



*Hawaii Kai*  
PENINSULA

DESIGN  
GUIDELINES

## **DESIGN GUIDELINES HAWAII KAI PENINSULA**

These Design Guidelines have been adopted by the Developer for and on behalf of the Association pursuant to the Declaration of Condominium Property Regime of The Peninsula at Hawaii Kai, as the same may be amended (the "Declaration"), and are meant to facilitate the orderly administration of any improvements to the Project for the general benefit of the Apartment Owners. Nothing in these Design Guidelines shall affect the Developer's rights under the Declaration, and these Design Guidelines are subject and subordinate to the provisions of the Declaration. All capitalized terms used in these Design Guidelines not otherwise defined shall have the meaning ascribed to such term under and pursuant to the Declaration.

### **I. DESIGN COMMITTEE: ESTABLISHMENT; ORGANIZATION; RIGHTS AND POWERS.**

#### **A. FUNCTION.**

There shall be a design review committee ("Design Committee"), the function of which shall be to oversee and exercise control over improvements, renovations, replacements or other modifications made to certain of the Apartments of The Peninsula at Hawaii Kai – Project I condominium project ("Project"), including the design, style and/or construction relating thereto, as applicable (any such improvement, renovation and/or modification made to any Apartment of the Project shall hereinafter be referred to as an "Apartment Improvement"), and the landscaping plan and design for Yard Areas (defined in Section I.E.2 below) of certain Apartments of the Project, for the purpose of protecting and maintaining the standards, the visual character and the plan of the development of the Project. The Design Committee is concerned with all exterior house and garden designs and materials visible from the street, parks and neighboring Apartments.

#### **B. MEMBERS.**

The Design Committee shall consist of not less than three (3) members, at least one of whom shall be an engineer or an architect licensed in the State of Hawaii who shall be designated the "Professional Member." Except for the Professional Member, the members of the Design Committee shall be resident Apartment Owners. Each shall remain a member until such time as he resigns or he has been removed and his successor appointed as set forth in Section I.C below. Any member appointed to the Design Committee

may resign at any time by giving written notice to whomever then has the power of his appointment or removal. Unless otherwise authorized by the Board, the members of the Design Committee shall not receive compensation for services rendered; provided, however, that all members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of their duties.

### **C. APPOINTMENT OF MEMBERS.**

The right to appoint and remove members of the Design Committee shall be reserved to and vested in Peninsula – Hawaii Kai, LLC, a Hawaii limited liability company, its successors and permitted assigns (“Developer”) and/or the Association as follows:

1. From the date hereof and for the first three (3) years following the date of the first duly called meeting of the Association of Apartment Owners of the Project (the “Association”), the right to appoint and remove all members shall be reserved to and vested solely in the Developer;
2. From and after three (3) years from the date of the first duly called meeting of the Association, the Association shall have the right to replace one member previously appointed by the Developer, other than the Professional Member, and thereafter to remove and appoint his successors; and the Developer shall retain the right to appoint the other two (2) members, including the Professional Member;
3. From and after six (6) years from the date of the first duly called meeting of the Association, the Association shall have the sole right to appoint and remove all members and may replace any member previously appointed by the Developer;
4. If at any time the Developer should fail to exercise its then-existing right to appoint or remove members and/or gives written notice to the Association of its intention to waive such right, the Association shall thereupon have the right to appoint and remove all such members.
5. If at anytime the Association should fail to exercise its then-existing right to appoint or remove members, the remaining members of the Design Committee shall have the right to appoint and remove all such members.

#### **D. MEETING; BINDING DECISIONS; RECORDS; HEARING.**

The Design Committee shall meet from time to time as is necessary to perform its duties hereunder. The vote or written consent of any two (2) members of the Design Committee shall constitute authority for the Design Committee to act, unless the unanimous vote or consent of its members is otherwise required by these Design Guidelines or any Design Committee Rules adopted by the Design Committee pursuant to Section I.E below. The Design Committee shall keep and maintain a record of all proposals and plans submitted to it and the specific action taken with respect to each and a record of all other actions taken by the Design Committee. In performing its duties, the Design Committee may, but shall not be obligated to, conduct a hearing or to consult personally with the persons or parties who submit proposals or plans for Design Committee approval.

#### **E. DESIGN COMMITTEE RULES.**

By unanimous vote of its members, the Design Committee may adopt, amend and repeal rules and regulations to be known as the “Design Committee Rules”.

The Design Committee may establish by Design Committee Rules:

1. Interpretive guidelines and specific interpretations of all limitations and restrictions contained in these Design Guidelines pertaining to the design, installation, construction and/or implementation of any Apartment Improvements made, including, but not limited to, the materials to be used therein or therefore;
2. Interpretive guidelines and specific interpretations of all limitations and restrictions contained in these Design Guidelines pertaining to the landscaping of limited common element yard areas appurtenant to Executive Residences Apartments, Carriage Ways Apartments and Cottages (“Yard Areas”) or other landscaped areas of the Project (“Landscaping Improvements”); and
3. Specific procedures governing the manner and method by which applications, proposals, plans and specifications for the Apartment and Landscaping Improvements (the Apartment Improvements and Landscaping Improvements shall be collectively be referred to herein as “Improvements”) shall be submitted, received and processed, and the fees to be charged upon the submission for approval of such

applications, proposals, plans and specifications; provided, however, that the Design Committee shall also have the authority to permit the Apartment Owners of the Executive Residences Apartments and Carriage Ways Apartments, by and through the adoption of a specific Design Committee Rule or Rules, to make certain Improvements without first having to obtain Design Committee approval; provided that such Improvements comply strictly with these Design Guidelines and the specific guidelines and interpretations thereof set forth in the Design Committee Rules.

4. A copy of the Design Committee Rules, as they may be adopted, amended and/or repealed from time to time, shall be made available at the office of the Association and the office of the Developer (for so long as the Developer has the authority to appoint members to the Design Committee) for inspection during normal business hours by any Apartment Owner or architect or agent of any Apartment Owner.

#### **F. OTHER CODES, LAWS, RULES AND ORDINANCES.**

The approval of plans by the Design Committee does not eliminate the Apartment Owner's obligation to comply with all existing laws, ordinances, rules and regulations made by any governmental authorities or with any terms and conditions required under the Declaration

#### **G. NO WAIVER.**

The approval by the Design Committee of any plans and specifications for any work done or proposed, or submitted in connection with any matter which requires the approval of the Design Committee, shall not constitute a waiver of the Design Committee of its right to withhold its approval of any similar plans and specifications or any other matter subsequently submitted for approval, whether or not by the same person or party.

#### **H. CERTIFICATION.**

Upon the request of any Apartment Owner and payment to the Association of a reasonable fee, the Design Committee shall issue to the Apartment Owner a certificate executed by at least two (2) of its members certifying that as of a certain date:

1. All Improvements made by the Apartment Owner for which Design Committee approval is required to comply with the provisions of the Design Guidelines and/or any Design Committee Rules; or

2. Such Improvements do not comply with the provisions of these Design Guidelines and/or any Design Committee Rules. In the event such certificate indicates such non-compliance, the certificate shall also identify the non-complying improvements and/or work and set forth the particular reasons for non-compliance.

The Design Committee shall issue such certificate within forty-five (45) days after demand and payment therefore has been made, and the certificate shall be in form suitable for recordation at the Bureau. Any purchaser or lessee of the Apartment Owner, or mortgagee or holder of any other encumbrance on the property covered by such certificate, shall be entitled to rely on the certificate with respect to all matters contained therein, and such matters shall be deemed conclusive between the Association, the Developer, the Design Committee, all Apartment Owners and the holder of any such encumbrance.

#### **I. NO LIABILITY.**

The review and approval of any application for a proposed Improvement ("Application") by the Design Committee pursuant to these Design Guidelines is made on the basis of aesthetic considerations only. The Design Committee shall not bear any responsibility for ensuring the structural integrity or soundness of any Improvement or for ensuring compliance with building codes and other applicable governmental requirements. In addition, neither the Design Committee, the Developer, the Association or the Board, nor their respective members or duly authorized representatives, shall be held liable for any injury, damages, loss or prejudice suffered or claimed on account of (i) a mistake in judgment or negligence, (ii) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications or other request or item, whether or not defective, (iii) the manner or quality of any approved Improvement or the performance of any work, whether or not such construction or performance complies with these Design Guidelines, the Declaration or any other Project documents, (iv) the manner, appearance, style or quality pertaining to the development, maintenance or operation of any Improvement, (v) the erroneous execution of any estoppel certificate, (vi) the failure of any plan, drawing, specification or other item approved by the Design Committee to comply with any applicable law, or (vii) any other matter, decision, act or omission; provided that the members of the Design Committee have acted in good faith upon knowledge actually possessed by them.

## **J. NO REPRESENTATIONS, WARRANTIES OR AGREEMENTS.**

No approval by the Design Committee of any item submitted to the Design Committee shall in any manner constitute a representation, warranty or agreement by the Design Committee, the Developer, the Board, the Association, and their respective members, duly authorized representatives and attorneys, that such item (1) has been prepared free of defects or is of good workmanship or design, or will result in Improvements that are readily marketable or free of design or construction defects, (2) complies with applicable laws (including building code requirements) or (3) will result in the approval of the same by any governmental agency or subdivision thereof, or any other person.

## **K. VARIANCES.**

The Design Committee may approve variances from compliance with any of these Design Guidelines when, in the sole discretion of the members of the Design Committee, unique circumstances warrant the approval of the variance; provided, however, that no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Design Committee from denying a variance in other circumstances. Moreover, any variance approved pursuant to this Section K shall be issued in strict compliance with any policies duly adopted by the Design Committee for the issuance of variances. For purposes of this Section, an Owner's inability to obtain the approval of any governmental agency or subdivision thereof, any permit, or the any particular financing terms shall not be considered a hardship warranting a variance.

## **L. AUTHORITY OF PRESIDENT.**

If for any reason the Design Committee cannot be assembled to act on a particular matter or matters for a period of more than twenty (20) days after a request is made, the President of the Association, or, in his stead, the Vice President of the Association, may perform the functions and duties of the Design Committee for so long as the Design Committee is unable to meet. In such event, the President, or, in his stead, the Vice President, shall indicate with respect to any action taken the reasons for his acting in place of the Design Committee. In performing the functions and duties of the Design Committee pursuant to this subsection, the President or Vice President may employ an architect or engineer to render technical advice and may offer to such architect or engineer reasonable compensation as approved by the Board.

**M. DEVELOPER EXEMPT.** The Developer shall be exempt from these Design Guidelines, the Design Committee Rules, if any, and any other guidelines, interpretations or standards established pursuant thereto; and the rights, powers and duties of the Design Committee shall not be deemed to limit or affect in any way the rights of the Developer to develop and make Improvements to real property owned by the Developer or to limit or affect the rights of persons or parties specifically exempted by the Developer in writing to develop and make Improvements to the property owned by such persons or parties.

## **II. DESIGN COMMITTEE APPROVAL.**

### **A. APPROVAL PROCESS.**

Unless otherwise indicated herein or in the Design Committee Rules, no Improvement requiring Design Committee approval shall be commenced, erected or installed unless the Apartment Owner of any impacted Apartment or the Apartment Owner of any Yard Area, as appropriate, first obtains the approval of the Design Committee, as follows:

1. The Owner of an Executive Residences or Carriage Ways Apartment, or a committee of Apartment Owners of Cottages or Villas Apartments responsible for the maintenance of the exterior of the buildings in which such Cottages and Villas are located, in accordance with Article X, Section 21 of the Bylaws ("Committee of Apartment Owners"), shall submit to the Design Committee a completed Application, together with preliminary plans for the proposed work prepared by an architect licensed in the State of Hawaii, unless otherwise permitted by the Design Committee, which plans shall show in detail the nature and dimensions of the proposed work. The applicant shall also submit a copy of the amendment instrument (to the Declaration) and the revised drawings of the condominium map (collectively, "Amendments") that the applicant intends to record and file, respectively, at the Bureau of Conveyances to reflect the proposed modification (if such Amendments are required by the Declaration and/or the Act). Within thirty (30) days after submission of the preliminary plans, the Design Committee shall review the plans and Amendments (if any) and return them to the Apartment Owner indicating its approval or disapproval. If disapproval is indicated, the general nature of the Design Committee's objections shall be so stated. The Design Committee's failure to make return within said thirty-day period shall be deemed approval of the preliminary plans.



2. After review of the preliminary plans and Amendments (if any) has been completed, the Apartment Owner or Committee of Apartment Owners, as applicable, shall submit in duplicate to the Design Committee the final plans and specifications for the proposed work, which shall indicate, where appropriate, all materials, finishes and colors to be used, as applicable. Along with the plans and specifications, the Apartment Owner shall submit his proposed construction or work schedule, revised Amendments (if the Design Committee required revisions based upon its initial review) and shall pay a reasonable fee for the Design Committee's inspection and review.

3. Within thirty (30) days after the submission of final plans and specifications and/or Amendments, the Design Committee shall either approve or disapprove the same in writing. Any disapproval shall also set forth the reasons for disapproval. If the Design Committee does not act within said thirty-day period, the final plans and specifications and/or Amendments shall be deemed approved as submitted. The Design Committee may not disapprove any aspect of the final plans and specifications and/or Amendments which was apparent in the preliminary plans and previously approved by the Design Committee.

4. If the final plans and specifications and/or Amendments are disapproved by the Design Committee, the Apartment Owner may correct or modify the same to account for the reasons given for disapproval by the Design Committee and resubmit the same within thirty (30) days after receiving the Design Committee's disapproval. Within fifteen (15) days after resubmission of the corrected or modified final plans and specifications and/or Amendments, the Design Committee shall either approve or disapprove the same in writing in the same manner set forth in Subsection (4) above. If the Design Committee does not act within said fifteen-day period, the corrected or modified plans and/or Amendments shall be deemed approved as submitted.

5 All Applications must be accompanied by the appropriate processing fee. The processing fees to be charged to Owners are as follows, and such fees are subject to change without prior notice:

a. Room Additions and Room Extensions: \$250.00.

b. Other Major Improvements and Modifications: \$100.00

This includes an Improvement (other than a room addition or extension) that significantly alters the Apartment or appurtenant Yard Area or incorporates new structures or additions (e.g., new wall or fence, adding a swimming pool, new driveway or patio slab, solar installation, storage, etc.) to the Apartment or appurtenant Yard Area. As a general rule, this category will include, but is not limited to, any Application that requires architectural consultation and a building permit and/or that requires multiple Improvements or other modifications.

c. Minor Improvements and Modifications: \$50.00

Examples of minor improvements and modifications are: window tinting, unenclosed air conditioning installation, solar water heater installation, gates, planter boxes, security windows, trash enclosures, exterior painting, new roof material, basketball standards, antenna installations, sidewalks around house, screen doors, landscape plans, etc.

6. Permit processing fees may be increased by the Design Committee, in its sole discretion, at any time and without notice. The Association shall keep a copy of the current fee schedule at its office at all times for Owners or any agent of an Owner to review. In the event an Owner withdraws an Application, and thereafter resubmits the Application to the Design Committee for approval, the Owner shall pay an additional fifty percent (50%) of the applicable processing fee for the resubmittal.

The Design Committee may employ the services of an architect, landscape architect, engineer, land-planner, attorney, and/or any other consultant to render professional advice, and may charge the fees incurred to the Owner (in addition to the basic application fee); provided that before any such consultant review is commenced, an estimate of such fees shall be determined and approved by the Owner in writing. The consultant may be a member of the Design Committee. The basic application fee and estimated consultants fees shall be payable by Owner prior to the time that the Design Committee review the Owner's application.

## **B. DURATION OF APPROVAL; REVOCATION.**

All work approved by the Design Committee shall be prosecuted to completion diligently and in good faith. Approval of plans and specifications by the Design Committee as aforesaid shall be effective for a period of one (1) year from the date of approval, and may be revoked if the work pursuant to such plans and specifications has not commenced within said one-year period or does not proceed in a timely manner (i.e., more than ninety (90) days elapses without substantial or significant progress toward completing the project). The Design Committee shall give written notice to the Apartment Owner of revocation of approval, stating the reasons therefore, and revocation of approval shall be effective upon the giving of such notice. If approval is revoked for untimely commencement of the work, the Apartment Owner may not commence work pursuant to the previously approved plans and specifications without first re-obtaining Design Committee approval. In such case, the Design Committee shall treat any resubmission of plans and specifications, whether or not they are identical to the plans and specifications previously approved, as a new submission and shall not be bound by any prior decision made with respect to the same. The Design Committee may also require the payment of another fee for review and inspection. If approval is revoked for the reason that work has not proceeded in a timely manner, the Apartment Owner may not proceed with any further work pursuant to the previously approved plans and specifications without first re-obtaining the approval of the Design Committee as aforesaid. The Design Committee shall not be bound by any previous decision when reconsidering plans and specifications which may come before the Design Committee as a result of an Owner exceeding the time requirements for completion of any project.

If the work is abandoned at any time prior to completion, the Association may take any and all reasonable steps to have the work completed or the property restored to its pre-existing condition, and may specially assess the Apartment Owner for all costs and expenses incurred in connection therewith.

## **C. COMPLIANCE.**

Upon the completion of any Improvement for which approved plans and specifications are required pursuant to this section, the Apartment Owner shall give written notice thereof to the Design Committee. Within thirty (30) days after such notice is given, the Design Committee shall inspect the improvements or work in order to determine whether or not there has been substantial compliance with the plans and specifications. If the Design Committee finds that there has not been substantial compliance with the plans and specifications, it shall notify the Apartment Owner of such non-

compliance and require the Apartment Owner to remedy the same within sixty (60) days after such notice is given. If the Apartment Owner fails to remedy such non-compliance within said sixty-day period, the Association may take any and all reasonable steps to remedy the non-compliance or to restore the property to its pre-existing condition, and may specially assess the Apartment Owner for all costs and expenses incurred in connection therewith. If the Design Committee does not notify the Apartment Owner of any non-compliance within thirty (30) days after receipt of notice of completion of work from the Apartment Owner, the improvements or work shall be deemed to have been completed in accordance with the approved plans and specifications.

### **III. CONSTRUCTION GUIDELINES.**

**A. PRIOR NOTICE TO DESIGN COMMITTEE.** The Apartment Owner shall give the Design Committee two (2) weeks advance written notice of the Apartment Owner's intent to commence any construction of an Improvement. Prior to commencement of such construction, the Apartment Owner will deposit a copy of the County building permit (if required for such Improvement) with the Design Committee.

**B. PERFORMANCE: GENERAL CONTRACTOR.** All work to an Apartment shall be expeditiously and with due diligence prosecuted to completion. A contractor duly licensed to perform such work under the laws of the State of Hawaii must perform all work.

**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. Used materials are not permitted except where specifically approved by the Design Committee to achieve a desired aesthetic effect. All materials used for any Improvement shall be termite and fungus free. 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. UNDERGROUND INSTALLATIONS AND EASEMENTS.** The Owner or its builder shall be responsible for determining the location of easements, utility lines and underground installations prior to the start of any construction.

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

**F. DISPOSAL OF CONSTRUCTION WASTE AND DEBRIS.** Each Owner shall be responsible for promptly disposing of construction waste and debris and for keeping the public, private and common areas surrounding his property free of waste and debris at all times. There is no dump site available within The Peninsula at Hawaii Kai community area.

**G. CONSTRUCTION ACTIVITIES.** Owners and their contractors and subcontractors shall keep all public areas clean during periods of construction. Materials shall not be stored so as to block or partially block public access areas. Once the residence has been completed, no construction materials or equipment may be stored in any area visible from adjoining streets. For security purposes, the Owner may be required to furnish a list of all architects, contractors, subcontractors, and their employees who will enter The Peninsula at Hawaii Kai community area, and all architects, contractors, subcontractors and their employees must be registered with the Design Committee prior to entry onto the Apartment. All construction traffic shall enter The Peninsula at Hawaii Kai community area through designated construction entrance(s) established by the Design Committee from time to time. Construction is permissible daily between 7:30 a.m. to 6:00 p.m. (excluding Sundays and nationally recognized holidays), but is subject to any rules and regulations promulgated by the Design Committee from time to time (including any Design Committee Rules). During the construction period, all Owners are required to keep on record with the Design Committee a twenty-four (24) hour emergency phone number. All Owners are also required to provide portable restroom facilities on all job sites and a trash dumpster for buildings under construction. Flags, banners, and signs are prohibited. No hazardous materials or liquids may be stored or drained on or around any Apartment or appurtenant Yard Area, except that certain materials may be temporarily placed in safety containers. Hazardous materials shall not be drained into any Apartment, Yard Area or street drain (including the rinsing of equipment containing or covered with hazardous materials with water). Owners will be charged a \$500.00 fine (plus the appropriate clean-up charges) per infraction for any violation of this section or any other construction rules promulgated by the Design Committee. The Design Committee may also suspend any Owner, contractor or subcontractor from the Project for a violation of this section or any other construction rules promulgated by the Design Committee.

#### **H. GROUND TERMITE STANDARDS.**

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

Treatment shall be guaranteed in writing by said company against termite infestation for a period of five (5) years or the largest period of time then available on the market. The guarantee shall include annual inspection and re-treatment of infested areas. A copy of this guarantee shall be delivered to the Design Committee.

Chemicals used outside of the dwelling or in accessible spaces under the dwelling, shall be applied in a safe manner to mitigate exposure to humans, plants and pets, and shall be used only in strict accordance with all applicable government laws and regulations.

#### **IV. USE AND DEVELOPMENT RESTRICTIONS AND REQUIREMENTS FOR APARTMENTS.**

Regardless of the cost or replacement value of the same, the following conditions, limitations and restrictions shall be applicable to any Improvement undertaken for any Apartment in the Project:

#### **V. EXTERIOR OF THE APARTMENTS.**

Any Owner of an Executive Residences or Carriage Ways Apartment or Committee of Apartment Owners that desires to alter or otherwise modify the exterior appearance of said Apartment or buildings shall adhere to the following design guidelines in proceeding with such alteration or modification.

**A. Exterior Painting.** Colors should be non-reflective, flat or semi-gloss natural tones. Strong and/or bright colors, whites and very light or highly reflective colors shall not be used as primary colors unless such colors were specifically used as part of the original color palette for the Apartment or building in question or were otherwise approved by the Design Committee. The Design Committee Rules shall set forth the specific colors, types and “brands” of paint that are permitted for each Apartment-type or building-type (as applicable) of the Project. If an Apartment Owner or Committee of Apartment Owners desires to paint or re-paint an Apartment or building of Apartments in a manner that deviates from what is permitted by the Design Committee Rules, said Apartment Owner or Committee of Apartment Owners must obtain the prior approval of the Design Committee before proceeding with the work. In any event, the responsibility for precisely matching the color samples provided to the Design Committee ultimately rests with the Apartment Owner or Committee of Apartment Owners.

**B. Siding; Different Exterior Finish.** Any proposal to modify the look of exterior walls of an Apartment or building of the Project from the original

design of said Apartment or building other than the painting or repainting of such Apartment or building in a manner that deviates from the original color palette (i.e., the installation of a different type of siding or wood finish, etc.) shall first be presented to the Design Committee for approval. A sample of the materials to be used shall be included in the application for approval. Prior to submitting said application, the Apartment Owner or Committee of Apartment Owners should refer to the Design Committee Rules, which shall set forth a list of recommended materials (i.e., siding, wood finish, etc.) for the exterior walls of each Apartment or building of the Project.

**C. Reflective Finishes and Window Tinting.** No reflective finishes shall be used for the exterior surfaces of an Apartment or building (other than glass and the surfaces of hardware fixtures) if such exterior surfaces are visible from neighboring Apartments or any roadway of the Project. Highly reflective window tinting which creates glare on adjacent properties or streets is not to be construed as a “glass” exception to the reflective finish restriction. All window tinting installations are subject to review. Applications for window tinting should be accompanied by a manufacturer’s specification sheet and a minimum 3”x 5” sample. Highly reflective metallic finishes and/or tinting films with an outdoor daylight reflectance value of over thirty (30) percent are prohibited. No design review submittal is required for non-reflective tinting films.

**D. Exterior Lighting.**

Lighting fixtures shall be wall mounted and be located under the roof eaves. If a fixture is mounted on the gable end of the house, it shall be mounted within twelve (12) inches of the roof slope (measured parallel to the roof slope). The light source of such a mounted fixture shall not be visible from neighboring property, except when permitted by the Design Committee Rules or as approved by the Design Committee.

Lighting fixtures shall not project outward from the face of wall more that twelve (12) inches except when permitted by the Design Committee Rules or as approved by the Design Committee.

Lighting fixtures utilizing exposed, colored or flashing light sources, or fluorescent, high intensity discharge, quartz halogen, mercury vapor or neon lamps (including light tubing for the creation of a sign) are not permitted.

The light emanating from an exterior lighting fixture shall not be directed into the adjacent street or onto an adjoining Apartment. Any exterior lighting



fixture that generates a complaint from another resident, shall be redirected, relocated, shielded or removed upon the written request of the Association.

**E. Doors.**

Doors made of wood with raised wood panels or a combination of materials such as wood and glass are encouraged. Simple, elegant accents such as copper, brass or iron doors are also permitted. A front door should not be an overly dominant feature of the Apartment, but rather, should be integrated with the exterior appearance of the Apartment. Screen doors should be finished in a way as to match the siding or trim and should be kept in good condition and repair.

Screen doors fabricated from non-painted clear anodized aluminum shall not be permitted.

**F. Drop Blinds.** Drop blinds for the lanais of the Executive Residences Apartments and Carriage Ways Apartments may be used provided that they shall be maintained in a good condition, shall be rolled up and/or adequately tied down during periods of high wind and rain to avoid noise due to slapping or banging, and shall blend in with or otherwise compliment the color scheme and exterior appearance of such Apartment (i.e. no garish or bright colors shall be used).

**G. Awnings.** No metal, plastic or cloth awnings shall be erected so as to be visible from a roadway of the Project. Awnings shall blend in with or otherwise compliment the color scheme and exterior appearance of such Apartment (i.e. no garish or bright colors shall be used) and must be approved by the Design Committee.

**H. Gutters.** Rain gutters and down spouts shall be of a matching type for the entire Apartment being served, provided that they are non-reflective and painted to patch the surfaces to which they are attached. Copper gutters and downspouts shall be permitted but need not be painted.

**I. Gingerbread and Trim.** Decorative trims, railings, shutters, ornamental wrought iron and other such "gingerbread" effects shall not be permitted without the prior approval of the Design Committee. Such items will not be approved by the Design Committee, however, when they result in a "tacked on" appearance and when they do not blend in with the established architectural style of the Apartment or the Peninsula at Hawaii Kai community.

**J. House Decorations.** In general, tacked on house decorations shall not be approved. However, decorations for holidays or special occasions are exempt and need not be submitted for approval provided they are not constructed or applied sooner than 30 days before the event and are removed within 15 days after the event.

## **VI. ROOFS.**

Roofs shall be repaired or reconstructed using integrally colored concrete tile, clay or slate tile, textured (laminated) asphalt shingles, and cedar shakes or shingles.

**A. Roof Vents and Chimneys.** Roof vents shall be installed below the ridge line of the roof. Fireplace chimneys shall comply with all applicable governmental codes and regulations and shall be submitted for Design Committee for approval as to location, color, style and texture.

**B. Pre-finished Roofing.** Pre-finished standing seam metal roofing is also acceptable provided that the roof finish is non-reflective and that the standing seams are a minimum of twelve (12) inches apart and at least one and one-half (1-1/2) inches in height.

**C. Prohibited Roof Materials.** In general, the following roof materials are not permitted: corrugated roofing, non-textured asphalt shingles, roll roofing and spray-applied membrane roofing.

**D. Single-ply Membrane Roofing and Built-Up Roofing Systems.** Single-ply membrane roofing and built-up roofing systems are permitted provided that the area of roof utilizing this type of roofing has a slope of not more than two (2) inches per foot and covers not more than twenty (20) percent of the total roof area of the entire Apartment. The finish surface of such roofing shall be tan, brown or gray in color. Exposed roll roofing, including mineral-faced cap sheet, is prohibited.

**E. Permissible Colors.** Roofs shall be only those colors approved by the Design Committee or set forth in the Design Committee Rules. Except as may be otherwise provided in the Design Committee Rules, a material sample in the color to be used (or samples if multiple colors are proposed) shall be submitted for Design Committee for approval as to color, style and texture.

**F Skylights.** Skylights shall be designed as an integral part of the roof system, shall utilize clear or bronze-tinted glazing materials. The color of the skylight frame shall be compatible with the color of the surrounding roof and shall be non-reflective.

**VII. ACCESSORY STRUCTURES.** Each Owner of an Apartment to which a Yard Area is appurtenant shall be prohibited from erecting, placing, installing or constructing any guest cottage, servants' quarters or second kitchen on said Yard Area. Each such Apartment Owner shall be permitted to erect, place or permit to remain the following structures or improvements on said Yard Area only if Design Committee approval is first obtained therefore:

1. Playhouses,
2. Storage and tool sheds,
3. Hot houses,
4. Dog kennels or other animal enclosures
5. Lanais (both open and covered),

provided, however, that no structure will be permitted within any maintenance or utility easement or landscape setback area. This Section shall not, however, be deemed to (i) prohibit or in any way limit the right of the Developer or any Owner of an Executive Residences Apartment or Carriage Ways Apartment to construct the "Option Areas" (as such term is defined in the Declaration) designated for each such Apartment on the Condominium Map pursuant to and in accordance with the provisions of the Declaration, or (ii) require an Apartment Owner to obtain Design Committee approval for a structure or other improvement erected, placed, installed or constructed upon said Yard Area by the Developer as part of the original construction of the Apartment.

**CAUTION:** Apartment owners are cautioned that the construction of permanent structures within thirty (30) feet of the Marina property line will require the submittal of detailed foundation design recommendations prepared by a licensed geo-technical engineer, detailed foundation design drawings prepared by a licensed structural engineer, to both the Design Committee and the City and County of Honolulu.

## **VIII. AIR CONDITIONING SYSTEM AND MECHANICAL EQUIPMENT.**

Air conditioners that are visible from the street or any adjacent property are permitted provided that they shall be properly screened from public view and that their installation conforms to the restrictions set forth below and in the Design Committee Rules:

**A. Aesthetics.** The use of lattice of any kind for air conditioning screening is prohibited. No bare metal or conspicuous filter elements may be

exposed. Moreover, all exterior piping must be covered or “furred” and painted to match the color of the surfaces to which it is attached, and all exterior wiring must be concealed or painted to match the surfaces to which it is attached. Any glass removed for the installation of the air conditioner must be replaced with clear glass or plexi-glass. If the design of the installed air conditioner is such that filter elements may not be painted, the Apartment Owner is responsible for providing a design acceptable to the Design Committee to screen or otherwise enclose the air conditioner in such a manner that it may be painted to blend with the mounting surface. Only new air conditioning units or systems shall be installed, provided that the installation of used units may be permitted with the prior inspection and written approval of the Design Committee. Air conditioning systems shall be maintained at all times in a clean and attractive condition and shall not be permitted to become unsightly. At no time shall an air conditioner be installed so that it over-hangs or encroaches into the Yard Area of an adjacent Apartment.

**B. Noise.** The level of noise or sound pressure emanating from any air-conditioning unit or system, or other mechanical equipment installed by an Apartment Owner, shall not exceed the maximum level permitted by the State of Hawaii and/or the City and County of Honolulu, or the following noise guidelines, whichever ever is more restrictive.

Special attention to noise control measures is required during the design process , as follows:

1. Selecting the quietest available equipment, ideally with an equipment sound rating of 7.2 bels (10 decibels = 1 bel) or lower.
2. All exterior mounted air conditioning equipment shall be enclosed and located within the Apartment or within the Yard Area appurtenant to that Apartment.
3. Providing partial (three or four sided) equipment enclosures, with 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.

Should complaints occur after start-up of such equipment, the Design 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 the above criterion, until additional noise mitigation measures are provided by the Apartment Owner and approved in writing by the Design Committee.

#### **VIX. SOLAR ENERGY AND HEAT PUMPS.**

Any Owner of an Executive Residences Apartment or Carriage Ways Apartment may use solar energy or heat pumps as the primary source to heat water. Solar energy installations shall be, as much as practicable, hidden from view by integrating them into the roof or incorporating them into a flat roof section, and shall be installed as far as possible to the rear of the Apartment at the same angle of slope and parallel plane as the roof.

A. The highest point of any exposed part of the system may not be higher than twelve (12) inches above the surface (sloped or flat) of the roof on which it is mounted. The lowest point of any exposed part of the system may not be more than six (6) inches above the surface (sloped or flat) of the roof on which it is mounted. The intent is to create an architecturally pleasing integration of the solar panels into the roofline. Roof-mounted composite solar collector and water storage tank systems are not permitted.

B. The collector frame, piping and other roof accessories shall be minimized and must be painted a flat black or the color of the roof on which it is located. Copper piping need not be painted.

C. Collectors shall be mounted so that the collector edges are parallel to the eaves of the roof and the collector surface is parallel to the plane of the roof.

D. The design of all installations shall follow Hawaiian Electric design guidelines and shall require the prior written approval of the Design Committee.

**X. GAS TANKS PROHIBITED.** No fuel tanks or bottles will be permitted which are visible from public view or from the neighboring Apartments.

#### **XI. SWIMMING POOLS, SPAS, WATER FEATURES AND INCIDENTAL STRUCTURES.**

Swimming pools, spas, fish ponds, waterfalls and structures incidental to landscaping that are visible from any roadway of the Project or from a neighboring Apartment may be constructed in a Yard Area appurtenant to an

Executive Residences Apartment, Carriage Ways Apartment or Cottage only upon the prior approval of the Design Committee.

The Design Committee Rules shall set forth specific design parameters and noise level restrictions that an application for the installation and construction of a swimming pool, spa, water feature and incidental landscaping structure shall address. Such design parameters and noise level restrictions may vary depending upon the type of Apartment and the size of Yard Area for which such proposal is being submitted for. In addition, the following general restrictions shall apply:

**A. Pools above grade.** With the exception of temporary wading pools, swimming pools constructed above grade (i.e. on the ground) shall not be permitted.

**B. Pools below grade.** Swimming pools constructed below grade (i.e. flush with the ground) shall be approved provided the Apartment Owner complies with Design Committee Rules and any guidelines herein for grading, walkways, drainage, etc.

**C. Spas.** Spas constructed above or below grade shall be approved provided the Apartment Owner complies with Design committee rules and guidelines for grading, walkways, drainage, etc.

**D. Fences.** All applications for approval to construct a swimming pool must be accompanied by an application for fencing around the pool which is no less than four and one-half (4-1/2) feet in height and which complies with all applicable state and municipal laws, regulations, codes and standards.

**E. Filter Noise.** Applicants for swimming pools must submit details for the abatement of filter and skimmer noise to the Design Committee. The pump and motor of the filter and skimmer unit shall be soundproofed in order to prevent nuisance to adjacent properties. Should undue noise result from the operation of the unit, the owner will provide additional soundproofing methods and proceed expeditiously with the necessary adjustments. Notwithstanding the Design Committee's right to approve and required adjustment to the filtering unit, the apartment Owner shall assume full responsibility therefore and shall hold the Design Committee harmless against any and all claims resulting from the maintenance and operation of the filtering unit.

**F. Operation in Compliance with Regulations.** The Applicant shall, at all times, comply with all state and municipal rules, regulations, codes and standards concerning the operation of a private swimming pool.

**G. Lighting.** In addition to the requirements contained in IV, A.4. hereof entitled “Exterior Lighting”, the Design Committee will approve the appropriate underwater lighting in those instances where the source of light is not visible from adjacent Apartments.

**H.** Notwithstanding anything contained herein to the contrary, swimming pools, spas, fish ponds, waterfalls and structures incidental to landscaping structures may not be placed within any maintenance or utility easement or landscape setback area.

**CAUTION:** Apartment owners are cautioned that construction of swimming pools, spas, water features and incidental structures within thirty (30) feet of the marina property line requires that a foundation design review be conducted by both a licensed geo-technical engineer and a licensed structural engineer and that specialized foundation designs and/or systems may be required.

## **XII. UTILITY LINES.**

**A.** All telephone and electric power lines, water and sewer pipelines and all other conduits for utilities within the Project have been installed underground. The Apartment Owner shall be responsible for determining the location of easements, utility lines and underground installations prior to start of construction.

**B.** No Owner of an Executive Residences Apartment or Carriage Ways Apartment shall install private power, telephone or other utility lines, wires or conduits which would be visible from the roadway or from a neighboring Apartments unless:

1. Technical or physical reasons make such an installation necessary or advisable and
2. Design Committee approval is obtained in the manner provided in Article II above.

## **XIII. MAILBOXES AND APARTMENT NUMBERS.**

**A.** All mailboxes shall be designed pursuant to postal regulations and specifications established by the Design Committee.

**B.** Apartment numbers and name signs shall be of an attractive and superior quality design, shall be installed flush with wall surfaces where possible, and shall not exceed an aggregate surface area of one (1) square foot.

#### **XIV. FENCES AND ENCLOSURES.**

In the event that the Owner of an Executive Residences Apartment or Carriage Ways Apartment desires to repair, renovate, reconstruct or replace that portion of the fence surrounding or enclosing a portion of the Yard Area appurtenant to said Apartment that said Apartment Owner is responsible for maintaining (as provided in Article II, Section C.1 of the Declaration) in a manner which deviates from the look or location of the original fence installed by the Developer (i.e., the height, color and materials used for such fence, or the location thereof, etc.), said Apartment Owner must first obtain Design Committee approval unless the proposed repair, renovation, reconstruction or replacement is otherwise permitted by the Design Committee Rules.

**A. Footings.** Footings for fences and enclosures shall be wholly within an Apartment Owner's Yard Area and shall not encroach upon any adjacent Apartment unless by specific written agreement between the two Apartment Owners.

**B. Height.** The maximum height of fences and enclosures shall not exceed six (6) feet in height. Fences located between the front plane of an individual Apartment Unit and the adjacent street shall not exceed two and one-half (2-1/2) feet in height. In no case shall any fence exceed the legal limit allowed by municipal code. In addition, the height of any proposed fence or enclosure should not exceed that of any existing fences or enclosures on adjacent Apartments (in other words, the height of fences and enclosures on adjacent Apartments should be identical).

**C. Materials.** In general, fences and enclosures utilizing imitation rock, decorative wrought iron, expanded metal, plastic, fiberglass, chain link, or wire will not be allowed. Fences and enclosures shall be constructed from one or two of the following materials: Moss rock, bluestone, wrought iron (vertical picket only), aluminum, copper, finished concrete, plaster-veneered hollow tile, brick, redwood, cedar, and vinyl.

**D. Miscellaneous.** Fences containing decorative additions such a small roofs, moon gates, etc. will not be approved by the Design Committee.



Decorative tile inserts will be considered. Whenever a fence, facing a street, has, by the nature of its construction and materials, a "good side," the "good side" shall face outward from the Yard Area toward the adjacent street(s).

**E. Survey.** It is the responsibility of the Apartment Owner to verify the location of Limited Common Element corners before and after the completion of any perimeter wall construction or improvement.

## **XV. DRIVEWAYS; EXTERIOR PAVING MATERIALS.**

All driveways of the Project that are characterized in the Declaration as a Limited Common Element appurtenant to an Apartment or Apartments shall be paved. In the event that any such driveway must be repaved, the Apartment Owner or Committee of Apartment Owners responsible for the repavement of any driveway shall first obtain the Design Committee's approval of the materials to be used and the color of said materials before proceeding with the repavement work. The following materials are recommended: asphaltic concrete, textured concrete, brick or concrete pavers, bomanite and grasscrete. The Design Committee encourages the use of uncolored concrete with sand, trowel or broom finish, brick paver tiles, stamped concrete and other permanent paving materials with matte finishes in neutral or muted earth tones.

## **XVI. SIGNS.**

No signs whatsoever shall be erected or maintained upon any Apartment or Yard Area, except:

- A.** Such signs as may be required by legal proceedings;
- B.** Such signs as Developer may erect or maintain for any Apartment or series of Apartments of the Project prior to sale and conveyances;
- C.** Such signs as required for house numbers and name signs in accordance with Section V.I (mailbox) above, provided that such signs shall not exceed one (1) square foot maximum surface area; and
- D.** Real Estate "for sale" signs for the Apartment being sold, provided specifications and placement are in conformance with the document entitled "Specifications for 'For Sale' signs" which may be obtained from the Association or the Developer.

E. Any sign, which does not comply with the above, must obtain specific written approval of the Design Committee and the Board.

## **XVII. BASKETBALL EQUIPMENT STANDARDS.**

A. An application form must be submitted to the Design Committee for all proposed permanent or portable basketball equipment. The application shall show the location and design of the equipment. Basketball equipment will not be permitted in backyards or anywhere in close proximity to adjacent homes.

B. Permanent basketball equipment may be installed against the front of a gable roof garage wall or on the hip/flat roof eave of a garage roof.

C. Permanent or self-supported equipment is permitted only in the front or rear driveway area, provided that backboard is flush to the house and confined entirely within the Yard Area of the Apartment.

D. The face of the backboard shall face the street, alley or neighbor's Apartment. Placement of permanent or portable basketball apparatus with the back of the backboard facing a neighbor's Apartment is DISCOURAGED due the possibility of damage and nuisance to the neighboring Apartment resulting from over-thrown balls.

E. Self-supporting portable equipment is to be stored in an enclosed garage or other location not visible from the street or alley after use.

## **XVIII. ANTENNAS AND SATELLITE DISHES.**

The guidelines set forth in this Section N for the installation of antennas and satellite dishes are adopted by the Design Committee in conformance with the adopted rule of the Federal Communications Commission (47 C.F.R. Part 1, subpart S 1.400 et seq.) ("FCC Rule") governing installation of direct broadcast satellite antennas, multi-point distribution system ("wireless cable") antennas and over-the-air broadcast antennas.

**A. Restrictions.** No antenna of any sort shall be installed or maintained which is visible from neighboring property except that antenna placed on the ground and not exceeding ten (10) feet in height above normal grade are allowed if not visible from the adjacent street.

**B. Antenna Installation Affected by the FCC Rule.** The only antennas which are covered by the FCC Rule are:

**C.** Antennas designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, one meter or less in diameter; or

**D.** Antennas designed to receive video programming services via multi-point distribution services, including multi-channel multipoint distribution services, instructional television fixed services and local multipoint distribution services, or to transmit fixed wireless signals other than via satellite, one meter or less in diameter or diagonal measurement; or

**E.** Antennas designed to receive television broadcast signals; or  
A mast supporting an antenna described in paragraph B (1), (2) and (3) above.

**F.** The FCC Rule only covers antennas installed “ ... on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property.” Antennas installed on property that is not within the exclusive use of the antenna user or property in which the antenna user does not have a direct or indirect ownership interest are not covered by the FCC Rule, and shall be subject to any restrictions regarding the installation of antennas set forth in these Design Guidelines.

**G. Restrictions on Antenna Installation Affected by the FCC Rule.**  
Antennas covered by the FCC Rule may be installed only in accordance with the following restrictions:

**H.** Any Owner proposing to install an antenna shall provide the Design Committee with a written notice at least seven (7) days prior to installation. The notice shall include:

1. The type of antenna, including dimensions and other specifications.
2. The name of the television service provider. Plans showing the location of the installation and the manner in which the antenna will be installed and cables will be run (located).
3. Prior to installation, the owner shall also provide the Design Committee with a copy of any applicable governmental permit(s).

**I.** Antenna and masts shall not be installed, used or maintained on or in the Common Element areas of the Project. No antenna or mast may encroach

upon any Common Element area, another owner's Yard Area or Apartment, or the airspace of Common Element areas, or another owner's Yard Area or Apartment.

**J.** Except as otherwise provided herein and subject to the other provisions herein, antennas covered by the FCC Rule may be installed, used and maintained on or within Apartments and Yard Areas, respectively; provided, however, that:

1. No antenna shall be installed, used or maintained on any area that is not within the exclusive use or control of the antenna user;
2. No antenna shall be installed, used or maintained without the prior written consent of the Design Committee on or in any area if the installation, use or maintenance will involve a penetration through, alteration of, addition to, or modification of any area that is not within the exclusive use or control of the antenna user, including, without limitation, any area the Association is required to repair and/or maintain.
3. If acceptable quality signals can be received by placing antennas and masts inside an existing improvement without causing an unreasonable delay or an unreasonable increase in cost of installation, maintenance or use, then outdoor installation is prohibited. In any event, antennas and masts shall be placed in locations which are not visible from neighboring properties or public rights of way unless such placement would impair the installation, maintenance, or use of the antennas, in which case the following requirements shall apply:
  4. Antennas and masts shall be placed in the least visually obtrusive location which would not preclude reception of an acceptable quality signal.
  5. Antennas or masts may not extend beyond a railing or fence unless no acceptable quality signal may be received from the antenna's location.
  6. Antennas placed on the ground and visible from the street, neighboring properties or public rights of way must be camouflaged by existing landscaping or fencing, if such placement insures receipt of an acceptable quality signal.

7. If no landscaping or screening exists, the Design Committee may require antennas to be screened by new landscaping or screening of reasonable cost in such a manner as to blend with surrounding background surfaces or to minimize visibility of the antennas.

8. The antennas and masts shall be painted to blend with the surrounding background surfaces to the extent that this will not preclude reception of an acceptable quality signal. No bare metal may be visible.

9. Exterior antennas shall be installed so as to be minimally visible.

10. Antennas and masts shall be no larger nor installed higher than is absolutely necessary for reception of an acceptable quality signal.

11. As used in this paragraph, "... preclude reception of an acceptable quality signal ..." means that reception would be impossible or would be substantially degraded.

12. Any installer of an antenna other than the Owner shall provide the Design Committee with proof of such insurance as may be required by the Design Committee from time to time. Masts must be installed by licensed contractors providing proof of such insurance as may be required from time to time by the Design Committee.

13. Owners shall not permit their antennas or masts to fall into disrepair or to become safety hazards. Owners shall be responsible for maintenance and repair of antennas and masts. Owners shall be responsible for repair or replacement if the exterior surface of the antenna or mast deteriorates.

14. Installation shall be performed in such a manner that it does not damage the Common Element areas, Yard Areas, Apartments or other improvements of other Owners, or avoid any warranties of the Association or other Owners.

In the event that the Design Committee reasonably determines that it needs to perform maintenance which will require removal of any antenna, the Owner shall remove the antenna. The Design Committee shall give the Owner at least thirty (30) working days prior written notice, where practical to do so, in order that the Owner may coordinate with his or her service provider. Any relocation or removal

of an antenna required under this provision shall be performed by the Owner at his or her sole cost and expense and the Association shall not be liable for loss or inconvenience to the Owner arising from the removal or relocation.

No more than one antenna of each type of service may be installed by an Owner.

Antenna installations shall not present any safety concerns and shall comply with all applicable statutes, codes, ordinances rules and regulations promulgated by any governmental authority, including, without limitation, the obtaining of any permits required by such authorities unless those statutes, codes, ordinances, rules or regulations have been preempted by the FCC Rule. Installation of antennas and masts which present potential safety concerns will require compliance with the normal application process. The Federal Communications Commission has recognized that safety concerns may be presented by masts higher than twelve (12) feet. Safety concerns may also be presented by installation of any mast whose height exceeds the distance to neighboring property or public rights of way measured from the point of installation. Installation of such masts must be approved by the Design Committee. Any application for these masts must include a detailed description and anchorage of the antenna and the mast, as well as an explanation of the necessity for a mast higher than twelve (12) feet. If the installation will pose a safety hazard to Association residents or personnel, then the Design Committee may prohibit such an installation. The notice of rejection shall specify the safety risks. The purpose of this rule is to address safety concerns relating to wind loads and the risk of falling structures. Antennas shall not be located in the vicinity of electrical power lines or other electrical or power circuits and in no event shall antennas or mast be placed where they may come into contact with such power lines and circuits. In order to prevent electrical or fire damage, antennas shall be permanently and effectively grounded. Antennas are required to withstand winds of eighty (80) miles per hour.

Pursuant to the FCC Rule, the Association reserves the right to petition the Federal Communications Commission for a waiver allowing the adoption of restrictions on antennas which would otherwise be preempted. In the event that such a waiver is granted, antenna installations which are not in compliance with such

restrictions may be required to be brought into compliance within a reasonable time as determined by the Association acting through the Design Committee.

## **XVIII. LANDSCAPING STANDARDS.**

**A. APPROVED MATERIALS.** The Owner may landscape the grounds using any of the plant materials listed in Table I appended hereto and incorporated herein by this reference. The Design Committee must approve the use of any plant materials not listed in Table I and may adopt a list of prohibited plant materials as it deems appropriate.

**B. PLAN APPROVAL.** Except as otherwise permitted in the Design Committee Rules, no change, alteration or removal of the original landscaping installed in the Common Element areas and no planting of trees or other vegetation in such areas shall be allowed without the prior approval of the Design Committee. Prior to the installation of new or revised landscaping, landscape plans, prepared by a licensed landscape architect or by a licensed landscape contractor, are required and must be approved in writing by the Design Committee. Plans shall indicate the existing and proposed grades, the irrigation and drainage systems to be used and a detailed planting and hardscape plan complete with an itemized plant materials list.

**C. TIMING.** The landscaping of front yard areas, including installation of irrigation systems, must be completed within six (6) months after taking occupancy of the Apartment. Lots fronting on two (2) streets shall be landscaped along both street frontages. The Landscaping of the side and rear yard areas, including installation of irrigation systems, must be completed within twelve (12) months after taking occupancy of the Apartment.

**D. COMPLETION.** Completion of landscaping includes, at a minimum, the importation of topsoil, the placement of irrigation system, grading, weeding (removal of all noxious weeds and vegetation), soil preparation, seeding or planting and the initial grow-in of suitable ground cover and the planting or emplacement of customary plant and non-plant landscaping materials to a sufficient degree that the majority of the Design Committee members agree that the area or Apartment in question is a "completed landscape."

**E. MAINTENANCE.** Upon completion, all landscaped Yard Areas shall be continuously maintained in a healthy and clean condition. What constitutes a "healthy and clean condition" as it pertains to the maintenance of complete landscaping shall be determined by the good judgment of the majority of the members of the Design Committee. Owners of Apartments with electrical transformer enclosures are responsible for insuring that the area surrounding the transformer is kept in a clean condition.

**F. VISUAL OBSTRUCTIONS.** The Apartment Owners of Apartments to which Yard Areas are appurtenant must be considerate of their neighbors when planting and/or maintaining their landscaping in their Yard Areas. Trees and shrubs taller than six (6) feet shall not obstruct desirable views from adjacent Apartments or buildings or create safety, trash or maintenance problems for the Apartment Owners of said adjacent Apartments or buildings.

**G. GRADING AND DRAINAGE.**

The Apartment Owner shall accept the condition of the Yard Area as is and shall be responsible for the maintenance of the Yard Area, including dust and erosion control.

All grading, excavation fill and site work required, following the acceptance of the Apartment by the Apartment Owner, shall be done only in accordance with drawings approved by the Design Committee and at the expense of the Apartment Owner. The Apartment Owner shall obtain a grading permits for cuts and fills as required by the ordinances of the City and County of Honolulu and shall abide by all City and County requirements.

Topsoil or fill material brought to the site by the Apartment Owner shall be free of adobe, termites and/or other deleterious matter.

Whenever excavation or fill, including placement of topsoil, causes modification of existing drainage swales or drainage patterns, it shall be the Apartment Owner's responsibility to restore such swales and drainage patterns or to otherwise provide for adequate drainage.

Storm and irrigation water runoff shall be dispersed or channeled by surface swales or other facilities in such a manner as to prevent erosion and damage to the property of adjacent Apartment Owners.



**H. BUFFER ZONE.** All areas within one foot of any structure, wall or fence shall not contain any landscaping and shall be covered with crushed rock or gravel.

**I. VEGETABLE GARDENS.** Vegetable gardens are not acceptable as completed landscaping in front yard areas or where visible from adjacent roadways.

**J. GENERAL CONDITIONS.** In addition to the specific conditions, limitations and restrictions set forth above, any Improvement undertaken upon any Apartment shall be in conformity with the following general conditions, limitations and restrictions:

**K. COMPATIBILITY.** The Improvement shall be compatible and in harmony with existing structures and other improvements in the area with respect to quality and type of materials, workmanship, external design and location of the Improvement to the Apartment;

**L. CONFORMITY.** The Improvement and/or landscaping shall conform to the general plan of the entire development of the Project;

**M. NONINTERFERENCE.** Any Improvement made to the exterior of any Apartment and/or landscaping shall not, because of its design, unreasonably interfere with the light, air or view of neighboring Apartments; and

**N. NO SURFACE CHANGES.** Except as is reasonably necessary for and incident to the Improvement undertaken upon any Apartment, plans for which the Apartment Owner has obtained the approval of the Design Committee:

1. There shall be no grading, excavation or fill undertaken upon the land underlying any such Apartment;
2. There shall be no change in the natural or existing drainage for surface water upon any such land.

**O. WASTE DISPOSAL.** Each Apartment Owner shall be responsible for disposing of construction waste and debris and for keeping the public, private and common areas surrounding his apartment free of waste and debris at all times during construction. No storage of construction materials and equipment will be permitted in common areas at any time.

## APPROVED PLANT MATERIALS

<p><b>Small Canopy Trees</b>  Allspice  Beach Heliotrope  Coral Tree   Dwarf Poinciana   False Olive  Hawaiian Kou  Hong Kong Orchid  Jaboticaba  Jatropha  Kalamona  Lechoso  Lignum Vitae  Magnolia  Pink Tecoma  Plumeria varieties  Podocarpus  Puakenikeni  Red Bottlebrush  Silver Trumpet  Strawberry Guava  Traveller's Tree</p>	<p><b>Fruit Trees</b>  Citrus  Suinam Cherry  Star Fruit</p> <hr/> <p><b>Palms</b>  Areca  Bottle  Coconut  Dwarf Phoenix  Fiju Fan  Fishtail  Joannis  Kentia  Licuala  Mac Arthur  Manila  Rahapis  Sealing Wax</p>	<p><b>Hedge Materials</b>  Croton  Eldorado  Hibiscus Varieties (Kaiser Pink,  Hula Girl, Surfrider, Yellow)  Leea  Mock Orange  Natal Plum  Podocarpus  Snowbush</p> <hr/> <p><b>Vines</b>  Allamanda  Bougainvillea  Cats Claw  Creeping Fig  Galphimia  Huapala  Jade  Mandevilla  Stephanotis  Thunbergia</p>
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<p><b>Grasses</b>  Bermuda  Centipede  Hybrid Bermuda  Seashore Paspalum  St. Augustine  Zoysia "El Toro"</p>	<p><b>Shrubs</b>  African Iris  Bird of Paradise  Brunfelsia  Dwarf Cycad  Dwarf Date Palm  Gardenia Varieties (Tiare, Jasminoides, Crepe, Pinwheel)  Ginger Varieties (Red, Kimi Pink, White, Yellow, Shell, Torch)  Heleconia Varieties (Giant Red Caribaea, Giant Yellow  Caribaea, Hanging, Lobster</p>
<p><b>Ground Covers</b>   Agapanthus</p>	

Asparagus Fern	Claw)
Hemigraphis	Impatiens
Joyweed	Ixora varieties
Lantana	Kokutan
Laua'e Fern	Monstera
Mondo Grass	Nandina
Neomarica	Philodendron
Portulaca	Plumbago
Pothos	Raphiolepis
	Spathyphyllum
	varieties
Rhoeo	Spider Lily varieties
Ruellia	Ti Leaf
Syngonium	
Walking Iris	

**AMENDMENT OF DESIGN GUIDELINES.** The Design Committee shall have the right to amend these Design Guidelines from time to time, upon a majority vote of the Design Committee or a unanimous written consent of the members of the Design Committee for such amendment, provided that no amendment which shall adversely impact the Developer's rights hereunder or under any of the Project documents shall be effective without the Developer's prior written consent, which may be withheld in its sole discretion. Specifically, the provisions of Section I.C. regarding the appointment of the members of the Design Committee shall not be altered or modified without the Developer's consent.