 and/or other properties resulting from inadequate or improper drainage and grading, regardless of the Committee's approval of the lot's drainage plans.

2. Certain lots must accept and/or discharge drainage at specific locations along the lot boundaries. A master drainage plan designating these specific drainage locations will be available to the Owners for inspection. In addition, the Plot Plans for the lots indicate the drainage locations.

F. 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 the "date of completion." Temporary structures, trailers and construction materials shall be placed on the lot and not on adjacent lots or common area without the written approval of the landowner, HOA and Committee.

G. 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 expense. 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.

H. Pavement and Play Areas

The aggregate surface area of all impervious paved surfaces, including swimming pools, on a lot shall not exceed thirty percent (30%) of the residual land area of the lot (lot area - building footprint = residual land area). The driveway portion of a flag lot shall not be part of the aggregate area of the impervious surface. Areas covered by building structures are not considered part of the pavement 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.

I. Vehicles, Trailers and Boats

Vehicles shall not be parked continuously, regularly or overnight on common area roadway lots within the Subdivision. Only occasional parking by guests or by vehicles servicing a lot shall be permitted on such roadway lots. 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.

No mobile home, travel trailer, truck camper, house trailer, food truck or mobile kitchen shall be kept, parked, stored or maintained on any Lot.

J. 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.

II. Architectural Standards

A. Architectural Character

Architectural character of all buildings is commonly of a contemporary Hawaiian style featuring generous overhangs, lanais, trellises and building siting oriented to take advantage of prevailing trade winds for ventilation. This style utilizes broad lanais, interior courtyards and water features, and expands upon an interpretation of modern and Asian influences. It incorporates the use of local materials such lava rock, blue rock, wood beams and glass. Local forms are employed with flowing indoor and outdoor open spaces sheltered by dramatic roofs and overhanging eaves.

Tudor, colonial, Georgian and French provincial styles are prohibited. Also, pole houses, structures with "A-frame" roof lines, and factory-built structures which have been preassembled or precut for assembly, shall not be placed on any lot, except with the prior written approval of the Design Committee.

B. 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. **Actual minimum setbacks and maximum buildable area for the lots are indicated on the individual Plot Plans for each lot.** 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. Where individual plot plans are not available, the minimum setbacks shall be 15' on all sides, or per County standards, whichever is greater.

C. Building Footprint

The Plot Plans for each lot may indicate the maximum building footprint (maximum coverage of buildable area) for the lot and/or maximum floor area ratio. No improvements placed or constructed on any lot shall exceed these lot coverages. The term "floor area ratio" (FAR) shall mean the gross floor area of all buildings on the lot divided by the lot area.

For one story structures, the maximum building footprint may be increased per the HOA. As used above, the term "building footprint" shall mean the area of the lot, within the buildable area, covered by the horizontal areas included within the exterior walls of all structures (including garages) on the lot, plus any area within the exterior posts supporting a solid overhead roof or covering. Trellis covered areas not attached to residence and swimming pools shall not be considered part of building footprint.

D. 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 corridors, grading, cutting and filling shall be limited as follows:

1. Maximum finished pad elevations shall be limited as shown on the individual Plot Plans, where applicable, for each lot. 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.
2. Cutting and filling shall be kept to a minimum. Grading shall be contoured, with no cut or fill banks greater than a 1:3 ratio (vertical to horizontal), 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.

E. Building Envelope

A building envelope or a three-dimensional volume of space for each lot is established. The building envelope defines building height and setback limitations and is shown on the individual lot Plot Plan. Building envelope designations are based on setback considerations and other site planning and design criteria.

1. All structures and improvements, including any building, accessory building, enclosed and/or covered parking areas, recreation facilities and other habitable improvements, shall be built within the building envelope unless an envelope modification is approved in writing by the Committee.
2. The building envelope setback limitations shall constitute open space areas, which shall be enforceable by the Owner who is impeded by a violation of these areas and/or the Association. The Developer, Board, Association, Master Association or Committee does not guarantee any unobstructed views or open space and shall not have the obligation to enforce any of the envelope setbacks.

F. Building Height

The Plot Plans for each lot will indicate the maximum roof elevation, as part of the building envelope as indicated in the aforementioned Section II. E. Building Envelope, above sea level for all structures placed or constructed upon the lot. Such roof elevation shall be measured at the highest point of a structure's roof (but exclusive of the structure's chimney.) No structure shall be placed or constructed upon any lot in excess of the building envelope shown on the Plot Plan for the lot. No chimney shall extend more than four (4) feet above the highest point of the roof of the dwelling.

On a lot limited to a one-story residence, the maximum building height at the highest point on the exterior roof shall not exceed 20'0" unless otherwise designated as being higher on the individual Plot Plan.

On lots where the maximum of two story residences are permitted, the building height at the highest point on the exterior roof shall not exceed 30'-0" in vertical height from original grade at that specific point on the lot, unless otherwise designated as being lower on the individual Plot Plan.

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.

G. Minimum Dwelling Size

Each dwelling constructed upon a lot, exclusive of garages and attached or detached lanai(s), shall have a minimum square footage of enclosed living area as established by each Homeowner's Association (HOA).

H. Garage and Storage

A garage for at least two (2) cars is required with a recommendation of not less than four hundred (400) square feet of parking area under roof, which may be attached to or detached from the dwelling. All garages shall be fully enclosed with garage doors. It is encouraged that garage door designs break up the door massing by various means such as detailed articulation, use of custom doors or separate door for each vehicle. All garage doors are recommended to have fenestration.

However, a drive-through porte-cochere, in lieu of a garage, may be constructed provided the design and construction are approved by the Committee and provided further that no porte-cochere shall be approved nor constructed unless an additional one hundred (100) square feet of floor area is constructed for storage uses. Such storage areas may have outside access and need not be located within the porte-cochere.

Every garage, whether attached or detached, should contain not less than an additional one hundred (100) square feet of covered and enclosed floor area for storage facilities, accessible only from the garage and/or exterior. Such additional area shall be adequately screened from view from the street. Front yard setback of garages that are side loaded may be reduced by a maximum of five (5) feet in the area fronted by the garage. Carports shall not be permitted.

I. Roof: Materials, Pitch, Overhang and Roof Decks

1. Roof Materials

Roofs shall use wood shingle, wood shake, concrete tile, clay tile, or copper. Other roofing materials of equivalent texture and character may be approved by the Committee. A sample shall be submitted for Committee approval as to color, style and texture.

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 approved earth tones with shades of browns, grays, blues and greens. Clay tiles shall be of an integral color; wood shakes and wood shingles shall be natural, stained with dark brown penetrating stain or oiled.

2. Roof Pitch

a. Should be a minimum of 5:12 (vertical: horizontal) for a single-pitched roof and a minimum of 3:12 for the lower portion of the split pitch roof.

b. Mansard roofs are not recommended.

3. Flat Roofs

Unless approved by the Committee, the area of flat roof shall not exceed fifteen percent (15%) of the total roof area. A roof is considered flat when the slope is less than a 3:12 pitch, excluding lanais that also serve as roof area in a multi-level structure. The flat roof surface above the second story shall not be used as a roof terrace.

4. **Overhangs**

Roof overhangs are not limited in horizontal dimension, but a variance will be considered for overhangs of up to three (3) feet into any building setback area.

5. **Viewing Decks**

In single family buildings, roof terraces, balconies, lanais, lookouts, or any similar viewing areas shall not be permitted higher than the floor elevation of an adjacent interior inhabitable space and shall be accessible from that space.

J. 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:

1. Projections and recesses to provide shadows and depth.
2. Lanais.
3. Sunshading devices such as trellises.
4. Staggering of wall planes (the Committee permits an up to 45' uninterrupted plane).
5. Articulated doors, windows and wall openings.

K. Exterior Lighting

There should be no exterior lighting of any type, either installed or maintained, the light source of which is visible from public and private neighboring properties. The purpose is to limit degradation of the night visual environment by minimizing light glare, pollution, and trespass of light from outdoor lighting. As such, all new outdoor lighting shall be fully shielded. Fully shielded shall be defined as being constructed so that all of the light emitted by the fixture is projected downward, below the horizontal plane of the lowest point of the fixture. All exterior lights must be submitted to the Design Committee for approval. Submittals must include plans showing the location of the outdoor lighting fixtures, along with tear sheets and/or catalogue cuts of the fixtures. The Committee shall take into consideration the elevation of the structure relative to downhill Lots and the associated effect(s) even fully shielded lights may have when making their approval. Security lights activated by movement may be installed with approval of the Committee.

Colored lights other than approved amber or gray, fluorescent, high intensity discharge exterior lights, flashing, exposed bulbs and flood lamps on roof eaves are not permitted.

Tiki torches will be allowed in residential subdivisions provided that the Home-Owner's Association of such subdivision does not prohibit them. The following conditions will govern their installation:

1. Propane fueled Tiki torches shall be allowed at one torch per 1500 sq. ft. of lot size.
2. All torches must be within the building envelope.
3. All torches must comply with County, State and National gas and fire codes. Propane tank(s) and location(s) must also comply.
4. Maximum pole length above finish grade, excluding cone, shall be 89 inches.
5. Torch cones shall be a maximum of approximately 8 inches in diameter and 12 inches in height. A brochure of the Tiki torch heads must be submitted to WCA for approval prior to installation.

6. If light from torches results in problematic light trespass, flickering or glare to immediate adjacent neighbors, the Owner may be asked to shield, relocate or curtail use of torch(es).

L. Driveways

1. Driveways aprons should 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 sixteen percent (16%) or more should be paved with concrete.
2. Driveways and drop curbs 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, and sidewalks. Sprinklers and underground utility lines shall be sleeved for protection. 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.

M. 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 or the following Wailea Noise Guidelines, which ever is more restrictive.

To assist in maintaining the tranquil conditions in the subdivision and to minimize the likelihood of complaints from neighboring residents, the level of sound or noise emanating from air-conditioning and other mechanical equipment on any lot shall not exceed 40 dBA (decibels) at any point on the property line of the lot.

Special attention to noise control measures is required during the design process to ensure compliance with a 40 dBA property line criterion. Suitable measures would normally include, but not necessarily be limited to, the following:

1. Selecting the quietest available equipment, ideally the equipment sound rating should be 7.2 bels (10 decibels = 1 bel) or lower.
2. All exterior mounted mechanical equipment and housing shall be fully enclosed with a minimum 48-inch wall and solid gate and located within the buildable area. Such enclosure may need durable sound absorptive treatment applied to the interior surface of the walls. The enclosure design shall allow for adequate access and clearance for maintenance purposes as well as permitting sufficient airflow.
3. Locating the equipment as far as possible from neighboring noise sensitive areas (such as bedrooms, patios, etc.) with a minimum twenty (20) foot setback from the closest property line of the lot.

4. Equipment with sound ratings of higher than 7.2 bels could possibly be used with larger setbacks. Setback distances of less than twenty (20) feet may also be feasible in certain cases where quieter equipment (7.0 bels or lower) are utilized. The Committee may, without limitation or liability, allow placement of equipment closer to the setback line or equipment with higher bels rating provided the combination of measures employed produces the desired result of 40 dBA or less at the property line of a lot.

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.

Notwithstanding the above, should complaints occur after start-up, the Committee may, without liability or limitation, restrict or prohibit the operation of any air-conditioning or mechanical equipment found to be generating property line noise levels exceeding 40 dBA, until additional noise mitigation measures are provided by the Owner and approved in writing by the Committee.

N. Solar Energy and Heat Pumps

It is recommended that all structures use solar energy or heat pumps as the primary source to heat domestic water. Solar energy installations shall be, as much as practicable, hidden from view by accommodating them into the roof or a flat roof section, and shall:

1. Be installed at the same angle of slope and parallel plane as the roof. The intent is to create an architecturally pleasing integration of the solar panels into the roofline.
2. Collectors may be ground mounted provided they are properly screened.
3. Roof mounted composite solar collector and water storage tank systems are not allowed.
4. The design of all installations be part of the design submittals and requires the prior written approval of the Committee.
5. Hot water solar collectors shall have black frames and, where appropriate, black skirting as noted for photovoltaic systems below.

All structures that incorporate photovoltaic, or equivalent, for energy requirements (“system”) shall be incorporated into the design at the time of submittal to the Design Committee. The Design Committee review and approval shall be required inclusive of the system. Requirements for the installation of photovoltaics:

1. Solar units not mounted on the roof (ground mounted) should be installed according to the setback requirements. Any such structure shall be concealed from neighbors’ views.
2. Aluminum trim, if used and visible, must be black.
3. Solar collectors should be installed on the plane of roof material (flush mounted).
4. A sample or illustrated brochure of the proposed solar unit, which clearly depicts the unit and defines the material used, must be submitted with the application.
5. Construction drawings for the proposed installation must be provided, showing the location and number of collectors, attachment to the roof structure, and location of any other exterior components.
6. Calculations must be provided showing the number and area of the collectors required.
7. Method of installation shall follow solar collector manufacturer’s recommendations to achieve the lowest profile possible.

8. If the profile of the PV panels is more than 4” above the roof, the leading and side edges of each array shall have an appropriate “skirt” facing to maintain as low a profile as possible. Details of the skirt shall be submitted to the Design Committee for approval. Skirts must be black to match the panel frames.
9. In no event shall the racking system extend beyond the face of the array/panel.
10. In no event shall the panels/arrays extend beyond the edge of the roof.
11. Racks cannot be exposed between panels.
12. Deviations from an approved layout must be approved by the Design Committee before installation begins.
13. Panels shall be all black with all black frames and hardware.
14. No conduit or wires shall be visible on the roof or soffit.
15. PV panels, installed in townhome and condominium subdivisions, which serve an individual Owner must be installed on the roof directly above the unit which is being served.

O. Swimming Pools and Water Features

Swimming pools and water features design shall be submitted as part of the preliminary and final plans.

- For swimming pools to be constructed outside the buildable area, a variance will be required. No more than fifty percent (50%) of the swimming pool shall be allowed beyond the buildable area for a variance to be considered.
- Swimming pools and swimming pool decks shall have a minimum ten (10) foot setback from property lines for a variance to be considered, except where stated or delineated on the individual Plot Plans.
- Swimming pool equipment and housing shall be enclosed and contained within the buildable area.
- A water feature, its equipment and housing shall be 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.

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 other than lots specified for the same purpose.

No “future pool” plans, or any “future” plans, may be submitted or approved.

P. 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.

Q. Antennas, Satellite Dishes, Flag poles, Towers, Windmills, EV Charging Stations

No visible antennas are allowed. Towers, windmills or aerials are prohibited. One flag pole per lot shall be allowed within the buildable area. Pole height shall not exceed twenty feet (20') nor extend beyond the ridge. No commercial flags shall be allowed. Location shall be approved by the Design Committee. For single family residences, Electric Vehicle (EV) charging stations must be located in the garage or in a Design Committee approved enclosure.

Satellite dishes

The Federal Communications Commission rule implementing Section 207 of the Telecommunications Act of 1996 applies only to direct broadcast satellite service (DBS) antennas less than one meter in diameter, as set forth in Section 207, multi-channel multi-point distribution service (MMDS) antennas less than one meter in size, and standard TV antennas.

The FCC rule permits measures to minimize the visual impact of small multi-channel multi-point distribution service (MMDS) dishes in high visibility locations, including mandatory painting or screening of a dish. As such:

1. All proposed small multi-channel multi-point distribution service (MMDS) dish installations and antennas **must** be submitted to the Design Committee for review, care of the Wailea Community Association Office.
2. Direct broadcast satellite service (DBS) and multi-channel multi-point distribution service (MMDS) one meter or greater in diameter are not permitted.
3. The Committee will review the submittal of location and determine if it is a location of non-significant impact on the community while allowing for adequate signal reception, within a reasonable time frame.
4. Where it would be visible from neighboring properties, the dish and/or antennas or supporting structures shall be screened from view unless this will adversely affect reception. In such a case, they must be painted and screened per approval of the Design Committee to minimize aesthetic impact on the community. The screening and paint color must be submitted for approval.
6. The proposed location must be approved by the Design Committee. The Committee will not approve the location of satellite dishes or antennas mounted on the peak of the roof of a home, on the front of a home where a dish is visible from the street, or in front or side yards if a less visible location can be utilized while still allowing for adequate reception.

R. Mailboxes

All mailboxes shall be designed per postal regulations and shall not exceed 56 inches in height above finish grade. Mailboxes shall be custom designed to reflect the style of the residence and/or neighborhood and cannot be purchased from a retail/wholesale establishment, unless approved by the Design 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. Mailbox designs must be approved by the Design Committee.

S. Exterior Walls/Other Materials/Color

All materials shall be stucco, stone, cast concrete, board and batten, or shiplap siding. All wood siding shall be clear redwood, cedar or Douglas fir suitable for a stain grade quality finish or better. Samples of the siding shall be submitted as part of the preliminary plan application.

No vinyl or pre-finished metal siding, plain surfaced or grooved plywood panels, composite or presswood sidings 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, vents 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%).

Where "Wailea Green" is required for conformity with the Resort, for items to include roadway guardrails, the Owner shall use Hunter Green from Ameritone, Deflex product number 4216-0500, Ameritone Code Number CM 08-760.

T. Fences. Walls. & Hedges

All walls, fences, and hedges 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. Cuts in grade adjacent to property line wall shall start no closer than two (2) feet to base of wall.

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 wall including retaining walls shall be six (6) feet as measured from the finished grade on either side at the wall's base. Property line fences, walls and hedges shall be developed in common with adjacent property Owners to eliminate double fencing, wherever possible.

1. **Materials**

All walls shall be constructed of lava rock, blue rock, concrete or concrete block. Wall finishes shall be lava rock veneer, blue rock veneer or stucco. Exposed cement mortar for rock walls shall be colored to match the rock as closely as possible. 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 landscaped, irrigated and maintained.

Highly detailed wood fences are permitted wherever appropriate. The wood fence shall be of an attractive design, have a high quality finish and must be approved in writing by the WCA Design Committee. Fencing shall be designed to be equally attractive from both sides. The use of a plain board fence is not permitted.

2. **Original grade is defined as the grade of subject lot at time of final subdivision approval.**

3. At **front property line** and street right-of-way:

Fences, walls, hedges and enclosures, located along the street right-of-way, with a height of one and one-half (1½) feet or more shall be set back a minimum of three (3) feet from the abutting property line. This does not include wall and fence improvements installed as part of the original subdivision construction by the developer.

Fences, walls, hedges and enclosures with heights between one and one-half to six (1½ - 6) feet shall be set back at a ratio not to exceed 3:5 (vertical to horizontal) from the existing grade at the abutting front property line. Any fence, wall, hedge or enclosure having the maximum height of six (6) feet shall be set back a minimum of ten (10) feet from the abutting property lines for front or street right-of-way.

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 an equilateral triangle. These sight line setbacks shall be set forth on the individual Plot Plan for such lots.

4. Walls located **parallel to the front property lines** or street right of way shall:

- a. Be modulated a minimum of eight (8) inches (forward or backward for each ten (10) feet of length, provided that the wall shall not encroach into defined setbacks; **OR**
- b. Use significant landscaping in front of wall to mitigate the visual impact of the wall.

5. At **side or rear property lines**:

- a. Fences, walls, hedges and enclosures located along and abutting side property lines shall not exceed six feet in height of exposed face from the original grade.
- b. The retaining wall portion of any wall alongside property lines shall not be greater than three (3) feet in height above or below original grade.
- c. If additional fences and walls are necessary, they shall be set back at a ratio not to exceed 3:5 (vertical to horizontal) from the existing grade at the side property lines.

6. Hedges on Property Lines

Hedges adjacent to property lines shall be maintained to the mutual satisfaction of adjacent property Owners. Root barriers and/or masonry walls may be necessary to prevent plantings encroaching onto neighboring property. Planting shall be planned to take into account light, views and plant maintenance for all properties and at no time shall hedges be allowed to grow taller than six (6) feet in height as measured from the finish grade to top of hedge. Hedge plant material must be readily maintained to control height and width of hedge. Suitable hedge materials include, but not limited to: bougainvillea, plumbago, hibiscus, carissa, snowbush, oleander, mock orange, and bee still.

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

U. Laundry Facilities

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

V. Signs, Graphics, Murals & Artwork

No signs, graphics, murals or artwork whatsoever shall be erected or maintained upon any lot, or upon the exterior surface of any structure, except:

1. Such signs as may be required by legal proceedings.
2. Such signs as Developer may erect or maintain for a lot prior to sale and Conveyance. Construction and/or Project signs shall not be permitted after completion of construction
3. Such signs as required for house numbers and name signs in accordance with item R (Mailbox) above, provided that such signs shall not exceed one square foot max.
4. Real Estate "for sale" signs on the lot being sold, provided specifications and placement are in conformance with the document entitled "Specifications for "For Sale" signs" which may be obtained from Wailea Community Association or the Developer. Sign shall not be located in common areas for single family residences, shall not face golf course, and must face the road to which the lot has access. No more than one sign shall be permitted.
5. Security service signs, provided WCA size and color requirements and locations are followed. A sign specification for an approved security system "notification" sign, as approved by the WCA Design Committee on April 6, 1999, shall be made available to all security services on Maui. Each neighborhood association has the discretion to decide whether this sign specification and policy shall be allowed in their association. This security sign specification (design, color and size) shall be the only security sign allowed all or in part within Wailea. If an individual neighborhood association Board of Directors resolves to not allow this WCA approved sign, this neighborhood's perspective shall control and the sign shall not be allowed. If it is to be used, the following approved security sign policy applies:
Size/Shape – 6 ½ X 10 ½" Oval
Colors – Wailea Green, Gold and White (non-reflective).
Post – 24" Tall, Wailea Green
Wording – "Protected by Security System"
Locations:
 - The front yard shall have one sign not more than 5 feet from the front door (preferably not visible from the street).
 - The back yard, not higher than 18" allowed maximum, preferably not visible from neighbor's view:
 - Abutting golf courses- centered on the lot at the setback line;
 - On all other back yards – located at Owner's discretion, but not to be visible from any street.
 - Side yards – a maximum of 1 in each side yard, but not to be visible from any street, preferably not visible from neighbor's view.
 - Window Decals – allowed, but not larger than 4", colors to match sign.

Note: Contact WCA at 874-6866 for artist's rendering.
6. Any sign which does not comply with the above must obtain specific written approval of the Committee. Note: Lettering and graphics cannot exceed 14" height.
7. No Vehicle bearing commercial insignias or names shall park on any commercial Lot, where it is associated with a tenant of that commercial center, unless it is positioned in the furthest corner of the respective parking lot or is temporarily parked for delivery purposes.

Developed and Undeveloped Subdivision Signage

1. Project signs shall be considered synonymous with construction signs to include size and the time permitted for display.
2. Construction and/or project signs displaying a single subject, e.g., contractor name, marketing information, or “For Sale,” shall be limited in size to no more than 6 SF and shall be subject to Design Committee review and approval.
3. “For Sale” signs for an existing subdivision, to include both developed and undeveloped property, shall be limited in size to no more than 6 SF and shall be subject to Design Committee review and approval, and shall be limited to a 12 month continuous display time, after which the Owner will need to reapply to the Design Committee for any additional display time.
4. Commercial and residential subdivision signs must face the street onto which they have primary access and be located as close to the entry as possible.
5. Only one (1) sign is permitted on any property at any given time.
6. Lighting of any sign is not permitted.
7. Signs must be within 20’ of entry or proposed entry.
8. Signs cannot be mounted on a building.
9. The mounting height of the sign above grade shall be proportionate to the size of the sign, and in no event shall the top of the sign be greater than 10’ and must be approved by the Design Committee.

W. Trellises

The use of trellises is encouraged for the screening of balconies and lanais. A trellis is an open-air structure of latticework and/or plants often used as support for vines or other creeping plants. It can be constructed as a separate structure or as an extension to the residence. A trellis is treated as a building or part of the building and is therefore subject to the same lot restrictions as the buildable area, including the following:

1. Trellises must be built within the buildable area.
2. Non-support elements may extend into the setbacks no more than 3 feet, similar to roofs.
3. Trellis covered areas shall not be considered part of building footprint.

X. Outdoor Furniture

The design, colors and material of all outdoor furniture owned and placed by HOA’s, AOA’s, hotel and commercial property shall be subject to the review and approval of the Design Committee.

III. Landscape Standards

Any new or changed landscaping in Wailea must be submitted to and approved by the Design Committee conforming to the new Landscape Specifications outlined in full below. WCA considers landscaping a major design element to the Community and to the individual homes within the Community. Landscape design should be an integral part of the total project or home design process. The planting design should have a significant visual impact at the time of installation, and plant compositions should create harmony and order in the design. Use of color in the landscape is encouraged. Water conservation in landscaped areas should be a design and maintenance consideration and percolation of storm runoff maximized.

Synthetic Turf is not permitted in Wailea unless specifically reviewed and approved by the Design Committee.

A. Landscaping Plans

Landscape plans, prepared by a Landscape Architect duly licensed as such by the State of Hawaii, are required and must be approved in writing by the Committee and shall be executed by a contractor licensed for this trade. Final required plans shall consist of:

1. Planting Plan and Plant List (species and size specified).
2. Fully Automatic Irrigation Plan and Equipment List.
3. Grading & Drainage Plan must be consistent with architectural & engineer's sheets.
4. Construction Plan, if appropriate to the project.
5. Exterior Lighting Plan, if appropriate to the project, including submittal of fixtures with brochure or "cut sheet" of fixture.
6. Hardscape, defined as all impervious surfaces including but not limited to:

Swimming pools
 Water features
 Pool decks
 Driveways
 Walkways and entry steps
 Stepping stones
 Concrete/stone lanais
 Landscape boulders
 Walls when located immediately adjacent to flat work

Formula for calculating hardscape:

Lot area - Building Footprint = Landscape Area

Landscape Area x 30% (% allowable of hardscape) = Max. Allowable Hardscape

Areas behind columns (toward the structure), covered by a solid roof, are included in both the building footprint and hardscape calculations. Flat work under a trellis and eaves would be included in hardscape. Grass block or rock and gravel are not considered hardscape.

Flag lots do not include staff portion of property in hardscape calculations, therefore the flag and staff shall each be calculated separately. The flag shall be calculated as per the above formula, with the staff not included in the Lot area. The staff will be evaluated by the Committee based upon its own geometry, but generally will require an impervious hardscape no greater than 60%.

B. Landscape Completion

Landscaping work shall be done, as much as is practical, concurrently with building construction and substantially completed no later than the "date of completion", as that term is defined in Section 507-43, HRS and must be completed for WCA and HOA final inspection.

Planting technique and maintenance shall achieve complete coverage within three (3) months of planting. Common and/or easement areas where existing grass is disturbed shall in all cases be replaced with sod of the same type.

C. Planting Soil

Planting or fill soil brought to the site by the Owner shall be free of clay, termites, and/or other deleterious materials, including nut sedge seeds.

D. Root Barriers

Where large and medium trees are planted within ten (10) feet of the property line or utility easement, a 24" deep physical or chemical root barrier is required at the lot boundary to protect existing or potential improvements from damage by invasive tree roots.

E. Grass

The lot area bounded by street frontage or golf course frontage shall be grassed for a minimum distance of three (3) feet into the lot from the property line, to include all roadways

in and around subdivisions. Grass type shall be hybrid Bermuda or other approved grass. Seashore paspalum shall **not** be allowed.

F. Hedges

- A hedge is defined as similar plants planted linearly adjacent to each other that extend 6 feet or more in length.
- Clumping palms (arecas or similar) may not be used as hedges.
- Clumping palms must be planted a minimum of 5 feet from the property line as measured from the property line to the edge of the root ball.
- Clumping palms not planted as hedges, adjacent to property lines contained by an above-grade wall may be considered on a case-by-case basis.

G. Plant Quantities for Single Family Lots:

<u>Recommended Plant Type</u>	<u>Quantity of Plants Required</u>
Major Palms, 10' min. trunk or Shade Canopy Trees 12 ft. min. overall, 5" caliper	1 Field stock tree per 3000 sq. ft. of total lot area or 1 Field stock tree per 3000 sq. ft. of total lot area
Palms/Small Flowering Trees 6-7 ft. overall height	1-15 gal. size per 1000 sq. ft. of total lot area

Shrubs and Ground Covers: 40 % of total landscape area.

Accent Plants and Vines: 20% of total landscape area.

1. The quantities for trees are both minimums and **maximums**. The percentages shown for shrubs and ground covers, and accent plants and vines are design goals which the Design Committee may consider in the review of landscaping plans.
2. Accent plants and vine materials may constitute a portion of required shrubs and groundcover coverage.
3. The total landscape area in square feet, as well as verification of conformance of plant quantity minimums as a percentage of total landscape area is required to be shown on final landscape plans.
4. Plant calculations are to be rounded to the nearest whole number. A plant key is to be used on landscape plans.
5. Special conditions and variances to the guidelines may be evaluated and judged acceptable by the Committee to meet specific site requirements.

H. Ultimate Tree Size for Single Family Lots

1. Except for palms, species shall be selected with growth characteristics that will not exceed the height of the allowable building envelope for the lot, were the building envelope to be extended to the property lines.
2. Trees planted in side yards shall be restricted in height to no more than the underside of the adjacent eaves of the residence and shall be selected based upon these growth

restrictions. As herein referred, "side yards" shall extend from the front property line to the rear property line, extending inward the width of the building setback. Travelers Palms shall not be permitted in residential side yards.

3. Large trees are required to be planted and maintained so that the crown does not cross the property line.
4. Trees shall be planted at least 5 feet from any and all property lines.

I. Prohibited Trees for Single Family Lots

1. Trees with growth characteristics that would exceed the maximum allowable height, such as Monkey pod, Banyan, Ficus and Eucalyptus, are **not** allowed.
2. Tall, narrow, vertical trees such as Halio Cypress, Cook Pine, and Norfolk Pines are **not** permitted. Multi-trunk palms such as Areca and MacArthur may be approved, subject to the discretion of the Design Committee. Mango trees are not permitted.

J. Other Prohibited Plants (all Lots)

Seashore paspalum, wedelia, and other undesirable, invasive, free-seeding plants such as pampas grass, and castor bean are prohibited.

K. Sustainability (all Lots)

1. At least 50% of all plant types (trees, shrubs and ground cover, and accent plants and vines) shall be drought tolerant. Irrigation design shall recognize the reduced water requirements of drought tolerant landscaping.
2. All lots, to include residential, multi-family, commercial and hotel, shall have automation device designed to work with the sprinkler/irrigation system to shutoff the system when watering is unnecessary.
3. Landscape Architect shall be encouraged to use native plants when possible and to use plants which are drought resistant whenever possible.

IV. Construction Standards

A. 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 in subparagraph VI.

B. Performance - General Contractor

1. No individual or entity, including an Owner, may construct any improvements in Wailea unless such individual or entity is a licensed contractor in the State of HI.
2. Licensed contractors include general contractors, all specialty trades & landscaping.
3. No individual or entity (including an Owner) may construct any improvements in

Wailea, unless such individual or entity (including an Owner) is a licensed contractor in the State of Hawaii, and such licensed individual or entity shall comply with all applicable requirements of the Declaration.

Additionally, projects or operations for which the aggregate contract price for labor, materials, taxes and all other items of less than \$1,000.00 shall be exempt, except that this exemption shall not apply in any case where a building permit is required regardless of the aggregate contract price, nor where the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts of not more than \$1,000.00 whether for the purpose of evading this rule or otherwise.

4. If there is a change in contractors, a new building permit must be obtained referencing the new contractor and must be filed with WCA. A new Contractor's Acknowledgement Form and Construction Deposit must be submitted before work begins by the new contractor.

C. Materials and Quality

The materials used for structures shall be new and of a quality consistently associated with that used on superior quality 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.

D. Foundations

Portions of the Subdivision have been filled. Ground settlement of the filled areas is possible. 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.

E. Ground Termite Standards

1. 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, should be treated against subterranean termites by a reliable, established and duly licensed termite control company.
2. Treatment should be guaranteed in writing by said company against termite infestation for a period of five (5) years. The guarantee shall include annual inspection and retreatment of infested areas. A copy of this guarantee should be delivered to the Committee.
3. Chemicals used outside of the dwelling or in accessible spaces under the dwelling, should be applied in a safe manner to mitigate exposure to humans, plants and pets.

F. Abandoned Construction

"Abandonment" shall mean the cessation of construction activity for a period of thirty (30) consecutive days. If construction of a building is at any time abandoned, the lot Owner shall cause the lot to be cleaned, grassed, and mowed so as to present a neat appearance, and shall thereafter so maintain the lot until the recommencement of construction. Owner may be required to raze any or all portions of an abandoned structure upon the determination of the Committee that construction will not recommence.

G. 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.

V. Construction Requirements

A. Blasting

A request for approval to use or possess explosive materials shall be made to the Committee which shall issue its approval only if the Fire Chief or designated representative approves issuance of a permit. The Committee shall have 14 days to review the request, including all supporting documentation in order to make its determination. The request for approval shall be accompanied by a Blasting Plan for the blasting operation and shall be subject to the following:

1. The applicant shall maintain and provide proof of liability insurance coverage for the purpose of payment of damages to persons or property which arise from, or are caused by, the blasting operations.
2. Evidence of notice, sent by certified mail, return receipt requested, not less than 30 days before blasting commences, to owners of property and/or utility lines located within 1500 feet of the blast site.
3. Verification that no blasting shall occur within one hundred (100) feet of any structure or utility line.
4. The applicant shall offer pre-blast surveys to residents or owners of structures and utility lines located within 500 feet of the blasting site.
5. Blasting operations shall only be conducted during daylight hours between 9:00 a.m. and 4:00 p.m. on Monday through Friday. Only two (2) blasts per day will be allowed unless otherwise approved by the Committee.
6. If during the course of the blasting operation, a complaint is made, or a claim of damage is stated, the applicant shall, with the owner's consent, conduct a post-blast inspection of the structure in question. The applicant shall investigate each complaint or claim thoroughly using where appropriate a comparison to pre-existing damages.

B. Construction Signs

Construction signs (i.e., signs identifying the name of the contractor, architect, construction lender, etc.) are permitted on a single-family residential lot. Signs shall not exceed six (6) square feet in total area. Each sign is subject to prior approval by the Design Committee.

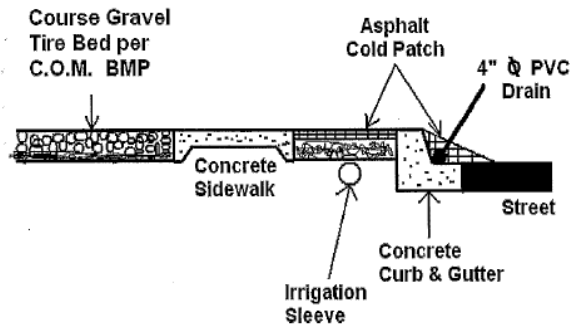
C. Refuse Disposal Bins

A refuse disposal bin shall be placed on the lot under construction only at the commencement of construction and shall be completely removed from the lot no later than fifteen (15) 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 and Committee.

D. Site Preparation

1. Lot Entrance

Construction lot entrance apron required prior to the start of construction (see diagram below). Contact local association landscaping company and have them install the irrigation sleeve under the proposed driveway location. Install street/curb drainage sleeve at location of driveway with 4" PVC pipe. Cover the drainage sleeve with a cold patch ramp at curb and extend cold patch to street edge of sidewalk. Do not cover sidewalk with cold patch. Install filter fabric bed for gravel tire wash from lot edge of sidewalk extending fifteen (15) feet into the lot (dimensions to be specified based on width of access). Install course gravel tire wash bed.



2. Dust Control

Each Owner/Contractor shall take all adequate and reasonable precautions during construction including, but not limited to, the following:

- An 8-foot-high dust fence is required around the entire perimeter (excluding the staff on flag Lots, and where not practical, which shall be subject to Design Committee review and determination) of the Lot prior to the start of grading and/or excavation on all new single family home residences.
- The dust fence shall remain in place until all grading and building construction has been completed. It may be removed prior to irrigation and paving work is completed if adequate dust control is maintained.
- Water meter must be installed before start of construction to ensure adequate and consistent dust control.
- Watering down: Each construction site must be watered down at least *three* times daily, *seven* days per week, with an automated sprinkler system throughout the entire construction process.
- If conditions make controlling of dust problematic, then dust-creating construction shall cease immediately until conditions change.
- Driving on vacant lots: It is a violation of the CC&R's to park or drive upon any of the vacant lots with construction equipment or worker's vehicles.

E. Portable Toilets

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

F. Contractor's Acknowledgment

Each Owner shall be required to have his or her contractor contact the Committee prior to commencing any construction or work upon the Owner's lot. The contractor shall be provided with a copy of the applicable design and construction requirements and shall be required, prior to commencing any construction or work, to acknowledge in writing the contractor's receipt of and agreement to comply with such requirements.

The Owner shall be required to place a refundable deposit to the association to cover potential damages or to be used as fine(s) for failure to comply with Design Committee Rules.

G. Construction Deposits

1. A construction deposit is required from the Owner prior to start of construction of all single-family residence construction, remodels, renovations, swimming pool, spa or water feature additions or changes, or significant landscaping changes. The Deposit required to be paid pursuant to Article V, Section 10 of the Declaration for the total sum of \$20,000 shall be deposited with the Association by the following: (1) the record Owner(s) of title to the lot shall deposit \$20,000 with the Association. A Deposit of up to \$10,000.00 shall be required for Major Renovations and Remodels of a Single Family Residential lot and a Deposit of up to \$5,000.00 shall be required for Minor Renovations and Remodels of a lot.
3. Individual Association deposits, if required.
4. Painting does not require a construction deposit.

H. Construction Fining Policy

To assist the Design Committee to cause compliance with WCA's project documents, violation of the Declaration and Design Committee Rules shall be subject to fines, fees and charges as permitted by WCA's project documents and are in addition to completion of remedial work and or resolution of infractions. Corrective action may be taken by the Association at the Owner's cost and expense and liened against the property if not paid by such Owner.

Any monies due WCA through review fees, charges, professional services fees and fines pursuant to Article V, Section 10 of the Declaration shall be deducted from the Deposit.

1. Failure to comply with WCA Declaration and Design Guidelines may result in fines
2. Deviating from Approved Plans (up to a \$10,000 cumulative per Owner per item), includes but is not limited to:
 - a. Deviating from approved plans, i.e.,
 - Changes in grade.
 - Addition of retaining or privacy walls.
 - Relocating or enlarging of pools, spas, air conditioning equipment, and/or propane tanks.
 - Increase in hardscape.
 - Changes in elevations, floor plan, roof design, colors, or materials.
 - b. Deviating from the Landscape Plan.

- c. Structure extending beyond building envelope or setback lines.
3. Deviation from approved plans may result in the Committee requiring corrective action up to and including restoring the property to the original approved plans. Where corrective action is required, as determined in the sole judgement of the Committee, the Committee will set a calendar date as to when the completion of the corrective action will be required. Failure to complete the required corrective action by the established calendar date will result in fines up to \$1,000/day until the corrective action is completed.
4. Construction and Procedure Violations (up to a \$1,000, or 2.5% of the construction deposit, whichever is greater, fine per occurrence (except as noted)) (maximum fines may be doubled after the first occurrence), include but are not limited to:
- a. Starting construction without required curb access, dumpster, porta-john, or water supply.
 - b. Inadequate dust control, mitigation fencing, or clean-up of streets, sidewalks, or job site.
 - c. Working outside designated work times, i.e., before 7:30 a.m., after 5:00 p.m., on Sundays, or on the following construction holidays (and the days legally observed): New Year's Day, Dr. Martin Luther King, Jr. Day, President's Day, Prince Jonah Kuhio Kalaniana'ole Day, Good Friday, Memorial Day, King Kamehameha I Day, Juneteenth, Independence Day, Statehood Day, Labor Day, Columbus Day, General Election Day (even numbered years), Veteran's Day, Thanksgiving, Christmas Eve and Christmas. Note: Holidays shall include both the legal public holiday and observed holiday, e.g., if Independence Day falls on a Saturday, both July 3 (the observed holiday), and July 4 (the legal holiday) are construction holidays.
 - d. Excessive noise, radios, or bad language.
 - e. Non-repaired damage to common areas.
 - f. Use of adjoining lots without prior approval; trespassing.
 - g. Occupancy before final WCA inspection may result in a fine of \$1,000 per day.
 - h. Failure to comply with Design Committee requests in a timely manner will result in a \$1,000 per day fine until request is satisfied.
 - i. Starting construction without required permits, deposits, and signed agreements.
 - j. Parking within 10 feet of a mailbox or fire hydrant or blocking sidewalk access or neighboring driveway(s).
 - k. Parking within a forty (40) foot sightline setback at intersections from the point where the curbing forms the tip of an equilateral triangle.

VI. Approval Procedures and Requirements

A. Consultation Services/Licensed Architect

Before the preparation of preliminary drawings, the Owner's architect may arrange for consultation with the Committee for comments as to the location and design of the improvements to be constructed on, and the landscaping of, the lot, and assistance in interpretation of the requirements imposed under this Declaration and the Master Declaration. The Owner will use an architect licensed in the State of Hawaii.

B. Architectural Controls

No structure or other improvement shall be erected, placed or altered on any lot until:

1. The preliminary **and** final construction plans and specifications referred to in subparagraph C below, prepared under the immediate and direct supervision and stamped by the Licensed Architect, have been submitted to **and** approved by the Committee. Home Owners are encouraged to use the services of a Licensed Professional when making minor modifications to their residences. There are a number of modifications that would reasonably not require the services of a Licensed Professional wherein reasonable judgment should prevail. Upon request, the Design Committee will make an initial recommendation as to whether or not a Licensed Professional will be required by the Design Committee for a specific project. All projects require the review and approval of the Design Committee, regardless of whether or not a Licensed Professional is required.

If at any time the Committee shall determine that it would be in the best interests of Wailea for such Owner to employ a Licensed Professional to design any improvement involved in the proposed work, the Committee shall inform such Owner in writing of its determination, whereupon all plans and specifications designated by the Committee to be so prepared must be prepared by such a Licensed Professional.

Nothing in the aforementioned shall eliminate the need to use a Licensed Professional as may be required by any other agencies, to include the individual subdivision Homeowner's Association.

2. The landscape plans for the lot have been submitted to and approved by the Committee.
3. The Owner submits to the Committee a written acknowledgment (the form of which shall be prepared or approved by the Committee) from both the Owner and the Owner's general contractor, that they have received a copy of, and agree to abide by, this Declaration and the Master Declaration and any construction rules or guidelines duly adopted by the HOA's Board of Directors. 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.
4. Cash construction deposit to WCA by Owner.
5. Anticipated start and/or finish dates are required for the following activities:
 - Site Work
 - Foundations
 - Concrete Slabs
 - Roofing
 - Exterior Windows & Doors
 - Exterior Finishes
 - Landscaping
 - Final Walk-through

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:

1. 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 Master Declaration or in any other applicable document which is administered by the Committee.
2. 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 or other residential subdivisions in the Wailea Resort.
3. The proposed work does not comply with the spirit and intent of 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.

C. Procedures for Submitting Plans

Each Owner shall have the Architect 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:

1. Preliminary Plans

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

- a. Floor and roof plans. Solar water heating panels, heat pump, or other approved system, must be shown on the appropriate plan.
- b. Exterior elevations with materials and finishes indicated.
- c. Two site/building cross sections, showing heights and maximum building height and envelop limits. Site section must extend at least 10' beyond the property line into adjoining properties or streets showing existing and proposed grades and walls, and existing trees, hedges and fences. For subdivision perimeter and street side walls, full, un-broken elevations of all walls are required, to include a pdf file.
- d. Architectural site plan showing subdivision name, Lot number, site dimensions, easements, building setbacks, utility hook-ups, and compass. Site plan must show building placement, roof overhangs, driveway, pool, spa, water features, garden structures, retaining and privacy walls, fences, decks, patios, walkways, pool equipment room, air conditioning units, LP tank (including a letter from the gas company stating that the location is acceptable)
- e. Preliminary drainage plan by licensed civil engineer showing existing and proposed grades, storm water retention and management, cut and fill

calculations, sections of proposed retaining walls (drawn to scale), and finish floor elevations.

- f. 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.
- g. Topographic survey by licensed surveyor showing of the existing contours at two-foot intervals.
- h. Conceptual landscape plan consistent with architectural site plan.
- i. Samples of proposed exterior finishes, if decided.
- j. 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. Unless brought to the attention of the Committee, non-conforming items will not be approved in the review and approval process.
- k. List of consultants including, but not limited to, the architect, engineers and landscape architect.
- l. Final plan approval must occur within one year of date of preliminary plan approval or preliminary plan approval shall be automatically revoked without notice. In the event preliminary plan approval is revoked, the Owner must resubmit the plans for preliminary approval. A resubmittal fee will be required. The Committee shall not be bound by decisions made by prior approvals.

- 2. Approval shall be in compliance with the standards and restrictions set forth herein.

The review shall consider:

- a. Compliance with declaration and covenants and restrictions for the Wailea Community Assoc. and declaration & covenants & restrictions of the HOA;
- b. Siting and orientation of the house structure;
- c. Setback lines and height restrictions;
- d. Building shapes; and
- e. Architectural Character.

- 3. Final Plans

Final plans must include all items required in the preliminary submittal plus:

- a. Final working drawings.
- b. Landscape and irrigation plans.
- c. Outline specifications.
- d. Exterior material: colors, roof sample and brochure.

Upon securing the Committee's 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.

- 4. Design Review Fees

The fees are due and payable at time of submittal. A Design Review fee for a new single-family residence shall include two submittal reviews: preliminary and final. If

either the preliminary or final plans fail to pass review after the second submittal of same and an additional submittal is required, an additional review fee will be required.

Incidental submittals and minor requests for changes to approved plans shall not require a review fee. The WCA Design Review Committee shall have sole discretion to determine what constitutes an incidental or minor submittal.

The following Design Review Fee will govern Wailea:

1. Single Family Residences will be charged a fee of \$7,500 which includes one resubmittal at Preliminary and one at Final review. Subsequent resubmittals will be charged \$1,200.
2. Renovation Projects for Single Family Residences or Condominiums will be charged a fee of \$1,200 for each minor remodel. A major remodel will be charged \$4,000. Resubmittals will be charged \$1,000.
3. Multi-family Projects will be charged the following fees:
 - \$45,000 0-25 units
 - \$95,000 26-50 units
 - \$120,000 51-100 units
 - \$145,000 Over 100 units
4. Subdivision Projects (single family) will be charged a fee of \$75,000.
5. Business or Commercial developments will be charged:
 - \$1.80 per square foot for structures < 25,000 square feet
 - \$ 1.50 per square foot for structures > 25,000 square feet
6. Hotel fee will be \$180,000.
7. Pre-design Consultation with Design Committee will be \$1,200 for a Single Family Residence and \$3,000: All Other Projects (Credited toward Preliminary Design Fee).
8. All other projects will be determined at the time of submittal.

D. 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.

E. Performance of Work

All construction, alterations and landscaping performed or placed on the lot shall be performed or placed 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 Master Declaration.

Work must commence within one year of date of final plan approval or approval shall be automatically revoked without notice. "Commencement" is defined as the date the Construction Deposit is received by WCA, or whenever construction on the site begins, whichever is first, whether or not the project has been submitted to, and/or approved by, the Design Committee. 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. A resubmittal fee will be required. The Committee shall not be bound by decisions made by prior approvals.

Work must be completed within eighteen (18) months of the date construction commences for the new construction of a residence or twelve (12) months for the addition to, and/or remodeling of, an existing residence, whether or not the project has been submitted to, and/or approved by, the Design Committee. Noncompliance with final completion date may invoke a fine for noncompliance until resolved. "Work" shall be defined to include any and all changes and/or additions to the Owner's property during the original construction period, or, if applicable, during any approved extension(s), and shall include any and all new projects started at the Owner's property during the original construction period, unless otherwise granted a separate construction time period by the Committee.

The Owner shall provide a Certified Survey As-built Plan indicating all improvements, roof heights and setbacks.

As-builts must be submitted at the completion of a project or a particular job. As-built, or record, drawings depict the final installed configuration (whether physical or functional). They indicate any construction deviations and show all features of the project as actually built. These drawings provide a permanent record of as-built conditions and aid as key references for future. They are to be made as dated revisions to the originals of the submitted documentation, and must be signed by the appropriate licensed professional within the State of Hawaii.

F. Extensions of Construction Time Frame

In the event a project is unable to be completed within an agreed upon initial timeframe, whether or not the project has been submitted to, and/or approved by, the Design Committee, of up to 18 months, as established in the WCA Design Guidelines for the new construction of a residence (to include the tear-down and replacement of a residence), or 12 months for the addition to, and/or remodeling of, an existing residence; an extension of up to 6 months beyond the initial time frame for new construction and up to 4 months for the addition to, and/or remodeling of, an existing residence may be considered by the Committee if the exterior is completed within the agreed upon initial timeframe, to include the landscaping. However, completion of the exterior does not guarantee the approval of an extension by the Committee. Extenuating circumstances such as labor strikes, severe weather and/or other acts of God shall be considered separately by the Committee and may be excluded from the requirements outlined below. Projects will be fined up to \$1,000/day without notice for construction time beyond 18 months for new construction and 12 months for any and all remodeling, unless an extension is granted by the Design Committee. Projects not submitted to, and/or approved by, the Design Committee are not eligible for an extension and will be fined \$1,000/day without notice for construction time beyond 18 months for new construction and 12 months for any and all remodeling.

Should an extension of up to 6 months be granted by the Committee, the following conditions will be required during the extension period (the first three items shall apply to any construction in excess of the original construction period, whether or not an extension is

granted by the Committee):

- There shall be no contractor, sub-contractor, or supplier vehicles allowed to be parked on the construction property, street or within the boundaries of the development or any other subdivision within Wailea, with or without the written permission of any other party. The only exception shall be to allow construction vehicles on the driveway or in the garage of the residence during normal construction hours and so long as any vehicles so parked do not block any common areas, to include sidewalks.
- Any and all storing of materials must occur within the building envelope of the residence or outside the boundaries of the subdivision project, or any other subdivision within Wailea, with or without the written permission of any other entity.
- An additional construction deposit will be required in the amount of 50% of the original construction deposit. Should any fines or other amounts have been levied against the project during the original construction period, the Owner shall be responsible to ensure an amount equal to the original construction deposit plus 50% is on hand at the end of the originally defined construction period, e.g., up to 18 months for new construction.
- The Owner shall agree in writing that should the construction not be complete at the end of any extension period that might be granted, the daily fines for said delay shall be doubled, from up to \$1,000.00/day (as established by the WCA as the maximum daily fine for exceeding the timeframe) to up to \$2,000.00/day from the first day after the extension period until completion of the project. Completion is defined for new construction as the granting of permission to occupy the residence by the County.

In order to better monitor the progress of any and all construction projects by the WCA, the Owner shall be required to submit a construction schedule of all key dates of construction activities prior to start of construction. For construction of a new residence, the Owner shall be required to submit a construction schedule including critical path. The key dates shall include a timeline from date of on-site mobilization (which herein is defined as the start of construction), completion of foundations, roofing (“roofed in”), enclosure, and landscaping. Large projects including commercial and planned unit developments shall be reviewed by the Design Committee on a case by case basis to include the duration of the initial construction period.

The Owner shall be required to acknowledge in writing having read and understood the requirements and implications regarding any and all extensions prior to the final approval of the Committee.

Nothing in the aforementioned shall eliminate the need to obtain the approval, as may be required, by any other agencies, to include the local Home Owner’s Association.

G. Construction not in Compliance

In the event a project, or a part of a project, is completed by an Owner which is in non-compliance with the Requirements, the Owner shall be responsible for potential corrective action required to bring the project, or part of a project, into compliance with the Requirements, to include the final approval of the Committee.

The requirements hereunder shall carry forward for the life of a project, to include change in ownership of the premises. No approvals shall be forthcoming from the Committee for potential future construction activity that might be requested by an Owner so long as prior projects or parts thereof remain in non-compliance with the Requirements. Deficiencies shall include any and all unpaid fines. In the event an Owner decides to sell premises which have any of the aforementioned deficiencies, it is recommended that the Owner notify potential buyers of said deficiencies for which the future Owner(s) may be responsible.

Nothing in the aforementioned shall eliminate the need to obtain the approval, as may be required, by any other agencies, to include the local Home Owner's Association.

H. Pad Elevations

In the event a residence is constructed in excess of the maximum pad elevation permitted per the Plot Plan for the residence and a decision is made by an Owner to tear down and rebuild the residence, the maximum pad elevation per the Plot Plan, or the pad elevation at which the residence was built, whichever is higher, shall govern, if, in the opinion of the Design Committee, i) the primary view(s) of the residence, as shown on the individual plot plan for some subdivisions, is adversely affected by neighboring residences which have a pad elevation in excess of the maximum pad elevation permitted per the Plot Plan, and ii) the differential between the neighboring existing pad elevation and the neighboring maximum pad elevation per the Plot Plan are equal to or greater than the differential of the residence being built. If the differential of the neighboring property is less than the differential of the residence, then the maximum pad elevation permitted shall be the maximum pad elevation per the Plot Plan plus the differential of the neighboring property.

The review of any and all landscaping by the Committee shall take into account the special circumstances created by a residence being in excess of the maximum pad elevation permitted per the Plot Plan, wherein special consideration and review shall be given relative to the view planes of neighboring properties. The Committee may require landscaping to be compatible with the intended maximum pad elevation per the Plot Plan, up to and including the removal of existing landscaping.

The requirements hereunder shall carry forward for the life of the residence, to include change in ownership of the residence. In the event an Owner decides to sell a residence which has a pad elevation in excess of the maximum pad elevation permitted by the Plot Plan, it is recommended that the Owner notify potential buyers of the aforementioned issues and conditions for which the future Owner(s) may be responsible.

Nothing in the aforementioned shall eliminate the need to obtain the approval, as may be required, by any other agencies, to include the local Home Owner's Association.

VII. Reservations and Limitations

A. 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.

B. 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 Developer. The written decision or disposition of any such delegatee shall be binding upon the Committee.

C. 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), Developer'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 Developer nor the Committee nor any director, officer, employee, agent or member of Developer 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:
 - a. 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 or the Master Declaration, whether or not defective, and whether or not in compliance with the provisions and requirements of this Declaration and the Master Declaration;
 - b. The construction of any improvement or performance of any work whether or not such construction or performance complies with this Declaration, the Master Declaration or the terms of any approval of the Committee;
 - c. The development or manner of development of any property within the Subdivision or the Wailea Resort;
 - d. The erroneous execution of an estoppel certificate;
 - e. The failure of any plans, drawings, specifications or other item approved by the Committee to comply with the provisions and requirements of this Declaration, the Master Declaration or applicable laws, regulations, ordinances or codes;
 - f. 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 the Master Declaration; or
 - g. Any other matter, decision, act or omission; provided that such director, officer, employee, agent or member shall not have acted in bad faith.

D. Consolidation and Subdivision

No lot may be consolidated with any other lot in the Subdivision, and no lot may be subdivided, without in each instance the prior written approval of Developer, Committee and the Board, which approval may be withheld in Developer's, Committee's and the Board's sole and absolute discretion. Any consolidation or subdivision made without such approval shall

be null and void, and in addition to the remedies provided elsewhere in this Declaration for the Owner's breach, the Board and the Committee shall, in administering or exercising its rights under this Declaration, be entitled to disregard such consolidation or subdivision, and shall treat the lot in question as if it has not been consolidated or subdivided.

Prior to the consolidation or re-subdivision of any lot(s), a revised Plot Plan is required. The Owner shall request for a preliminary revised Plot Plan from the Developer prior to the request for consolidation or re-subdivision being submitted for approval to the Developer, Committee and Board.

The final revised Plot Plan will be issued after the consolidation or re-subdivision has been approved and recorded by the appropriate State and County government agencies, provided the aforementioned approvals are obtained from the Developer, Committee and Board.

VIII. Landscape Maintenance

Per the Updated Governing Documents for Wailea Community Association (Association), CC&R's and By-Laws, Article V, Section 1b, Condition of Lot: "Each Lot shall at all times be maintained in a strictly clean, sanitary and orderly condition. No Owner shall commit, suffer, or permit any waste, nuisance, strip or unlawful, improper or offensive use of the Lot; or permit any tall weeds, litter, debris or tall grass to be grown on or remain upon the Lot; or create or allow any fire, safety or health hazard."

Per Article V, Section 10, Review Fees, Fines, Deposits: "Without limiting any other remedies available to the Association, the Design Committee or the Board of Directors, if an Owner fails to comply with any provision of Article V, such Owner shall reimburse the Association for all costs and expenses incurred by the Association and shall be subject to a fine in the amount from time to time set forth by the Association."

Per Article VI, Section 2, Committee Duties: "It shall be the duty of the Design Committee to adopt, if deemed necessary or appropriate, Design Committee Rules," which, per Article VI, Section 4, "interpret or implement the provisions of this Declaration insofar as they relate to matters within the jurisdiction of the Design Committee."

Therefore, 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 Master Declaration and applicable laws, codes or ordinances, and the requirements of the local Home Owner's Association (HOA) or Association of Apartment Owners (AOAO), the most restrictive provisions or law, code, ordinance, or requirement shall control.

A. Landscape Maintenance of Common Areas

Each residential subdivision, hotel, golf course, and/or commercial property shall at all times keep and maintain their respective common areas in an attractive manner consistent with a first-class luxury resort development, free of all invasive tall grass or weeds, trash, litter and debris and shall not store nor keep upon their respective property any unsightly or objectionable items or materials. Maintenance responsibility shall extend to the curb of any and all street frontages to the Lot.

B. Landscape Maintenance Standards

Landscaping requirements include, but are not limited to, the following:

- Landscaping must be properly maintained as designed and approved by the Design Committee.
- Plants, lawns, shrubs and trees are to be watered and in good condition.
- All dead landscaping materials must be removed or replaced.
- Dead or missing grass must be re-seeded or resodded.
- Dead or dying limbs and branches must be trimmed or removed to maintain the health and appearance of the plant, as well as safety of the community.
- Landscaping materials such as crushed rock and mulch must be kept weed free, in good, presentable condition and not allowed to re-distribute outside of the area where they were intended to be used.
- Grass areas around trees and fences should be trimmed.
- Sidewalks and roadways must be kept clear of overgrowth from trees and shrubs.

C. Permitted Landscape Maintenance Hours

Except for the Wailea Blue Golf Course, which by the nature of its business has special requirements, permitted working hours for any and all contracted maintenance in Wailea are Monday – Saturday 7:30 a.m. - 5:00 p.m. Contracted workers may not “roll” before 7:30 a.m. and must clean up *before* 5:00 p.m. The Association may consider exceptions on a case-by-case basis. Contracted maintenance shall be defined as any and all workforce not on the payroll of the responsible party for a Lot.

D. Non-Standard Landscape Maintenance Violations

- Noise - The use of landscape maintenance noise-making equipment (greater than 70 dBA), such as but not limited to high-decibel blowers and chain saws, is restricted to Monday – Saturday, 8:00 a.m. – 4:30 p.m. (Sundays and holidays not permitted).
- Procedure Violations include but are not limited to:
 - a. Inadequate clean-up of streets, sidewalks or site.
 - b. Contracted landscape maintenance working outside designated maintenance times, i.e., before 7:30 a.m., after 5:00 p.m., or on Sundays.
 - c. Excessive noise from radios, or bad language by contracted landscape maintenance personnel.
 - d. Non-repaired damage to common areas.
 - e. Use of adjoining lots without prior approval; trespassing.
 - f. Parking within 10 feet of a mailbox or fire hydrant or blocking sidewalk access or neighboring driveway(s).
 - g. Parking within a forty (40) foot sightline setback at intersections from the point where the curbing forms the tip of an equilateral triangle.

E. Landscape Maintenance Enforcement Policy

Although WCA seeks and prefers resolution through compliance, to assist the WCA to cause compliance, violations may be subject to fines as permitted by the Declaration. In addition, corrective action may be taken by the Association at the Owner’s cost and expense and a lien will be filed against the property if not paid by such Owner.

1. Notification Procedure.
 - a. First offense: a verbal request and/or written notice to change or comply
 - b. Second violation, same offense: written notice and warning of fine.
 - c. Third violation, same offense: written notice and fine.
2. Fines:
 - a. Failure to comply with WCA Standards requests within 15 days will result in a \$500 per day fine until request is satisfied.

b. Procedural violations may be fined up to \$1,000 per occurrence.

3. Additional Actions by WCA:

As per Article VII, Section 2 - If the responsible party for a Lot fails or neglects to comply with the maintenance requirements herein, the Association, after 30 days written notice to the responsible party for a Lot shall, directly or by way of contract(s) with others, do all acts and things necessary or convenient to bring such Lot into compliance with this requirement, including but not limited to the cutting of grass and weeds, and the removal of litter, trash, debris or other objectionable or unsightly material. The Association shall charge the responsible party for the cost and expense of bringing the Lot into compliance as a Special Assessment or lien. By accepting ownership of a Lot, the responsible party for a Lot shall be deemed to have consented to the entry upon the Lot by and to the actions taken by the Association and its agents and employees.

F. Landscape Maintenance Disputes

Any and all disputes shall be subject to the requirements and procedures set forth in the Declaration, Article X, Disputes.

In addition, any and all disputes relating to the appropriateness of design and/or aesthetics of a maintenance condition in dispute shall be subject to review by the Design Committee. The review by the Design Committee *may* require the responsible party to pay a review fee of no more than \$500 for each review, which shall be refunded to the responsible party for a Lot should the Design Committee rule in favor of the responsible party for a Lot.

G. Landscape Maintenance Definitions

1. **Weed** - A weed is considered to be any undesirable, nuisance plant that has not been approved by the Committee and would cause the unwelcome effect of crowding out the more typical, desirable and approved plants used in gardens or lawns, or to potentially cause harm to adjoining gardens and lawns with approved plants. This would include plants that are left to grow naturally upon any Lot contrary to approved planting on said Lot.