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STATE OF HAWAII
BUREAU OF CONVEYANCES
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JUL 18, 2003 08:01 AM
Doc No(s) 2003-147249



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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TDW:62536.6
TMK (2) 3-9-04:76, 77 and 78

Total Number of Pages: 50

Kilohana Ridge

Declaration of Covenants, Conditions and Restrictions

Declarant:

Towne Brown LLC
c/o Towne Development of Maui, Inc.
375 Huku Li'i Place
Kihei, HI 96753

Declaration of Covenants, Conditions and Restrictions

This Declaration is dated as of this 14th day of JULY, 2003, and is executed by Towne Brown LLC, a Hawaii limited liability company, whose principal place of business is c/o Towne Realty, Inc., 375 Huku Li'i Place, Kihei, HI 96753 (the "Declarant").

1. RECITALS

The land to which this Declaration applies is the land described in Exhibit A attached hereto and made a part hereof. This land has been subdivided into 73 residential lots and several road lots, drainage areas, drainage retention basin and other common areas, all to be known as "Kilohana Ridge." This Declaration and each covenant will run with the land and will be binding upon and will inure to the benefit of each subdivided lot within said land (except any road lot, drainage detention lot and common area lots after dedication to a governmental body) and all of its successive owners and occupants.

It is the Declarant's intention to create a common development plan, enforceable by the Declarant or any property owner within the said land, in accordance with this Declaration. The acceptance of a deed, Agreement of Sale, lease or other conveyance by any person of any property or any interest in any property within the subdivision shall constitute acceptance of these covenants, regardless of whether or not said instrument is expressly made subject hereto. This Declaration shall be binding upon and enforceable against each owner, purchaser, tenant and occupant of all or any part of said land, including each Property (defined in Section 2.09 below) and their respective successors in interest; and shall be deemed incorporated in each deed, lease or other instrument by which any right, title or interest in Kilohana Ridge or any Property is granted, devised or conveyed, whether or not expressly referred to therein.

2. DEFINITIONS

The following terms shall have the following meanings:

2.01 "Association" shall mean the Kilohana Ridge Association, Inc., a Hawaii non-profit corporation, as more particularly described in Article 5 below.

2.02 "Central Drainage Facilities" are defined in Section 2.03 below.

2.03 "Common Area" means (i) all roadways and appurtenant landscaping within Kilohana Ridge which are not included within the area of any Property (defined below), if and so long as such areas shall not have been dedicated to and accepted by the County of Maui, including Road Lots 80, 81, 82 and 83 and access easements over Ho'ohale Place, Wela Street and Ala Koa Street; (ii) waterlines and sewerlines, if any, which are not owned by the County of Maui and which serve more than one lot or the subdivision as a whole; (iii) Open Space Lots 76, 77 and 78 (location of County of Maui's underground water transmission line), if and so long as such lots

shall not have been dedicated to and are accepted by the County of Maui, and Open Space Lot 75; (iv) Drainage Easements A through F, inclusive, and Drainage Lot 74, together with all headwalls, culverts, inlets, outlets, retention basins, storage and disbursement areas and other improvements and appurtenances, including such structures which are located on one or more Properties (collectively, the "Central Drainage Facilities"); (v) the entry feature located on Lot 23 together with its appurtenant easements and the other side of the entry feature located on Open Space Lot 75; (vi) all other areas within one or more Properties which may be designated by Declarant and which may comprise landscaping easements, drainage easements or utility easements for the benefit of one or more other Properties, the common areas or Kilohana Ridge as a whole or as may be required by governmental authorities; and (vi) such other assets, properties, facilities, and property rights, if any, which may in the future be designated as Common Area by Declarant or transferred to or acquired by the Association.

In addition, the County of Maui may, in the future, elect to convert the water system from individual meters on all lots to a single master meter to serve all lots through the central water system. If said election shall occur, the master meter and central water system shall be deemed to be Common Area under the management and jurisdiction of the Association.

2.04 "Declarant" means Towne Brown LLC, a Hawaii Limited Liability Company and its successors, assigns or designees who may be identified as such in an instrument executed by Declarant (or a successor or assign of Declarant), to be recorded in the Bureau of Conveyances of the State of Hawaii.

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

2.06 "Neighborhood" and "Kilohana Ridge" mean the Kilohana Ridge Subdivision as described on the Plan, including but not limited to all Properties and all roads and other Common Areas (whether now or in the future designated as such) shown on the Plan.

2.07 "Owner" of a Property means any person (including Declarant) who owns a fee simple interest in said Property, and any person to whom all rights as Owner (including voting) shall have been transferred by means of (a) a deed, (b) a lease of said Property for a period in excess of 5 years, or (c) an agreement of sale which transfers all rights of possession and occupancy; provided, however, that in each such case the transferee of said rights will not be recognized as an "Owner" by the Association unless a written notice of transfer is filed in the official ownership records of the Association maintained by the Board of Directors.

2.08 "Plan" means the subdivision plat entitled "Kilohana Mauka Subdivision," dated April 3, 2001 as revised through the date of recording of this Declaration in the State of Hawaii Bureau of Conveyances, prepared by Warren S. Unemori Engineering, Inc., as approved by the County of Maui, and as amended from

time to time by Declarant. Note that the subdivision name on the Plan has been superceded with the new name of Kilohana Ridge.

2.09 "Property" and "Lot" means each of the subdivided Lots numbered 1 through 73, inclusive, described on the Plan.

2.10 "Settlement Agreements" refers to the Agreements dated September 21, 2000 and [undated], 2000 with the Keawakapu Views Community Association and Association for the Preservation of Our Community, respectively, copies which shall be kept in the Association's files and available for inspection by the Owners.

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

3. COVENANTS

3.01 Residential Uses. Each Property will be used for single family residential purposes. One single family residence shall be permitted on each property. Accessory dwellings or "ohana" dwellings are not permitted.

3.02 No Commercial Use. No Property shall be used for any commercial, professional or business use, except the following:

(a) Reasonable sales activities on any Property for the purpose of selling such Property, including but not limited to reasonable placement of signs and advertising of the Property for sale.

(b) Declarant's activities in connection with the sale of any Properties in the Neighborhood; and

(c) If permitted by applicable zoning, work in a home office not visible from any other Property or the road and not involving visits to the Property by any customer, client or any other person, except on an incidental or occasional basis (provided that such use shall not violate applicable law).

(d) No bed and breakfast or transient or vacation rental operations are permitted and no rental operations on a room by room or "boarding house" basis shall be permitted.

3.03 Animals and Pets. No livestock, poultry or other animals whatsoever shall be allowed or kept on any part of the Kilohana Ridge Common Area, streets or on any of the Properties, except as otherwise provided below and except that dogs, cats and other household pets may be kept in reasonable number by an Owner on the Owner's Property, but such dogs, cats and other household pets shall not be kept, bred or used therein for any commercial purpose nor allowed on any Common Areas or streets except in transit when carried or on leash. Notwithstanding any

provision to the contrary contained herein, certified guide dogs, service animals and signal dogs (as defined herein below) (hereinafter collectively referred to as "specially trained animals") shall be permitted subject to the following restrictions:

(i) such specially trained animals shall not be kept, bred or used by any Owner for any commercial purpose; and

(ii) any specially trained animals shall be on leash while on the Common Areas and streets.

Any pet as described above and any specially trained animal causing a nuisance or unreasonable disturbance to any other Owner shall be promptly and permanently removed from Kilohana Ridge upon notice given by the Board of Directors of the Association; provided, however, that any such notice given with respect to a specially trained animal shall provide that before such animal must be removed, its Owner shall have a reasonable time to acquire a replacement specially trained animal unless the Association determines that such animal poses an unreasonable threat of physical harm to other occupants at Kilohana Ridge. The Board of Directors of the Association may from time to time promulgate such rules and regulations regarding the continued keeping of such pets and specially trained animals as the circumstances may then require or the Board of Directors of the Association may deem advisable.

The term "guide dog" shall mean "any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person" as defined in Section 515-3(8), Hawaii Revised Statutes, as the same may be amended from time to time in the future.

The term "service animal" shall mean "any animal that is trained to provide those life activities limited by the disability of the person," as defined in Section 515-3(8), Hawaii Revised Statutes, as the same may be amended from time to time in the future.

The terms "signal dog" shall mean "any dog that is trained to alert a deaf person to intruders or sounds," as defined in Section 515-3(8), Hawaii Revised Statutes as the same may be amended from time to time in the future..

3.04 Vehicles and Parking. There shall be no parking on any street in the Neighborhood except for temporary parking of vehicles of guests and visitors. No vehicle of any kind which is inoperable may be kept or stored outside of an enclosed garage and any such vehicle must be removed from the Property or promptly placed within an enclosed garage within seventy-two hours of becoming inoperable. For purposes of this section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen consecutive days. School buses, heavy trucks and heavy equipment shall not be parked on any Property except on a temporary basis in connection with construction or site work being conducted on said Property.

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

3.06 Maintenance of Structures, Properties and Drainage Areas. All structures located on each Property shall be kept in attractive condition, in good order and repair, and free from visible deterioration. All grass and vegetation on each Property (whether vacant or improved with a dwelling) will be kept neatly trimmed and hedges and other vegetation pruned. The Owner of each Property will maintain and keep trimmed and in neat condition any drainage area on the Property including the Central Drainage Facilities, (but not including any culverts, headwalls or other drainage structures, all of which shall be maintained by the Association as part of the Common Areas) in accordance with all County of Maui requirements. Each Owner will refrain from dumping grass clippings or debris in all drainage areas, easements and facilities on the Property and shall keep said area free of buildings, paving and obstructions which would reduce or interfere with its operation as a drainage facility. The Owner of each Property shall also maintain and irrigate the planted area, located within the road right of way, fronting the Property.

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

3.08 Antennas. An exterior antenna or satellite dish is permitted provided that such apparatus is screened so as to be invisible from other Properties and from roads. (See Design Standards, Exhibit "B".)

3.09 Refuse and Building Materials. Trash, garbage and other waste shall not be kept on any Property except in sanitary containers, stored inside the dwelling or enclosed garage and not visible from any street or other Property. No new or used building materials shall be stored on any Property except during active construction and all construction waste will be removed promptly after construction is complete. No Property shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All garbage and refuse shall be regularly transported by each resident to the common central storage and collection centers.

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

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

3.12 Swimming Pools. There shall be no free standing swimming pool on any Property, and each swimming pool will be installed with appropriate fencing and landscaping, in full compliance of all local, state and national codes, and only after obtaining a building permit as required by the County of Maui.

3.13 Grading and Drainage. No Owner of any Property will alter the grade or topography of any Property in a manner which would materially increase or change the location or direction of the flow of drainage from the Property to any adjoining Property or to any road.

3.14 Completion of Construction and Landscaping. Once the construction of any building or structure on a Property has commenced, said building or structure shall be pursued in good faith and with due diligence to completion within the shortest reasonable time and in all events said building or structure shall be completed not later than one (1) year from the date of commencement of construction. Each Property shall be landscaped and planted by its Owner, with an effective and operable landscape irrigation system in place (with irrigation at the lot frontage as required by Section 3.06) and driveway and walkways paved not later than one (1) year after completion of construction of the primary dwelling on said Property.

If an Owner acquires title to a Property without a home on it and shall fail to start construction of a home within six months of acquiring title to the Property, said Owner shall promptly take all necessary steps to establish and irrigate a lawn of grass over the entire Property so that the lawn shall be established and growing not later than nine (9) months from the date of acquiring title; and shall maintain said lawn in irrigated, mowed and attractive condition continually until said lawn shall be removed as needed in the construction of the home on the Property.

3.15 Easement Areas. No buildings or other structures shall be built within any area labeled on the Plan as easements for utility lines, drainage areas, landscaping or access.

3.16 Signs. Signs shall be prohibited except (a) Declarant's signs in connection with the construction, promotion and sale of Kilohana Ridge, (b) not more than one standard broker's-type "for sale" sign on a Property in connection with resale of said Property and (c) subdivision and road identification signs installed by the Declarant or the Board of Directors of the Association.

3.17 Utilities. All utilities within Kilohana Ridge and within each Property shall be underground.

3.18 Site and Building Heights and Setbacks. The height of any building or structure on any Property shall not exceed two stories, with the specific building height limit of 30 feet from the lower of natural grade or finished grade. In addition the following Lots are subject to the following special restrictions pursuant to the Settlement Agreements:

Lot No.	Maximum Building Pad Elevation Above Mean Sea Level	Maximum Building Height Above Finished Grade Land (Above Mean Sea Level)	Minimum Rear Yard Building Setback
1	*	21 feet	10 feet (if single story) and 15 feet (if two stories)
2	*	21 feet	10 feet (if single story) and 15 feet (if two stories)
3	*	21 feet	10 feet (if single story) and 15 feet (if two stories)
4	*	28 feet	10 feet (if single story) and 15 feet (if two stories)
5	*	28 feet	10 feet (if single story) and 15 feet (if two stories)
6	*	21 feet	10 feet (if single story) and 15 feet (if two stories)
7	*	28 feet	10 feet (if single story) and 15 feet (if two stories)
8	*	28 feet	10 feet (if single story) and 15 feet (if two stories)
9	*	28 feet	10 feet (if single story) and 15 feet (if two stories)
10-19 inclusive	*	28 feet	Per Maui County Code
20	132 feet	27 feet (and 159 feet)	15 feet
21	125 feet	28 feet (and 153 feet)	15 feet
22	126 feet	21 feet (and 147 feet)	Per Maui County Code
23	128 feet	28 feet (and 156 feet)	Per Maui County Code
24	124 feet	28 feet (and 152 feet)	Per Maui County Code
60	124 feet	28 feet (and 152 feet)	Per Maui County Code

*Per "PAD EL." shown on Grading Plan dated June 21, 2000. Copies are available from Declarant on request.

Compliance with the foregoing special restrictions shall be certified by a licensed engineer to the Association, which shall in turn send said certification to third parties

entitled thereto under the Settlement Agreements. All structures shall be subject to building setbacks as required by applicable law.

3.19 Sizes of Structures. Any single story dwelling constructed on any lot shall contain a covered and enclosed habitable floor area of not less than 1,400 square feet, exclusive of the area for a garage, attached or detached open lanais or other auxiliary buildings or structures. Any two story dwelling shall have 800 square feet of enclosed habitable floor area on the ground floor and a total enclosed habitable floor area of 1,800 for the entire dwelling, exclusive of garage, attached or detached open lanais or other auxiliary buildings or structures.

3.20 Reflective Materials. No building, improvement or structure located on any lot shall have a roof consisting of a highly reflective material or incorporate mirrored glass on the exterior of such building, improvement or structure.

3.21 Temporary Structures. No temporary buildings or structures, sheds, tents or trailers of any kind shall be erected or permitted to remain on any Property except during periods of construction and only incidental to construction.

3.22 Compliance With Design Standards and Laws. All structures, shall comply with (a) the Design Standards attached hereto as Exhibit B as they may be amended by the Declarant from time to time and (b) all applicable laws, rules and regulations. Where requirements in this Declaration are more stringent than applicable laws, rules and regulations, the requirements in this Declaration shall govern.

3.23 Water Conservation Measures. The Owners of all Properties shall use all reasonable efforts to comply with water conservation measures and recommendations of the County of Maui Department of Water Supply which may be issued from time to time, including but not limited to the following:

(a) No air conditioner, freezer or commercial refrigerator shall contain a single-pass water cooled system. Said systems have been eliminated by Section 14.21.20 of the Maui County Code.

(b) Low flow water fixtures and devices in faucets, showerheads, urinals, water closets and hose bibs shall be used, as required by Maui County Code Section 16.20A.680. Also water conserving washing machines, ice makers and other units which are available shall be utilized whenever practicable or required by law.

(c) Each Owner shall conduct a simple, regular program of repair and maintenance to prevent the loss of water through leaks and defective facilities.

(d) All Property Owners shall consider using climate adapted and salt tolerant native plants in yard landscaping. Native plants adapted to the area conserve water and further protect the watershed from degradation due to invasive alien species.

(e) Wherever practicable, rain sensors on all automated irrigation controllers shall be installed by each Owner.

4. ARCHITECTURAL CONTROLS.

4.01 Purpose. The purpose of the architectural controls set forth in this Article 4 is not to regulate all details of an owner's construction and landscaping activity, but instead is to give the Declarant the means to attempt in its discretion to avoid strange, jarring or inappropriate structures being initially developed within Kilohana Ridge which may be out of harmony with Kilohana Ridge as a whole. It is understood that Declarant's or the Architectural Design Committee's judgment in these matters may not be perfect or even consistent, and that some degree of taste and subjectivity will necessarily be involved. However, it is hoped that all concerned will cooperate in this process with the mutual objective of protecting property values and the general appearance of the neighborhood. The power to exercise these controls is reserved to the Declarant and may be exercised and delegated at Declarant's option only. Declarant or its designee shall have no legal obligation to exercise or delegate the architectural controls and shall have no liability to any buyer or owner if Declarant or its designee shall elect not to exercise said controls or shall fail to enforce said controls as to some or all of the Properties or if Declarant or its Designee exercises said controls in whole or in part in a manner which a buyer or owner of any Property feels is inappropriate, inconsistent or otherwise objectionable.

4.02 Restriction and Scope. No structure which is or will be visible from a road or from any other Property may be constructed without the prior written approval of the Architectural Design Committee (defined below); and no such feature, once built, may be externally remodeled, changed in color, or otherwise visually altered to any material extent without the prior written approval of the Architectural Design Committee. The Owners of each Property shall comply with and abide by all proposals, plans and specifications submitted to and approved by the Architectural Design Committee with respect to said Property. The term "structure" includes a building, any addition or expansion, or any pool, fence, wall, and any other man-made item located on or above the surface of the ground which may be visible from any road or other Property, and also includes any pavement of a driveway, parking area, lanai or open patio.

Notwithstanding the foregoing, the following shall not be subject to prior written approval of the Architectural Design Committee under this Article 4: (a) the construction, remodeling or change of any structure by the Declarant (or any successor as developer of all or part of Kilohana Ridge) as part of the development or initial sale of Kilohana Ridge; (b) the construction, remodeling or change of any structure by the Association of any Common Area facilities and (c) the repair or reconstruction of a damaged structure in accordance with plans previously approved for the original structure or the repainting of a structure in accordance with a previously approved color and color scheme.

4.03 Composition of Architectural Design Committee. The Declarant, or any person or persons whom the Declarant in its sole discretion may designate, shall

serve as the Architectural Design Committee until the date, if any, on which the Declarant (or Declarant's designee) shall, in its sole discretion, notify the Board of Directors of the Association or the owners of all Properties that the Declarant (or said designee) assigns the Architectural Design Committee's function to the Association, after which time the Board of Directors shall act as the Architectural Design Committee.

4.04 Standards and Procedures of the Architectural Design Committee.

All proceedings by the Architectural Design Committee shall be conducted in an orderly manner and a reasonable record of all proceeding shall be maintained.

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

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

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

4.05 Responsibility. The members of the Architectural Design Committee shall not be personally liable, and the Architectural Design Committee itself and Declarant shall not be liable, for any of their or its acts or omissions in connection with the performance of (or failure to perform) any duties hereunder so long as such

actions or omissions were grounded in the belief that such actions or omissions were in the best interests of Kilohana Ridge or the Declarant.

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

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

4.07 No Protection of Views. No Property shall have any vested rights or easements for the protection of any view from said Property and the Declarant makes no warranties or representations of any kind to the buyer, owner or occupant of any Property concerning the extent, attractiveness or protection of any view over any Property or Common Area from any other Property or Common Area. The Architectural Design Committee shall have no obligation to consider the protection of views in any case before it (including any original application or variance application) unless a formal written view easement shall have been specifically granted by the Owner(s) of any Property in favor of the applicant before the Committee and said easement shall have been recorded in the Bureau of Conveyances of the State of Hawaii and a true copy delivered to the Architectural Design Committee with the application. However, the Architectural Design Committee shall have the unilateral right, in its sole discretion, to consider views in approving proposed structures and improvements.

4.08 Design Standards. The Design Standards attached hereto as Exhibit B are hereby adopted by the Declarant as the Design Standards for Kilohana Ridge. They shall apply to all Properties except where variances are granted in individual cases as provided in Section 4.06 above. The Design Standards may be amended from time to time by the Declarant provided that no amendment shall be inconsistent with, or have the express or implied effect of superseding, the body of this Declaration of Covenants, Conditions and Restrictions (as it may be amended by the Association under Section 8.04 below). The Declarant shall give notice of all proposed amendments to all lot owners (as shown on the records of the Association) and shall give them a reasonable opportunity to comment, all in accordance with reasonable procedural rules implemented by the Architectural Design Committee from time to time. Said power to amend may be exercised by any person or entity, including the Association, to which the Declarant may, in its discretion, assign said power in the future.

No amendment to the Design Standards or this Declaration shall apply to any structure which shall have been previously approved by the Architectural Design Committee and the construction or placement of which (in accordance with said approval) has commenced or will, in the reasonable judgment of the Architectural Design Committee, be commenced by the Owner in good faith without undue delay.

5. KILOHANA RIDGE ASSOCIATION, INC.

5.01 Membership. The Owners of each Property shall automatically be members of the Kilohana Ridge Association, Inc., a Hawaii nonprofit corporation and said membership will be mandatory. Said membership may be transferred or encumbered only with and to the same extent as the Property to which it is appurtenant is transferred or encumbered. In the event fee title to a Property is transferred without mention of said membership, said membership shall be deemed to be automatically transferred with said Property. Also, see Section 2.07 concerning the recognition of certain other persons as "Owners."

5.02 Government and Control of Common Areas. The Association shall hold, control, manage and operate, as a common expense, all Common Areas and facilities, from and after the time when ownership or use thereof shall have been transferred to the Association (or the Association acquires rights with respect thereto), and may exercise all reasonable management rights, powers and authority with respect thereto including, but not limited to, (a) the power to enter into contracts for, or otherwise to implement, the maintenance, operation, repair, replacement and sale of such assets and facilities; (b) the power to maintain appropriate casualty and liability insurance; and (c) the power to adopt, implement and enforce reasonable rules and regulations to govern the orderly use and operation thereof.

All such dominion, control and authority shall cease with respect to any road, water line or sewer line, or other facility, the responsibility of which shall be accepted by the County of Maui or other governmental authority, the Board or Department of Water Supply, other governmental authority or any regulated public utility. Upon the acceptance of the dedication of any roadway, easement or facility by the County of Maui, the Board or Department of Water Supply, other governmental entity or any public utility, the Association shall have the authority to execute such deed(s), easement(s) or other conveyance as may be necessary or appropriate to accomplish said dedication.

5.03 Common Expenses. Each Property shall be subject to the obligation to pay all assessments for common expenses assessed to said Property by the Association in accordance with the Articles of Incorporation and Bylaws thereof. The Association, by its Board of Directors, may enforce and collect each such assessment (together with all legal fees and expenses of enforcement) by legal proceedings to enforce such obligation. All amounts so owed shall be a lien on the Property obligated. Said lien may be enforced by judicial foreclosure or power of sale in the same manner as a mortgage is enforced under Hawaii law, as amended from time to time. The Association may file a notice of said lien in the State of Hawaii Bureau of

Conveyances, but said filing shall not be a prerequisite to the perfection of said lien. In addition to, and without limiting said lien and foreclosure, the Association may obtain an ex parte attachment or Lis Pendens against the delinquent Property or its owners. The Association may bid on and purchase the Property in any foreclosure.

Said lien or attachment, however, shall be junior and subordinate in lien priority to the lien of any mortgage or other encumbrance which shall have been in existence and duly recorded in said Bureau of Conveyances prior to the date the Association's notice of lien, attachment or pending litigation shall have been recorded.

5.03A Central Water System. If the County of Maui shall elect to convert the water system to a private system served by a master meter (see Section 2.03 above), then the Association shall have the authority to install and operate an individual submeter on each lot as a common expense. All costs of maintaining and operating the system shall be common expenses and the Association shall have all rights of collection and enforcement as set forth in Section 5.03 above. The Association may allocate the costs among the individual Properties in any reasonable and fair manner, including allocating all or part of such costs based on proportionate water use as indicated by individual submeters.

5.04 Declarant's Control. Notwithstanding anything herein to the contrary, the Declarant and its appointees shall act in all respects as and on behalf of the Association and its Board of Directors in all matters until the first to occur of the following: (a) the expiration of five (5) years from the date of recording of this Declaration in the Bureau of Conveyances of the State of Hawaii; or (b) the date on which Declarant notifies the Owners of the Properties of its relinquishment of said authority. The Declarant may in its discretion relinquish said authority either in full at one time or in portions or stages over time during the 5-year period. Upon the expiration or relinquishment of Declarant's control, the Association shall promptly elect a Board of Directors so as to minimize any disruption in the Association's affairs caused by the transition.

6. EASEMENTS.

6.01 Easements Shown on Plan. The Plan specifically describes certain Easements over, across and affecting certain Properties. Each of said Easements is hereby established for those purposes and in those locations ("Easement Areas") which are shown on the Plan. Each Easement shall be non-exclusive and shall be for the benefit of (a) the Property or Properties served by such Easement; (b) the Association and its members where so indicated; or (c) any governmental entity or public or private utility provider whose pipes, lines or other facilities are installed within any such Easement. Each Easement shall confer the right to the benefitted Property, person or entity to construct, operate, maintain, repair and replace such improvements and facilities within the Easement Area as may be reasonably necessary or appropriate for the purposes for which the Easement is established as stated on the Plan. Reference is made to Exhibit C listing some easements which apply on a lot by lot basis.

All work within each Easement Area shall be conducted in a reasonable and orderly manner, so as to minimize any disturbance to the Owners and occupants of the encumbered Property, and all excavations will be filled in and promptly returned to even grade without unreasonable delay.

6.02 Roadway Lots. Lots 80, 81, 82 and 83 are lots to be used for roadway and utility purposes. All easement rights affecting any such lot in favor of Property Owners and occupants shall cease and terminate at such time as said lot shall be dedicated to the County of Maui as a public roadway. THERE IS NO ASSURANCE THAT THE COUNTY OF MAUI WILL ACCEPT DEDICATION OF SAID ROAD LOTS AND SEWER LINES AND OTHER UTILITIES LOCATED WITHIN THE ROADS. THE ASSOCIATION IS INFORMED THAT DEDICATION MAY NOT OCCUR AND THEREFORE THE COST OF ROAD AND UTILITY MAINTENANCE HAS BEEN INCLUDED IN THE ASSOCIATION'S INITIAL COMMON EXPENSE BUDGET.

Lots 23 through 42 and 63 through 73, inclusive, shall not have the right to use Ala Koa Street for vehicular or pedestrian ingress or egress or for utilities unless and until approved by the State of Hawaii Department of Land and Natural Resources, the owner of the easement area.

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

6.04 Additional Easements and Dedications. Declarant hereby reserves for itself and its successors in interest the right to grant and create further easements within the roads and Common Areas of Kilohana Ridge within any Property for the purpose of establishing or relocating utility lines, telecommunications, water lines, sewer lines, effluent lines, as well as pumps, controls, access points, meters, poles, anchors, stays, wires transformers, underground equipment vaults or any other equipment necessary or appurtenant thereto, and for establishing any necessary drainage structures or areas; provided, however, that no such additional easement within any Property shall unreasonably interfere with the reasonable use and enjoyment of said Property by the owners and occupants thereof or cause any diminution in value thereof. Notwithstanding anything to the contrary herein, this easement shall not entitle Declarant or the easement holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Property, and any damage to a dwelling or landscaping resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of this easement shall not unreasonably interfere with development or use of any dwelling and, except in an emergency, entry onto any dwelling shall be made

only after reasonable notice to the Owner or occupant thereof.

Also the Declarant reserves the right to dedicate and transfer to the County of Maui or the Board or Department of Water Supply all or any portion of Lots 76, 77 and 78 or any easement interests therein, or to direct the Association to do so if the Association shall hold title, in which event the Association shall promptly execute and deliver the documents necessary to effectuate said transfer and dedication and shall cooperate in said matter.

7. DEVELOPMENT OPERATIONS.

7.01 Development Operations. All Owners and occupants of Properties are hereby notified that the Owners and occupants may be subject to noise, dust, emissions, traffic and other nuisances in connection with the development, construction and operation of roads, utilities and other infrastructure of Kilohana Ridge and of individual homes in the subdivision. The developer of said facilities and Declarant (and their respective officers, directors, employees and agents of each) shall not have any liability or responsibility for any such noise, dust, emissions and nuisances. Each Owner of a Property, by taking title to said Property, thereby waives all such rights and claims.

8. ADMINISTRATIVE PROVISIONS.

8.01 Enforcement. If any person or entity shall violate or attempt to violate any of the covenants herein contained, any rules or regulations of the Association or any ruling of the Architectural Design Committee, the Owner of any Property (or the Association or the Declarant in its discretion, but in any case without having any affirmative duty to do so) may commence legal action at law or in equity against such person or entity, either to prevent or abate such violation or to recover damages caused by such violation, or both. Such enforcement initiated by the Association must be approved by vote of the Board of Directors at any special or annual meeting. Said damages may expressly include a judgment for all of the plaintiff's costs of suit, including reasonable attorney's fees.

In addition, the Board of Directors may establish and administer a schedule of fines which may be assessed against any Property with respect to which a violation shall exist and shall remain uncured after 10 days notice of violation. Said fines shall be secured by a lien on the Property in the same manner as a lien for assessments under Section 5.03 above.

8.02 Resolution of Disputes Between Owners of Properties. If a dispute arises between Owners of Properties as to any matter relating to any terms, meaning, application or enforcement of this Declaration, said Owners may, by mutual agreement, refer the matter to the Board of Directors of the Association for nonbinding arbitration (except as otherwise provided in Section 4.04 relating to the finality of certain decisions by the Architectural Design Committee). The Board of Directors may conduct proceedings to hear and consider both sides of the dispute, in accordance with reasonable procedures to be established by the Board of Directors, and may decide

any such matter by majority vote of the Board members in attendance. Any decision in such matter shall be advisory only and shall not pre-empt or restrict either party's rights to pursue legal action in said matter. The Board may, in its discretion, for any reason, refuse to hear any matter referred to it under the terms of this paragraph or may determine, as a general rule, that it will not act in an arbitration capacity as authorized herein.

8.03 Duration of Covenants. These covenants shall be binding for a period of fifty (50) years from the date this instrument is recorded in the Bureau of Conveyances of the State of Hawaii. Thereafter, they shall automatically be extended without any documentation or any action of any person or the Association, for successive periods of ten (10) years each unless terminated at the end of said initial 50-year period or at the end of any such successive 10-year period by the affirmative vote or written election of Owners representing not less than 65% of all Properties in Kilohana Ridge, evidenced by an instrument reciting said vote or election, signed and sworn by the Owners of not less than three Properties, and recorded in the Bureau of Conveyances of the State of Hawaii.

8.04 Amendment of Covenants. These covenants may be amended or terminated at any time by the affirmative vote or the written consent of the Owners of not less than 65% of all Properties in Kilohana Ridge. Said amendment shall be effective upon the filing in the Bureau of Conveyances of the State of Hawaii of an instrument which shall (a) recite said amendment; (b) recite that the Owners of not less than 65% of all Properties in Kilohana Ridge voted for, or gave their written approval for, said amendment or termination; and (c) be signed and sworn by the Owners of not less than 3 Properties in Kilohana Ridge.

Notwithstanding the foregoing, Sections 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 5.04, 6.04, 7.01 and this Section 8.04 may not be amended in any event, or at any time, without Declarant's written consent until expiration or relinquishment of the Declarant's control of the Association as provided in Section 5.4 hereof or as otherwise set forth in this Section 8.04. Also, Sections 3.01 and 3.18 may not be amended as long as the Settlement Agreements shall remain effective and binding on the Properties affected thereby.

Notwithstanding the foregoing, the Declarant acting unilaterally may amend these covenants at any time within five years from the date these covenants are recorded in the Bureau of Conveyances of the State of Hawaii. Also, during said 5-year period no amendment by the Owners will be effective without the Declarant's written consent (unless before the end of said five years Declarant shall be dissolved, shall be declared bankrupt, or shall in its sole discretion elect to relinquish said approval right by written notice signed by Declarant and duly recorded in the State of Hawaii Bureau of Conveyances).

In addition, notwithstanding anything herein to the contrary, the Declarant may from time to time amend these covenants unilaterally without the consent of any Owner or mortgagee of any Property, for any of the following purposes:

- (a) to correct any drafting or typographical error;
- (b) to comply with (i) any applicable law, rule or regulation of the State of Hawaii or the County of Maui, (ii) any requirement or condition of any governmental agency or (iii) any governmental approval, permit or order affecting the subdivision; or
- (c) to qualify some or all of the Properties for financing through the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or any similar program to facilitate the financing of Properties through any mortgage market or general financing program.

The Declarant's rights reserved under this Section 8.04 may be released by Declarant in its discretion at any time upon Declarant's voluntary relinquishment of said rights by written release recorded in the Bureau of Conveyances of the State of Hawaii.

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

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

8.07 Notice of Sale or Transfer of Title. Upon the sale or transfer of title to any Property, the transferee shall promptly notify the Board of Directors of the Association in writing of the name of each new Owner of said Property and his or her mailing address and home and business phone numbers.

8.08 Records of Ownership and Notices. The Declarant, the Association and the Architectural Design Committee shall be entitled to rely conclusively on the records of ownership of the Properties provided to the Association pursuant to Section 8.07 and 2.07 above, for all purposes, including, but not limited to, names and addresses for all communications, notices, service of process, approvals, voting and consents, it being the obligation and burden of each Owner of each Property to ensure that the Declarant and the Association have ownership records which are accurate and up-to-date. The Declarant, the Association and the Architectural Design Committee may also conclusively rely, in the sole discretion of each, on the records of ownership and addresses of Owners of each Property as shown on the real property tax records of Maui County in any particular case.

Executed the day and year first above written.

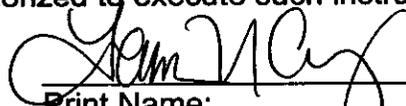
TOWNE BROWN LLC

By Towne Development Company of Hawaii, Inc.,
its Member, duly authorized,

By: 
Takeshi Matsukata, Its Vice President

STATE OF Hawaii)
COUNTY OF Mauai) SS:

On this 14th day of JULY, 2003, before me personally appeared Takeshi Matsukata, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.


Print Name: _____
Notary Public, State of _____
My commission expires: _____

Tamara Cabanilla-Aricayos
Expiration Date: December 10, 2004

EXHIBIT "A"

PARCEL FIRST:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5008 to Henry Waterhouse Trust Co., Ltd.) situate, lying and being at Kamaole (Kihei), District of Kula, Island and County of Maui, State of Hawaii, being LOT 8 and thus bounded and described:

Beginning at a pipe on the southwest corner of this lot, northwest corner of Lot 9, on the east side of 30 foot proposed road, the coordinates of which point referred to Government Survey Triangulation Station "KAMAOLE" being 7,718.01 feet south and 1,347.80 feet east and running by azimuths measured clockwise from true South:

1. 174° 54' 245.70 feet along a 30 foot proposed road to a pipe;
2. 245° 52' 1,650.40 feet along Lots 7 and 7-A to a pipe;
3. 354° 54' 245.70 feet along remainder of Grant 5008 to a pipe;
4. 65° 52' 1,650.40 feet along Lot 9 to the point of beginning and containing an area of 8.80 acres, more or less.

PARCEL SECOND:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5008 to Henry Waterhouse Trust Co., Ltd.) situate, lying and being at Kamaole (Kihei), District of Kula, Island and County of Maui, State of Hawaii, being LOT 7 and thus bounded and described:

Beginning at a pipe on a northwest corner of this lot, southwest corner of Lot 6, on the east side of a 30-ft. proposed road, the coordinates of which point referred to Government Survey Triangulation Station "KAMAOLE" being 7,228.56 feet south

and 1,304.12 feet east and running by azimuths measured clockwise from true South:

1. 245° 52' 1,650.40 feet along Lot 6 to a pipe;
2. 354° 54' 245.70 feet along remainder of Grant 5008, to a pipe;
3. 65° 52' 1,043.65 feet along Lot 8 to a pipe;
4. 155° 52' 20.00 feet along Lot 7 to a spike;
5. 65° 52' 20.00 feet along Lot 7 to a pipe;
6. 335° 52' 20.00 feet along Lot 7 to a pipe;
7. 65° 52' 586.65 feet along Lot 8 to a pipe;
8. 174° 54' 245.70 feet along a 30-ft. proposed road to a point of beginning and containing an area of 8.79 acres, more or less.

Together with a perpetual non-exclusive access and utility easement, as granted by Grant of Easement dated January 14, 1988, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21527 on Page 650; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein.

Said above Grant of Easement was assigned, by mesne assignments, to Kitahara Realty (Hawaii), Inc., a Hawaii corporation, by instrument dated May 31, 1988, recorded in the said Bureau of Conveyances in Liber 23288 on Page 600. Said easement being more particularly described as follows:

All of that certain parcel of land (being portion(s) of the Government Land of Kamaole) situate, lying and being at Kamaole, Wailuku (Kula), Island and County of Maui, State of Hawaii, being a perpetual non-exclusive access and utility easement, and thus bounded and described as per survey of Stanley T. Hasegawa, Land Surveyor, to-wit:

Beginning at the northwest corner of this easement and on the east side of South Kihei Road, the coordinates of said point of beginning referred to Government Survey Triangulation

Station "PUU O KALI" being 8,792.90 feet south and 19,929.79 feet west, thence running by azimuths measured clockwise from true South:

1. Along the remainder of the Government Land of Kamaole, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

305° 00' 33.96 feet;

2. 246° 53' 168.09 feet along the remainder of the Government Land of Kamaole;

3. 354° 54' 503.09 feet along Grant 5008 to Henry Waterhouse Trust Company, Limited;

4. 84° 54' 44.00 feet along the remainder of the Government Land of Kamaole;

5. 174° 54' 384.39 feet along the remainder of the Government Land of Kamaole;

6. Thence along the remainder of the Government Land of Kamaole, on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:

120° 53' 30" 48.55 feet;

7. 66° 53' 110.28 feet along the remainder of the Government Land of Kamaole;

8. Thence along the remainder of the Government Land of Kamaole on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

35° 00' 21.13 feet;

9. 183° 07' 111.48 feet along the east side of South Kihei Road to the point of beginning and containing an area of 32,016 square feet, more or less.

PARCEL THIRD:

In favor of parcels first and second, each as to an undivided 1/2 interest, as tenant in common in and to Lot 7-A, Well Site (being a portion of said Land Patent Grant No. 5008 to Henry Waterhouse Trust Company, Limited), at Kamaole (Kihei), District of Kula, Island and County of Maui, State of Hawaii, and thus bounded and described as follows:

Beginning at a pipe on the southwest corner of this lot, on the south boundary line of Lot 7, the azimuth and distance from the southwest corner of Lot 7 being 245° 52' 586.65 feet, and running by azimuths measured clockwise from true South:

1. 155° 52' 20.00 feet along Lot 7 to a pipe;
2. 245° 52' 20.00 feet along same to a spike;
3. 335° 52' 20.00 feet along same to a pipe;
4. 65° 52' 20.00 feet along Lot 8 to the point of beginning and containing an area of 0.01 acre, more or less.

SUBJECT, HOWEVER, to the following:

1. AS TO PARCEL SECOND: Waterline easement in favor of County of Maui, as contained in instrument recorded in Liber 12903 on Page 337, said easement being more particularly described as follows:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5008 to Henry Waterhouse Trust Company) situate, lying and being at Kamaole Homesteads, Kihei, District of Wailuku (Kula), Island and County of Maui, State of Hawaii, being WATERLINE EASEMENT, and thus bounded and described:

Said easement being 5.00 feet on the mauka (easterly) side and 10.00 feet wide on the makai (westerly) side of the following described line:

Beginning at a point on the northerly side of the above described parcel of land, 758.05 feet from the northwest corner thereof, the coordinates of said point of beginning

referred to Government Survey Triangulation Station "KAMAOLE" being 6,918.62 feet south and 1,995.92 feet east, and thence running by azimuths measured clockwise from true South:

1. 354° 54' 245.70 feet to the southerly boundary of the above described parcel of land, and containing an area of 3,686 square feet, more or less.

END OF EXHIBIT "A"

Tax Key: 3-9-004-076 (2) (PARCEL FIRST)
3-9-004-078 (2) (PARCEL SECOND)
3-9-004-077 (2) (PARCEL THIRD)

EXHIBIT "B"
**DESIGN STANDARDS
FOR
KILOHANA RIDGE**

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

(A) Use and Site Development Restrictions and Requirements

- (i) Land Use and Building Type
- (ii) Further Rezoning
- (iii) Utilities
- (iv) Individual Lot Plot Plans
- (v) Easements
- (vi) Grading
- (vii) Lot Drainage
- (viii) Temporary Structures and Surplus Materials
- (ix) Fire Hazard
- (x) Pavement and Play Areas
- (xi) Vehicles
- (xii) Vehicle Repair

(B) Architectural Standards

- (i) Architectural Character
- (ii) Buildable Area
- (iii) Building Footprint
- (iv) Finish Floor Elevation
- (v) Building Envelope
- (vi) Building Height
- (vii) Minimum Dwelling Size
- (viii) Garage
- (ix) Roof Materials, Pitch and Overhand
- (x) Building Surfaces
- (xi) Exterior Lighting
- (xii) Driveways
- (xiii) Air Conditioning System and Mechanical Equipment
- (xiv) Solar Energy and Heat Pumps
- (xv) Swimming Pools and Water Features
- (xvi) Refuse Storage
- (xvii) Antennas and Flagpoles
- (xviii) Mailboxes
- (xix) Exterior Walls/Other Materials/Color
- (xx) Fences, Walls, Hedges and Enclosures
- (xxi) Laundry Facilities
- (xxii) Signs

(C) Landscape Standards

- (i) Landscape Plans
- (ii) Required Landscaping
- (iii) Size of Plant Material
- (iv) Top Soil
- (v) Front Yard Grassing

(D) Construction Standards

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

- (v) Ground Termite Standards
 - (vi) Abandoned Construction
 - (vii) Utility Lines
- (E) Construction Requirements
- (i) Blasting
 - (ii) Construction Signs
 - (iii) Refuse Disposal Bins
 - (iv) Site Preparation
 - (v) Portable Toilets
 - (vi) Contractor's Acknowledgment
- (F) Approval Procedures and Requirements
- (i) Consultation Services: Approval of Owner's Architect
 - (ii) Architectural Controls
 - (iii) Procedures for Submitting Plans
 - (iv) Applicable Laws
 - (v) Performance of Work
- (G) Reservations and Limitations
- (i) Variance and Amendments
 - (ii) Delegation of Authority
 - (iii) Nonliability
 - (iv) Consolidation and Subdivision
- (H) Consolidation and Subdivision

Introduction.

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

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

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

(A) Use and Site Development Restrictions and Requirements

Each owner and occupant of a Lot in the Subdivision shall at all times comply with all applicable laws, and with all of the provisions of the Declaration. Each owner and occupant of a lot in the Subdivision shall be responsible for insuring that the architect, engineer, general contractor and all subcontractors also comply with all applicable laws and with all of the provisions of the Declaration. In addition, each owner and occupant shall at all times comply with and observe each of the following provisions; provided, however, that in the event of any conflict between or among the provisions set forth below, the provisions of the Declaration and applicable laws, codes or ordinances, the most restrictive provisions or law, code or ordinance shall control.

(i) Land Use and Building Type

Each Lot shall be used only for single-family residential purposes (as specified in the R-2 Residential District of Chapter 19.08, Maui County Code), regardless of whether the applicable zoning or laws permit a more intensive or different use. No Lot or residence or other building or portion thereof, constructed on any Lot may:

- (a) be leased or rented by the owner thereof for any term of less than six (6) consecutive months, it being the intent of this provision that any tenant of the owner must be obligated to lease or rent the owner's Lot or residence or other building thereon for a term of not less than six (6) consecutive months, without any option or right to cancel such lease before the expiration of said 6-month period; or
- (b) be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so-called "vacation license", "travel club membership" or "time-interval ownership" arrangement.

The term "time sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Lot or residence or other building upon the Lot rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise.

Promptly upon the request of Declarant, Board or the Association, each owner shall submit true and correct copies of all leases, rental agreements and documents pertaining to the occupancy or the owner's Lot or residence or other building thereon, so as to enable Declarant, Board and the Association to verify whether or not such owner is complying with the foregoing provisions.

No major building, structure or other improvement shall be placed, altered or permitted to remain on any Lot other than one single-family dwelling and a private garage.

(ii) Further Subdivision or Rezoning

No residential Lot shall be rezoned, consolidated with another lot or subdivided without Declarant's Committee's and Board's consent.

(iii) Utilities

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

(iv) Individual Lot Plot Plans

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

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

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

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

(v) Easements

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

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

(vi) Grading

The grade elevation of certain Lots is restricted by the Settlement Agreement. See Section 3.18. The owner shall accept the condition of his or her Lot in "as is" condition. All subsequent site work performed by the owner shall be in strict compliance with plans as approved by the Committee.

(vii) Lot Drainage

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

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

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

- (b) Certain Lots must accept and/or discharge drainage at specific locations along the Lot boundaries. A master drainage plan designating these specific drainage locations will be available to the owners for inspection. In addition, the Plot Plans for the Lots indicate the drainage locations.

(viii) Temporary Structures and Surplus Materials

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

(ix) Fire Hazard

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

(x) Pavement and Play Areas

The aggregate surface area of all impervious paved surfaces, including swimming pools, on a Lot shall not exceed fifty percent (50%) of the land area of the Lot. The driveway portion of a flag lot shall not be part of the aggregate area of the impervious surface. Areas covered by building structures are not considered part of the pavement and play areas. Paved play areas shall not be permitted within setback areas, and all play areas must be adequately screened by landscaping or other acceptable architectural means. Sports courts, including, without limitation, tennis, basketball and racquetball courts are not permitted.

(xi) Vehicles, Trailers and Boats

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

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

or roadway and shall not be parked on any roadway.

(xii) Vehicle Repair

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

(B) Architectural Standards

(i) Architectural Character

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

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

(ii) Buildable Area

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

(iii) Finished Floor Elevations.

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

(a) Maximum finished pad elevations shall be limited as shown in Section 3.18 of this Declaration on the individual Plot Plans for each Lot. Cuts of greater than 3'-0" or fills of greater than 2'-0" shall require a plan prepared by a civil engineer duly registered as such by the State of Hawaii.

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

preliminary design submittal.

(iv) Building Height

The plot plans for each Lot will indicate the maximum roof elevation, above sea level for all structures placed or constructed upon the Lot. Such roof elevation shall be measured at the highest point of a structure's roof (but exclusive of the structure's chimney). No structure shall be placed or constructed upon any Lot in excess of the building envelope shown on the Plot Plan for the Lot. No chimney shall extend more than four (4) feet above the highest point of the roof of the dwelling. See Section 3.18 of this Declaration for specific limitations.

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

Except as otherwise limited in Section 3.18, on lots where the maximum of two story residences are permitted, the building height at the highest point on the exterior roof shall not exceed 30'-0" in vertical height from original grade at that specific point on the lot, unless otherwise designated as being lower on the individual plot plan.

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

(v) Minimum Dwelling Size

Each main dwelling constructed upon a Lot, exclusive of garages and attached or detached lanai(s) shall have a minimum of one thousand four hundred (1,400) square feet of enclosed habitable living area for any single story dwelling, and eight hundred square feet (800) of enclosed habitable ground floor living area for any two story with a total minimum square footage of eighteen hundred (1,800) square feet.

(vi) Garage

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

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

located within the porte-cochere.

(vii) Roof Materials, Pitch and Overhang

(a) **Roof Materials**

Roofs shall be concrete roof tiles or other materials of a color, style and manufacture, all to be approved by the Committee. A sample shall be submitted for Committee approval as to color, style and texture. This shall be the only approved roofing material.

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

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

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

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

(b) **Roof Pitch**

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

(c) **Flat Roofs**

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

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

(d) **Overhangs**

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

(viii) Building Surfaces

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

- Projections and recesses to provide shadows and depth.

- Lanais
- Sunshading devices such as trellises
- Staggering of wall planes
- Articulated doors, windows and wall openings

Any architectural element used shall be approved by the Committee.

(ix) Exterior Lighting

There shall be no exterior lighting of any type, either installed or maintained, the light source of which is visible from neighboring property, except as permitted by the Committee. Security lights activated by movement may be installed with approval of the Committee.

Colored lights (non-white), fluorescent, high intensity discharge exterior lights, flashing, exposed bulbs and flood lamps on roof eaves are not permitted.

(x) Driveways

(a) Driveway aprons shall be paved. Pavement material shall be approved by the Committee. Recommended materials are asphaltic concrete, textured concrete, brick or concrete pavers, bomanite or grasscrete. Driveways with a slope of twelve percent (12%) or more shall be paved with concrete.

(b) Driveways and drop curbs shall be constructed by the owner following County standards prior to any other work being done, and shall be used during construction to prevent damage to existing concrete gutters, curbs, sidewalks, sprinkler systems and underground utility lines. Any damage caused by the owner or the owner's contractors, employees or agents shall be the responsibility of the owner, and shall be immediately and completely repaired to the original condition.

(xi) Air Conditioning System and Mechanical Equipment

Prior to the installation of an air-conditioning system, swimming pool filter pump unit(s) or other mechanical equipment, the owner shall secure the written approval of the Committee as to the location and type of system. The Committee makes no representations or warranties with respect to the noise level of such equipment as perceived by the neighboring properties.

(xii) Energy Saving Requirements

Kilohana Ridge is participating in the Energy Star program sponsored by Maui Electric Co. Ltd. to promote energy savings. Any person building or remodeling a home in Kilohana Ridge shall comply with the "Hawaii Energy Star Equivalency Program Summary" attached to these Design Standards as Attachment 1.

The design of all installations and equipment shall require the prior written approval of the Committee and be part of the design submittals.

(xiii) Swimming Pools and Water Features

Swimming pools and water features design shall be submitted as part of the preliminary and final plans. No more than fifty percent (50%) of the swimming pool shall be allowed beyond the buildable area. Swimming pools and swimming pool decks shall have a minimum ten foot setback from property lines, except where stated or delineated on the individual plot plans or as otherwise permitted by the Committee. Swimming pool equipment and housing shall be enclosed and contained within the buildable area. Water features, its equipment and housing shall be contained within the buildable or as otherwise permitted by the Committee.

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

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

(xiv) Refuse Storage

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

(xv) Antennas

No visible antennas, television, radio or otherwise are allowed. Miniature satellite dishes not to exceed 24" in diameter may be permitted only after specific written approval of the Committee.

(xvi) Mailboxes

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

(xvii) Exterior Walls/Other Materials/Color

All materials shall be either stucco, stone, cast concrete, board and batten, or shiplap siding. All wood siding shall be clear redwood, cedar , douglas fir, or an approved cement fibrous material such as "Hardie Plank" suitable for a stain grade quality finish or better. Samples of the siding shall be submitted as part

of the preliminary plan application. No vinyl, pre-finished metal siding, plain surfaced or grooved plywood panels, composite or presswood siding are permitted.

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

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

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

(viii) Fences, Walls, Hedges and Enclosures

Fences, walls hedges and enclosures, located along the street right-of-way, with the exception of the wall and fence improvements installed as part of the original subdivision construction by the developer, with a height of one and one-half (1 1/2) feet or less shall be setback a minimum of three (3) feet from the abutting property line.

No fencing, or walls are permitted in the front yards, with the exception of the Declarant's project perimeter fencing or Declarant's entry wall fencing, and / or common entry wall fencing.

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

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

All walls shall be constructed of lava rock, blue rock, concrete or concrete block. Wall finishes shall be lava rock veneer, blue rock veneer or stucco. No exposed concrete or concrete block walls shall be permitted, except for split face surfaces approved by the Committee.

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

Exposed cement mortar for rock walls shall be of standard gray or charcoal color. No white or other coloring agents shall be applied or mixed with the

exposed cement mortar. If a wall is located at the street frontage or rear yard frontage, the area between the wall and the property line shall be attractively landscape irrigated and maintained.

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

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

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

(xix) Laundry Facilities

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

(xx) Signs

No signs whatsoever shall be erected or maintained upon any lot; except:

- (a) Such signs as may be required by legal proceedings.
- (b) Such signs as Declarant may erect or maintain for a lot prior to sale and conveyance.
- (c) Such signs as required for house numbers and name signs in accordance with item xvii (mailbox) above, provided that such signs shall not exceed one square foot maximum
- (d) Real Estate "for sale" signs on the lot being sold.
- (e) Any sign which does not comply with the above must obtain specific written approval of the Committee and the Board.

(C) (i) Landscape Standards

Landscape plans are required and must be approved in writing by the Committee

(ii) Required Landscaping

Each lot owner shall be responsible to landscape the front and rear yards. Basic front yard landscaping shall be initially provided by the Declarant. The Owner of each Property shall maintain all landscaping in neat, attractive, irrigated and trimmed condition.

(iii) Top Soil

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

(iv) Yard Grassing

The area of a Lot bounded by the street frontage, side boundaries and a parallel line three feet into the lot from the street frontage shall be grassed.

(D) Construction Standards

(i) Prior Notice to Committee

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

(ii) Performance: General Contractor

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

(iii) Materials and Quality

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

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

(iv) Foundations

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

(v) Ground Termite Standards

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

(b) Treatment shall be guaranteed in writing by said company against termite infestation for a period of three (3) years. The guarantee shall include annual inspection and re-treatment of infested areas. A copy of this guarantee shall be delivered to the Committee.

- (c) Chemicals used outside of the dwelling or in accessible spaces under the dwelling shall be applied in a safe manner to mitigate exposure to humans, plants and pets.

- (vi) Abandoned Construction

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

- (vii) Utility Lines

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

- (E) Construction Requirements

- (i) Blasting

All blasting must be performed by a licensed contractor. Twenty-four hours prior written notice must be given to the Committee and all owners and occupants of property within a radius of five hundred (500) feet from the property line of the Lot on which the blasting is to occur. This section does not apply to the initial construction of the subdivision by the Declarant.

- (ii) Construction Signs

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

- (iii) Refuse Disposal Bins

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

- (iv) Site Preparation

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

- (v) Portable Toilets

A portable toilet in fully operating condition must be maintained on the construction site at all times during construction and serviced in accordance with

applicable State Department of Health and County Sanitation standards.

(vi) Contractor's Acknowledgment

Each owner shall be required to have his or her contractor contact the Committee prior to commencing any construction or work upon the owner's Lot. The contractor shall be provided with a copy of the applicable design and construction requirements and shall be required, prior to commencing any construction or work, to acknowledge in writing the contractor's receipt of, agreement to comply with, such requirements. The owner's contractor may be required to place a refundable cash bond to the association to cover potential damages to the Association's common areas.

(F) Approvals, Procedures and Requirements

(i) Consultation Services: Approval of Owner's Architect

Before the preparation of preliminary drawings, the owner's architect shall arrange for consultation with a representative of the Committee for suggestions as to the location and design of the improvements to be constructed on, and the landscaping of, the Lot, and assistance in interpretation of the requirements imposed under this Declaration and the master Declaration. The owner will use a reputable architect duly registered in the State of Hawaii. The architect's general qualifications will be subject to the prior approval of the Committee and the past performance and credentials of the architect and the architect's general concept for the residence will be taken into consideration in evaluating the acceptability of the architect. (The architect so approved by the Committee is herein referred to as the "Approved Architect"). The Committee's written approval of the architect should be obtained by the owner before the architect proceeds to prepare any working drawings.

The Committee's acceptance of the "Approved Architect" in no way constitutes any assumption of liability or responsibility for the Architect's work by the Declarant, Board, Association or Committee.

(ii) Architectural Controls

No structure or other improvement shall be erected, placed or altered on any Lot until (a) the preliminary and final construction plans and specifications referred to in subparagraph (iii) below, prepared under the immediate and direct supervision and stamped by the Approved Architect, have been submitted to and approved by the Committee, (b) the landscape plans for the Lot have been submitted to and approved by the Committee, and (c) the owner submits to the Committee a written acknowledgment (the form of which shall be prepared or approved by the Committee) from both the owner and the Owner's general contractor that they have received a copy of, and agree to abide by, this Declaration. It is recommended that the approvals described above be obtained before any materials are ordered or purchased for such structure or improvement on the Lot.

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

scheme prior to the commencement of such work.

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

- (a) The work of construction or alteration shown on the plans and specifications and other materials submitted, fail to comply with the conditions, covenants and restrictions set forth herein or in the Declaration or in any other applicable document which is administered by the Committee.
- (b) The improvements shown on the plans and specifications and other materials submitted are deemed unsatisfactory in location, design, exterior design or color, or would not be in harmony with the Subdivision.
- (c) The proposed work does not comply with the Declaration, these Design Standards or spirit and intent of all other relevant documents as applied by the Committee.

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

(iii) Procedures for Submitting Plans

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

- (a) Preliminary Plans (3 bound sets)

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

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

may be requested by the Committee.

- 5) Calculations on building square footage, percentage of buildable area covered, floor area ratio, cut and fill volumes, any other calculations which may be required by the Committee.
- 6) Topographic survey of the existing contours at two foot intervals.
- 7) Samples of proposed exterior finishes, if known.
- 8) Proposed construction schedule.
- 9) Variance requests, in writing, for any nonconforming portion of the plan. Any variance requested shall be discussed with the Committee prior to submittal of the preliminary plans.
- 10) List of consultants including, but not limited to, the architect, engineers and landscape architect.
- 11) A Design Review fee in an amount designated by the Home Owners Association at a regularly scheduled meeting with a simple majority vote.

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

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

(b) Final Plans (3 bound sets)

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

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

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

(iv) Applicable Laws

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

(v) Performance of Work

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

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

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

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

(G) Reservations and Limitations

(i) Variances and Amendments

The Committee shall have the right at any time in its sole discretion to amend, modify, waive, grant variances to or not enforce any of the provisions and requirements herein specified with respect to any Lot or Lots without any liability whatsoever to the owners or occupants of the lot to which the waiver, variance or non-enforcement applies, or to the owners or occupants of any other lots, or to any other person, and without impairing or otherwise affecting the application or enforcement of such requirements with respect to all other lots. See Section 4.06 of the Declaration.

(ii) Delegation of Authority

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

(iii) Nonliability

No review or approval by the Committee of any item submitted to the Committee pursuant to this Declaration or any recorded instrument shall in any manner constitute the Committee's (or any Committee member's), Declarant's, the Board's or the Association's representation, warranty or agreement that such item (1) has been prepared free of defects or is of good workmanship or design, or will result in improvements which are readily marketable or free of design or construction defects, or (2) complies with any or all applicable laws (including building code requirements), or (3) will result in any government entity's or any

other person's approval of the same. Neither Declarant nor the Committee nor any director, officer, employee, agent or member of Declarant or the Committee shall be liable to the Association, or to any owner, or to any other person, for any damage, loss or prejudice suffered or claimed on account of (i) the approval or rejection of, or the failure to approve or reject any plans, drawings and specifications or other request submitted by an owner pursuant to this Declaration whether or not defective, and whether or not in compliance with the provisions and requirements of this Declaration, (ii) the construction of any improvement or performance of any work, whether or not such construction or performance complies with this Declaration, or the terms of any approval of the Committee, (iii) the development or manner of development of any other lot or land within the Subdivision, (iv) the erroneous execution of an estoppel certificate, (v) the failure of any plans, drawings, specifications or other item approved by the Committee to comply with the provisions and requirements of this Declaration or applicable laws, regulations, ordinances or codes, (vi) the Committee's failure to require the owner's or owner's architect or contractor to comply with the provisions and requirements of this Declaration, or (vii) any other matter, decision, act or omission; provided that such director, officer, employee, agent or member shall have acted in the belief that such actions or omissions were in the best interests of Kilohana Ridge (or the Declarant, in any case where action is taken by Declarant acting as the Committee).

(H) Consolidation and Subdivision

No Lot may be consolidated with any other lot in the Subdivision, and no Lot may be subdivided, without in each instance the prior written approval of Declarant, Committee and the Board, which approval may be withheld in Declarant's, Committee's and the Board's sole and absolute discretion. Any consolidation or subdivision made without such approval shall be null and void, and in addition to the remedies provided elsewhere in this Declaration for the owner's breach, the Board and the Committee shall, in administering or exercising its rights under this Declaration, be entitled to disregard such consolidation or subdivision, and shall treat the Lot in question as if it has not been consolidated or subdivided.

Prior to the consolidation or re-subdivision of any lots(s), a revised plot plan is required. The owner shall request for a preliminary revised plot plan from the Declarant prior to the request for consolidation or re-subdivision being submitted for approval to the Declarant, Committee and Board.

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

END OF EXHIBIT "B"



ATTACHMENT I

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF AIR AND RADIATION

Climate Protection Division
U.S. EPA 6202J
Washington, DC 20460

April 11, 2000

To: Hawaii Electric Company (HECO)
Maui Electric Company (MECO)
Hawaii Electric Light Company (HELCO)

From: Sam Rashkin, EPA ENERGY STAR Homes Program
Adam Bean, ICF Consulting

Subject: ENERGY STAR Homes Program requirements for homes participating in the solar domestic water heating programs of Hawaii Electric Company (HECO), Maui Electric Company (MECO), and Hawaii Electric Light Company (HELCO)

We have reviewed HECO, MECO, and HELCO's solar water heating programs to determine if the programs were ENERGY STAR Homes equivalent. Two options were evaluated; homes without air conditioning, and homes with air conditioning. Both options require post-installation inspection, a critical component to the ENERGY STAR Homes Program.

Homes without air conditioning

ICF found that homes without air conditioning participating in the solar domestic water heating programs of HECO, MECO, and HELCO also comply with the requirements of the ENERGY STAR Homes Program. As stated above a post-installation inspection is required.

Homes with air conditioning

New homes with air conditioning that are built to the *Hawaii Model Energy Code – Low Rise Residential Requirements for Air Conditioned Homes* can also be ENERGY STAR compliant if the additional measures are implemented from one of the following option packages below:

Option 1 (Homes with Standard Windows and Ducts in Unconditioned Space):

1. Use double pane windows with total unit solar heat gain coefficient (SHGC) less than or equal to 0.55 (e.g. clear, low-e, or tinted). Total window area must be less than 18% of the conditioned floor area, and less than 62.5% of the total window area can be oriented on the south and west sides combined.
2. Use a programmable thermostat.
3. Use a minimum 12 SEER air conditioner.
4. Have duct unions and joints thoroughly and completely sealed with mastic and fibrous tape and verify with a visual inspection.

Option 2 (Homes with Standard Windows and Ducts in Conditioned Space):

ATTACHMENT I

1. Use double pane windows with total unit solar heat gain coefficient (SHGC) less than or equal to 0.55 (e.g. clear, low-e, or tinted). Total window area must be less than 22% of the conditioned floor area, and less than 62.5% of the total window area can be oriented on the south and west sides combined.
2. Use a programmable thermostat.
3. Use a minimum 12 SEER air conditioner.

Option 3 (Homes with High Performance Windows and Ducts in Unconditioned Space):

1. Use double pane windows with total unit solar heat gain coefficient (SHGC) less than or equal to 0.40 (e.g. low-e, or tinted). Total window area must be less than 25% of the conditioned floor area, and less than 62.5% of the total window area can be oriented on the south and west sides combined.
2. Use a programmable thermostat.
3. Use a minimum 12 SEER air conditioner.
4. Have duct unions and joints thoroughly and completely sealed with mastic and fibrous tape and verify with a visual inspection.

Signed:



Sam Rashkin
ENERGY STAR Homes Manager

EXHIBIT "C"

Schedule of Easements and Restrictions

This schedule lists those matters affecting each lot which may be specific to that lot and may not affect others. The following schedule is not exclusive or comprehensive. There may be additional matters that affect a particular lot not noted on this schedule. As stated in the project documents and the deed to each lot, the developer has reserved the right to amend existing easements and establish additional easements as needed, before and after closing of lots sales. Lot areas are approximate and may change on the final plan.

<u>Lot No.</u>	<u>Approximate Lot Area (as shown on Plan)</u>	<u>Specific Easements and Restrictions Affecting Lot</u>
1	7,672 square feet	Limited access on Wela Street and Road Lot 80 Special height and setback requirements, per Section 3.18 of Declaration Encroachment Agreement
2	7,542 square feet	Easement L for drainage purposes Special height and setback requirements, per Section 3.18 of Declaration
3	7,538 square feet	Easement M for drainage purposes Special height and setback requirements, per Section 3.18 of Declaration
4	7,538 square feet	Easement N for drainage purposes Special height and setback requirements, per Section 3.18 of Declaration
5	7,537 square feet	Special height and setback requirements, per Section 3.18 of Declaration
6	7,535 square feet	Special height and setback requirements, per Section 3.18 of Declaration
7	7,533 square feet	Special height and setback requirements, per Section 3.18 of Declaration
8	7,531 square feet	Easement P for drainage purposes Special height and setback requirements, per Section 3.18 of Declaration
9	7,563 square feet	Special height and setback requirements, per Section 3.18 of Declaration

Lot No.	Approximate Lot Area (as shown on Plan)	Specific Easements and Restrictions Affecting Lot
10	7,979 square feet	Easement H for waterline purposes Special height and setback requirements, per Section 3.18 of Declaration
11	7,505 square feet	Special height and setback requirements, per Section 3.18 of Declaration
12	7,503 square feet	Special height and setback requirements, per Section 3.18 of Declaration
13	7,502 square feet	Special height and setback requirements, per Section 3.18 of Declaration
14	7,501 square feet	Special height and setback requirements, per Section 3.18 of Declaration
15	7,502 square feet	Special height and setback requirements, per Section 3.18 of Declaration
16	7,501 square feet	Special height and setback requirements, per Section 3.18 of Declaration Encroachment Agreement
17	7,502 square feet	Special height and setback requirements, per Section 3.18 of Declaration Encroachment Agreement
18	7,794 square feet	Special height and setback requirements, per Section 3.18 of Declaration
19	7,923 square feet	Special height and setback requirements, per Section 3.18 of Declaration
20	8,698 square feet	Easement A for waterline purposes 15 foot rear yard setback Special height requirement per Section 3.18 of Declaration
21	8,355 square feet	15 foot rear yard setback Special height requirement per Section 3.18 of Declaration
22	8,247 square feet	Special height requirement per Section 3.18 of Declaration
23	8,546 square feet	Special height requirement per Section 3.18 of Declaration Ala Koa Street restriction per Section 6.02 of Declaration
24	10,989 square feet	Special height requirement per Section 3.18 of Declaration Easement B for drainage purposes Ala Koa Street restriction per Section 6.02 of Declaration

Lot No.	Approximate Lot Area (as shown on Plan)	Specific Easements and Restrictions Affecting Lot
25	8,024 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
26	8,095 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
27	8,323 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
28	8,079 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
29	7,511 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
30	7,511 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
31	7,511 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
32	7,845 square feet	Easement K for waterline purposes Ala Koa Street restriction per Section 6.02 of Declaration
33	7,621 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
34	7,530 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
35	7,530 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
36	7,530 square feet	Ala Koa Street restriction per Section 6.02 of Declaration Easement C for drainage purposes
37	7,630 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
38	7,691 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
39	8,432 square feet	Ala Koa Street restriction per Section 6.02 of Declaration
40	9,444 square feet	Ala Koa Street restriction per Section 6.02 of Declaration Easement D for drainage purposes Limited access on any future road on westerly boundary
41	8,120 square feet	Ala Koa Street restriction per Section 6.02 of Declaration Easement E for drainage purposes Limited access on any future road on westerly boundary
42	8,391 square feet	Ala Koa Street restriction per Section 6.02 of Declaration Easement E for drainage purposes Limited access on any future road on westerly boundary
43	8,382 square feet	Easement F for drainage purposes Limited access on any future road on westerly boundary

Lot No.	Approximate Lot Area (as shown on Plan)	Specific Easements and Restrictions Affecting Lot
44	8,261 square feet	Easements E-8 and E-9 for electrical purposes Easement F for drainage purposes Limited access on any future road on westerly boundary
45	7,885 square feet	
46	7,616 square feet	
47	9,056 square feet	Easement E-1 for electrical purposes Easement G for drainage purposes
48	7,718 square feet	
49	7,718 square feet	Easement E-10 for electrical purposes
50	7,718 square feet	
51	7,595 square feet	
52	7,825 square feet	Easement J for waterline purposes
53	7,662 square feet	
54	7,662 square feet	Easement E-2 for electrical purposes
55	7,662 square feet	
56	8,199 square feet	Easements E-11 and E-13 for electrical purposes
57	8,962 square feet	
58	8,890 square feet	Easement E-3 for electrical purposes
59	8,933 square feet	
60	7,942 square feet	Special height requirements per Section 3.18 of the Declaration
61	7,988 square feet	Easement E-7 for electrical purposes
62	7,970 square feet	
63	8,373 square feet	Ala Koa Street restriction per Section 6.02 of the Declaration
64	8,028 square feet	Easements E-13 and E-14 for electrical purposes Ala Koa Street restriction per Section 6.02 of the Declaration
65	7,695 square feet	Ala Koa Street restriction per Section 6.02 of the Declaration Easement E-6 for electrical purposes
66	7,695 square feet	Ala Koa Street restriction per Section 6.02 of the Declaration

<u>Lot No.</u>	<u>Approximate Lot Area (as shown on Plan)</u>	<u>Specific Easements and Restrictions Affecting Lot</u>
67	7,886 square feet	Easement J for waterline purposes Ala Koa Street restriction per Section 6.02 of the Declaration
68	7,543 square feet	Ala Koa Street restriction per Section 6.02 of the Declaration
69	7,729 square feet	Ala Koa Street restriction per Section 6.02 of the Declaration
70	7,729 square feet	Easement E-5 for electrical purposes Ala Koa Street restriction per Section 6.02 of the Declaration
71	8,608 square feet	Easement E-12 for electrical purposes Ala Koa Street restriction per Section 6.02 of the Declaration
72	8,049 square feet	Ala Koa Street restriction per Section 6.02 of the Declaration Easement G for drainage purposes
73	8,088 square feet	Ala Koa Street restriction per Section 6.02 of the Declaration Easement E-4 for electrical purposes

End of Exhibit "C"