

(1) There shall be no camping in common areas.

(2) There shall be no fires started or maintained in the common areas, except fires started and controlled by the Association incidental to the maintenance and preservation of property within the Subdivision.

(3) No animals shall be kept or permitted in the common areas except household pets when accompanied by and under the control of the Owners to whom they belong.

(4) No vehicles, boats or trailers of any type shall be parked or stored in the common areas.

(5) There shall be no use of the paved portions of the Roads within the common areas by vehicles or machinery without rubber tires.

(d) The rights to use and enjoy the common areas shall extend to the members of the families of all Owners and to their invitees, provided, however, that the pedestrian right of way described in Section 3.20 above shall be open to the public during daylight hours.

3.22 Common Areas: Construction, Alteration and Repair.
No construction, Fill, Excavation or repair which in any way alters any Common Area from its natural or existing state on the date when such Common Area was acquired by the Association shall be made or done, except in strict compliance with and within the restrictions and limitations of the following provisions of this Section:

(a) Except to the extent otherwise provided in Section 3.22 (b) below, or approved by the Association, no Person other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter or maintain any Excavation or Fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from or plant any tree, shrub or vegetation upon any common area.

(b) The Association may, at any time and from time to time:

(1) Reconstruct, replace or refinish any Improvement or portion thereof upon a Common Area in accordance with plans thereof approved by the Design Committee, or if such Improvements existed upon the common area when such common area was designated, then in accordance with the original design, finish or standard of construction of such Improvement when such common area was conveyed to the Association.

(2) Construct, reconstruct, replace or refinish any Road Improvement upon any portion of the common area designated

on the Subdivision Map as a Road.

(3) Excavate, Fill or otherwise maintain any and all Common Areas used for drainage purposes in accordance with plans thereof approved by the Design Committee and or the County of Hawaii Department of Public Works.

(4) Replace any destroyed trees or any other vegetation upon a Common Area and to the extent the Association deems necessary for the conservation of water and soil, plant trees, shrubs and ground cover.

(5) Place and maintain upon any Common Area such street lights, signs and markers as the Association, With the approval of the Design Committee, may in its discretion deem necessary for the identification of the Subdivision, for the regulation of traffic, including parking, and for the regulation and use of the Common Areas and for the health and welfare and safety of the Owners and the public.

(c) Any Owner may, at any time and from time to time, install and maintain within a Common Area any subsurface utility system, driveway, walk, mailbox or landscaping, provided the same is approved by the Design Committee.

3.23 Lot: Construction and Alteration of Improvements; Excavations; etc. The right of an Owner to construct, reconstruct, refinish, alter or maintain any Improvement upon, under, or above any Lot or to make or create any Excavation or Fill thereon, or to make any change in the natural or existing surface drainage thereof, or to install any Utility line (wire or conduit) thereon and thereover, shall be subject to all of the following limitations and conditions of this Section.

(a) Permitted Improvements. Single family dwellings, Private Garages, structures designed for the protection of animals, such other Improvements as are necessary or customarily incident to single family dwellings or to the conduct of permitted agricultural activity shall be allowed on any Lot. Guest houses for non-paying friends and relatives and accommodations for Persons employed on a Lot as domestic and agricultural employees shall be permitted. No structure or portion of a structure, designed to be rented, sold or otherwise transferred as an ohana dwelling or as a bed and breakfast accommodation shall be permitted on any Lot.

(b) Dwelling Requirements. Each single family dwelling erected on a Lot in the Development shall have a total floor area of not less than one thousand five hundred (1,500) square feet, exclusive of lanais, porches, patios, Garages, exterior stairways and landings.

(c) Parking Requirements. Each single family

dwelling constructed on a Lot shall have as accessory thereto a Garage large enough to accommodate at least two (2) automobiles. In addition, two (2) surfaced guest parking spaces shall be provided on each Lot.

(d) Setbacks: Building Envelopes. The required front yard setback shall be fifty (50) feet from and the side and rear yard setbacks shall be thirty (30) feet from the respective boundaries of each Lot. In the case of flag Lots thirty-five (35) foot front yard setbacks and thirty (30) foot side and rear yard setbacks shall be required.

No building, patio, fence, wall or other Improvement except (i) a fence or wall not more than seventy-two (72) inches in height; (ii) landscaping; (iii) driveways and walkways; or (iv) tennis courts and below grade swimming pools shall be placed in whole or in part upon or over any portion of any Lot which is designated as a setback area.

No paving, except for the paving of driveways and walks, and no storage or other use of the front yard setback area shall be permitted, except that the setback area may be landscaped. No walls may be erected or placed within the first fifteen (15) feet of a setback area along any road.

(e) Building Height. The maximum building height for any building, structure or other Improvement (except landscaping) constructed or placed on a Lot, shall be no greater than eighteen (18) feet above the Recorded High Point of any Lot, which Recorded High Point shall be established pursuant to and in accordance with paragraph (k) of this Section. Chimneys may exceed this height limitation by no more than 2 feet.

(f) Disposal of Sanitary Waste. No outside toilet shall be constructed on any Lot. All plumbing fixtures, toilets or sewage disposal systems shall be connected to a septic tank, or other sewage system approved by the appropriate governmental authorities; although it currently may allow cesspools, the Department of Health has established a goal that the construction of wastewater disposal systems depositing untreated sewage (as cesspools do) into the environment will not be allowed in the future. Therefore, since Kealakekua Bay Estates is located a mile above Kealakekua Bay, a marine conservation zone, in order to alleviate the possibility of untreated sewage from cesspools leaching into the ground and ultimately into the Bay, cesspools at Kealakekua Bay Estates will be prohibited.

(g) Concealment of Utilities and Fuel Storage Tanks. All utilities within the boundaries of any Lot, and between any Road or right of way pole source, shall be placed underground. Every fuel storage tank on any Lot shall be either buried below ground or screened.

(h) Exterior Lighting. The source of all exterior lighting on a Lot shall be subject to approval of the Design Committee.

(i) Site Grading. Grading shall be kept to a minimum and shall be blended with the natural contours of the Lot. Cuts or Fills in excess of thirty-six (36) inches are Improvements which require approval by the Design Committee. No grading or Filling shall affect an adjacent Lot without the consent of the owner of such Lot. All excavated material not immediately used as Fill elsewhere on a Lot must be removed from the Lot within one hundred eighty (180) days.

Where the proposed grading on any Lot requires a permit from the County of Hawaii or a conservation plan approved by a Soil and Water Conservation District, a copy of the permit or approval shall be delivered to the Design Committee prior to the commencement of any grading work or improvement on the Lot.

Each Owner shall control the emission of dust and other airborne particles while performing any grading, grubbing or Fill work on any Lot, so as to minimize the inconvenience and annoyance to other Lot Owners. Each Owner shall also provide erosion and mud control measures as necessary to prevent silt or mud from being washed or tracked from the property.

(j) Completion of Construction. Except for Improvements in the nature of landscaping, every Improvement constructed on a Lot, once construction is begun, shall be completed within twelve (12) months or such other time period (longer or shorter) as may be specifically permitted or imposed by the Design Committee. Improvements not completed within such time period, Improvements for which construction is interrupted for ninety (90) days, and Improvements partially or totally destroyed and not rebuilt within such time period shall be deemed nuisances. The time for completion of any construction, repair or rebuilding shall be extended for a period of time equal to the number of days during which construction is prevented or unreasonably interfered with because of strikes, lockouts, embargoes, unavailability or shortages of labor or materials, wars, insurrections, rebellions, acts of God or other causes beyond the owner's reasonable control (financial inability excepted).

(k) Occupancy. No Improvement, intended for human occupancy, shall be occupied until the Improvement has been substantially completed in accordance with the plans and specifications approved by the Design Committee.

(l) Design Committee Approval. Any construction or reconstruction of, or the refinishing or alteration of, any part of the exterior of any Improvement on any Lot is prohibited until and unless the Owner of such Lot first obtains approval therefore

from the Design Committee as herein provided, and otherwise complies with all of the provisions of this paragraph. Any Owner proposing to construct or reconstruct, or to refinish or alter, any part of the exterior of any Improvement on or within the Owner's Lot or to perform any other work which under the provisions of this paragraph requires prior approval of the Design Committee, shall apply to the Design Committee for approval thereof as follows:

(i) Submission of Topographical Survey.

Prior to any grubbing or grading of any Lot and prior to commencing with a final design for any construction or reconstruction of, or the refinishing or alteration of, any part of the exterior of any Improvement on any Lot, the Owner shall deliver to the Design Committee for its approval a topographical survey map prepared by a registered surveyor licensed in the State of Hawaii which shall, at a minimum, indicate (a) the property lines of the Lot, (b) the natural topography of the Lot on a scale of 1 inch equals 10 feet with two foot height intervals on a 24" X 36" drawing, (c) the Buildable Area of the Lot, i.e., the area located within the setback lines established pursuant to paragraph (d) of this Section, (c) the natural elevation of the highest point of the Lot within the Buildable Area, which shall then be known as the Recorded High Point of the Lot.

(ii) Submission and Approval of Plans.

Prior to construction, the Owner shall submit to the Design Committee for its approval plans and specifications for the proposed work, which shall include without limitation, floor, elevation, plot and grading plans; specifications for the principal exterior materials; specifications of exterior color schemes; provisions made for owner and guest automobile parking; outside lighting plans, if any; a detailed description of the location, character and method of utilization of all utilities; a determination of the highest point of the structure or Improvement above the Recorded High Point of the Lot. The Design Committee shall review any such plans and specifications within fifteen (15) working days after the submission of the plans to it and shall return such plans to the Owner either with approval or with disapproval, in which latter case the general nature of the objections shall be indicated. In the event of the Design Committee's failure to return the plans within the fifteen (15) day period, the Owner shall submit a written Notice thereof to the Design Committee. Failure of the Design Committee to act within ten (10) working days after submission of this written Notice shall be deemed to mean that the plans are approved. The Design Committee may require the payment of a reasonable fee for the review of plans. Such fee shall not exceed \$250.

(2) Exceptions. Accept as may be required in connection with the work undertaken within Common Areas pursuant to Section 3.22, no approval from the Design Committee is required for any of the following:

(i) Interior Improvements and/or alterations to a previously approved structure.

(ii) Reconstruction, refinishing, maintenance or repair in conformance with plans previously approved by the Design Committee.

(iii) Grading, consisting of cuts and Fills of a maximum depth of thirty-six (36) inches or less, and Excavations, regardless of depth, for planting wells.

(3) Inspection of Improvements: Noncompliance.

Upon the completion of any construction, reconstruction, alteration or refinishing, or the completion of any other work for which approved plans are required pursuant to this Section, the Owner shall give written Notice thereof to the Design Committee, which shall, within thirty (30) days, inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans and specifications. If the Design Committee finds that the construction is in substantial compliance with approved plans and specifications, it shall notify the Owner in writing of such approval. If the Design Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with such approved plans and specifications, it shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance. If the Owner fails to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required and approved by the Design Committee, the Design Committee shall notify the Association of such failure, and the Association shall either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith.

(4) Design Standards to Comply with Declaration. The Design Committee shall have no power, either deliberately or through inadvertence, to vary any of the standards and restrictions set forth in this Declaration, except as may be specifically permitted herein, and in the event of violation of any of such standards and restrictions by an Owner, whether or not the Design Committee approved the plans and specifications, the Association may commence and pursue any remedy provided in this Declaration for the violation by an Owner of the restrictions.

(5) Standards of Review. In reviewing plans and specifications the Design Committee shall consider the requirements and restrictions in Sections 3.01 thru 3.23, and the Design requirements adopted pursuant to Section 5.04 and also shall

consider whether the proposed improvement:

(i) Is compatible and in harmony as to quality and type of materials and workmanship and as to external design with reference to existing structures and other Improvements in the area and with reference to the location of the proposed Improvement with respect to topography and ground elevation;

(ii) Conforms to the general plan of the entire Kealakekua Bay Estates;

(iii) Constitutes a suitable and adequate development for the Lot and;

(iv) Is, in the case of the principal building, substantially as valuable an Improvement as the other comparable buildings in the Kealakekua Bay Estates, or exceeds the same.

3.24 Restoration by Association. The Association may, in the event of any violation of the provisions of Section 3.01 thru 3.23, restore the private area to its state existing immediately prior to the violation. The Owner of the Lot shall reimburse the Association for all expenses incurred by it in performing its obligations under this Section.

3.25 Presumption of Compliance. All of the following Improvements, Excavations, Fill and other work for the purposes of this Declaration shall be conclusively presumed to be in compliance with and within the restrictions and the provisions of this Article:

(a) Those existing or maintained within or upon any property within the Kealakekua Bay Estates at the time such property became a part of the Kealakekua Bay Estates.

(b) Those existing or maintained within a private area at the time such private area was first conveyed by the Declarant to an owner.

(c) Those from time to time constructed, reconstructed, refinished, altered, installed or maintained upon any property by the Declarant, or, if not in conflict with any specific restriction in this Declaration, pursuant to plans and specifications approved by the Design Committee.

3.26 Governmental, Public Utility, Eleemosynary, Religious, Educational, Community and Civic Organizations. Anything in the foregoing Sections of this Article to the contrary notwithstanding, the restrictions on Improvements, use and occupancy set forth in said Sections shall not apply to any Lot or other area while and so long as the same is owned, leased, or otherwise acquired by the State of Hawaii or County of Hawaii, or any governmental agency or public utility, and used for public, governmental or public utility purposes, whenever and to the extent, but only to the extent, that such restrictions shall prevent reasonable use of such Lot for said purposes. On cessation of such use, the restrictions of this Article shall become applicable again in their entirety. The Declarant and the Association shall each have the power to release any Lot or other area owned by it, temporarily or forever, from any restrictions in this Article if, in its discretion, such waiver shall be necessary or advisable to obtain acceptance of the same by said State of Hawaii, County of Hawaii, agency, public utility, institution or organization. While so owning, leasing or otherwise acquiring, and so using, said State of Hawaii, County of Hawaii, agency, public utility, institution or organization shall have no right to vote as a member of the Association, but shall be liable for any assessments under the provisions of Article VIII, and shall be liable for all costs and expenses incurred by the Association in enforcing against it any of the provisions of this Declaration or arising out of any default by it of said provisions.

ARTICLE IV AGRICULTURAL RESTRICTIONS

4.01 Agricultural Activity. Agricultural activity may be developed on each Lot in the Kealakekua Bay Estates. As used herein, "agricultural activity" means the cultivation of crops, including but not limited to flowers, vegetable, foliage, fruits, forage and timber; game propagation; raising of livestock, including but not limited to fish or other animal or aquatic life that are propagated for noneconomic or personal use.

ARTICLE V DESIGN COMMITTEE

5.01 Design Committee: Organization, Power of Appointment and Removal of Members.

(a) Organization. There shall be a Design Committee consisting of not less than three (3) or more than five (5) members. Every member other than an initial member and other than a member appointed by Declarant, shall also be an Owner. At least one member of the Design Committee shall be an architect or other person similarly knowledgeable in the area of building construction methods and materials, if such person is available to serve on the Design Committee. The Declarant has the right, but not the obligation, to select the initial members of the Design Committee.

(b) Term of Members. Each member of the Design Committee shall hold office for a term of two (2) years or until such time as that Person has resigned or a successor has been appointed, as herein set forth. A Person may be appointed for more than one term.

(c) Appointment of Members by the Association. The right from time to time to appoint and remove members of the Design Committee shall be reserved to and vested in the Association, provided, however, that in the event that the Declarant exercises its right to select the initial Design Committee, the right of the Association to appoint and remove members thereof shall be as follows:

(1) From and after one (1) year from the date of this Declaration, the Association shall have the right to appoint and remove one member of the Design Committee, who shall be the member who is the most recently appointed member as of the date such right is first exercised.

(2) From and after two (2) years from the date of this Declaration, the Association shall have the right to appoint and remove two members of the Design Committee.

(3) The Association shall have the right to appoint and remove all members of the Design Committee from and after three (3) years from the date of this Declaration; provided further, however, that if the Declarant fails to exercise its rights under paragraph (c) above, or records a declaration waiving such rights, the Association shall thereupon and thereafter have the right to appoint and remove all members.

(d) Resignation of Members. Any member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant or to the Association, whichever then has the right to appoint and remove members.

5.02 Design Committee Duties. It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions of Article III, to adopt Design Requirements pursuant to Section 5.4 and to perform such other duties from time to time delegated to it by this Declaration or the Association.

5.03 Design Committee Meetings, Actions, Compensation and Expenses. The Design Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of its members shall constitute the act of the Design Committee, unless the unanimous action of its member is otherwise required by this Declaration. The Design Committee shall keep and maintain a record of all actions from time

to time taken by the Design Committee at such meetings or otherwise. Unless otherwise authorized by the Association, the members of the Design Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with their performance of any Design Committee function.

5.04 Adoption and Amendment of Design Requirements. The initial Design Committee has adopted design and construction requirements which establish the procedures for submission and approval of plans, specifications and other materials pertaining to the erection, construction, installation, alteration, placement, maintenance and remodeling of, and the construction of additions to Improvements within the Kealakekua Bay Estates and which establish design standards for all buildings, landscaping, grading, and other Improvements within the Kealakekua Bay Estates, a copy of these Design Requirements are attached hereto as Exhibit "C" and incorporated herein by reference. The Design Committee may from time to time adopt additional design and construction requirements and amend or repeal the existing design and construction requirements. The design and construction requirements as so adopted, amended or repealed shall constitute the Design Requirements. A copy of the Design Committee Design Requirements, shall be kept available at all times at the office of the Association and at the office of Declarant, for the inspection by any Owner, architect or agent of the Owner or architect.

5.05 Non-Waiver. The approval by the Design Committee of any plans and specifications for any work done or proposed or in connection with any other matter requiring the approval of the Design Committee under this Declaration shall not waive any right of the Design Committee to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

5.06 Variances. The Design Committee may permit reasonable variances from the provisions of Article III in order to (i) overcome practical difficulties and (ii) either prevent unnecessary hardships or enhance the use of the Lot in question, provided that the Design Committee finds that the variance will not be materially detrimental to other Lots in the Kealakekua Bay Estates.

5.07 Estoppel Certificate. Within thirty (30) days after written demand therefore is delivered to the Design Committee by any Owner, and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Association, the Design Committee shall deliver to such Owner an estoppel certificate executed by any two of its members in form suitable for Recording in the Bureau of Conveyances of the State of Hawaii and the Office of the Assistant Registrar of the Land Court of the State of Hawaii, certifying with respect to any Lot of said owner