

**REVISED AUGUST 11, 2022**

**EXHIBIT C**

**KEALAKEKUA BAY ESTATES**

**DESIGN REQUIREMENTS**

The following design and construction requirements (the "Design Requirements") are hereby established and adopted by the Kealakekua Bay Estates Design Committee (the "Design Committee") pursuant to Section 5.04 of the Declaration of Covenants, Conditions and Restrictions for Kealakekua Bay Estates dated December 27, 1991, as the same may be amended from time to time (the "Declaration").

Except as otherwise specifically provided herein, the terms used in these Design Requirements shall have the meanings given to them in the Declaration.

The use of each Lot in the Kealakekua Bay Estates and the rights of each Owner of a Lot in the Kealakekua Bay Estates shall be subject to these Design Requirements and the Declaration.

A. GENERAL PROVISIONS

(1) Design Committee Approval Required. Except as otherwise provided in the Declaration, no new Improvement may be constructed nor may any existing Improvement be altered on any Lot, except in accordance with plans, specifications, topographic maps and other materials (the "plans") submitted to and approved by the Design Committee, and in accordance with these Design Requirements.

(2) Public Regulations. Each Lot Owner is responsible for being informed of and complying with the appropriate federal, state and county laws, rules, regulations, codes and ordinances that are applicable to the Owner's property. If a standard set forth herein differs from standards established by the various regulating agencies, the stricter standard shall apply.

(3) Land Use and Building type. All Owners of Lots in the Kealakekua Bay Estates shall comply with the restrictions and construction standards contained in the Declaration and these Design Requirements.

(4) Variances. The Design Committee may grant variances from the Declaration and/or these Design Requirements as to any one or more individual Lots pursuant to Section 5.06 of the Declaration.

(5) Construction Noise. **No loud noise due to construction activity is permitted except from 7am – 5 pm Monday-Friday and from 8 am – 4 pm on Saturday. Sundays and holidays are quiet days.**

## B. SITE IMPROVEMENT STANDARDS

(1) Utilities. Except as otherwise provided in the Declaration, all utilities within a Lot shall be placed underground. All utilities between the service poles installed by Declarant at or along road rights-of-way and a Lot shall also be underground. Electric meters and panels containing such meters, if located at the front boundary of a Lot, be approved by Design Committee as to their location, design and materials.

(2) Sewage Disposal. No outside toilet shall be constructed on any Lot. All plumbing fixtures, toilets or sewage disposal systems shall be connected to a septic tank, or other sewage system approved by the appropriate governmental authorities pursuant to Section 3.23 (f) of the Declaration. In no instance will a cesspool be allowed at Kealakekua Bay Estates.

(3) Propane Gas. If a Lot Owner utilizes propane gas in addition to the available electrical service, the gas tank shall either be buried below ground or screened in a manner approved by the Design Committee pursuant to Section 3.23 (g) of the Declaration.

(4) Drainage. No Owner shall construct or permit to be constructed on any Lot any Improvement which will create a problem of flooding, erosion, or interference with natural water flow or original runoff pattern damaging to such Lot, the Common Areas, including but not limited to, the Floodway, or the pedestrian right of way, or adjacent properties, nor shall any Owner fail to reasonably act so as to minimize runoff damage or interference with the natural flow of storm waters. Each Owner shall provide for the installation of necessary culverts and drainage facilities upon the Owner's Lot and for keeping the culverts and drainage facilities in good repair. Each Owner shall keep all the drainage facilities and culverts so installed on the Owner's Lot, free and unobstructed.

(5) Required Setbacks. The required front yard setbacks shall be fifty (50) feet from the front boundary, and the side and rear yard setbacks shall be (30) feet from the respective boundaries of each Lot. In the case of flag Lots, thirty-five (35) foot front yard setbacks and thirty (30) foot side and rear yard setbacks shall be required.

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

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

(6) Building Height. The maximum building height for any building, structure or other Improvement (except landscaping) constructed or placed on a Lot, shall be no greater than eighteen (18) feet above the Recorded High Point of any Lot, which Recorded High Point shall be established pursuant to and in accordance with

paragraph (k) of this Section. Chimneys may exceed this height limitation by no more than 2 feet.

(7) Site Grading. **Grading shall be kept to a minimum and shall be blended with natural contours of the Lot.** Cuts or Fills in excess of thirty-six (36) inches are Improvements, which require approval by the Design Committee. No grading or Filling shall affect an adjacent Lot without the consent of the Owner of such Lot. All excavated material not used as Fill elsewhere on a Lot must within six (6) months be

removed from the Lot. Where the proposed grading on any Lot requires a permit from the County of Hawaii or a conservation plan approved by Soil and Water Conservation District, a copy of the permit or approval shall be delivered to the Design Committee **prior to the commencement** of any grading work or Improvement on the Lot. Each Owner shall control the emission of dust and other airborne particles while performing any grading, grubbing or Fill work on any Lot, so as to minimize the inconvenience and annoyance to other Lot owners. Each owner shall also provide erosion and mud control measures as necessary to prevent silt or mud from being washed or tracked from the property.

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

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

### C. ARCHITECTURAL STANDARDS

- (1) Plans. Plans, conforming to the requirements of Section D herein, shall be submitted to the Design Committee for review and approval, prior to the construction, alteration, landscaping or grading of any Improvement on a Lot.
- (2) Geodesic Domes. Geodesic domes and structures which incorporate geodesic domes in their external design shall be prohibited.
- (3) Materials. The materials used for structures shall be new and of a quality consistently associated with that used in quality buildings. All building materials shall be installed in a neat and workmanlike manner, consistent with generally accepted construction practices. No used buildings shall be placed on any Lot, nor shall any used lumber or materials be a part of the construction of any Improvement. Notwithstanding the generality of the foregoing, however, aged materials may be used in the construction of Improvements to achieve a desired aesthetic effect with the approval of the Design Committee.

- (4) Exterior Dwelling Walls. Exterior surfaces will be generally of natural materials that blend and are compatible with the natural landscape. Stucco or traditional wood siding is to be the predominant exterior surfaces. Exterior wall finishes permitted shall include wood siding (tongue and groove siding, and shiplap siding), cement plaster (stucco) finish, moss rock wall, or other exterior wall finishes or equivalent texture and character that the Design Committee approves. Siding without any color finish, masonite or hardboard panels with battens, vinyl siding, and exposed concrete block (including split block and textured or scored block) are prohibited. All projections from a Dwelling or other Improvement including, but not limited to, chimney flues, vents, gutters, downspouts, utility boxes, porches, railings, and exterior stairways shall match the color of the surfaces from which they project, or shall be of another approved color.
- (5) Roofs. Roofs shall be of wood shake, ceramic or concrete tile, slate, high relief fiberglass reinforced composition shingle, architectural copper or such other materials specifically allowed by the Design Committee. Corrugated metal and metal roofs with reflective finishes are specifically prohibited.
- (6) Solar Heating Systems – Comply with County and Hawaii state guidelines
- (7) **Glare Prevention.** No highly reflective finish, other than glass (which, however, may not be mirrored), shall be used on exterior surfaces, including without limitation, roofs, exterior walls, retaining walls, doors, **trim fences**, pipes, permanent outdoor equipment, mailboxes and newspaper tubes.
- (8) **Satellite Dishes.** **Satellite dishes for the reception of radio and/or television signals shall be permitted per Federal regulations.**
- (9) **Fences.** **Fences, not more than seventy-two (72) inches in height may be placed in the setback areas. Fences should be designed to blend with the dwelling, landscaping and other improvements and must not have a highly reflective finish. All fences require prior written approval of the Design Committee.**

- (10) Chimneys. Chimneys are permitted but shall be subject to the review of the Design Committee in regard to material, color, spark arrestor and appearance. Chimneys may exceed the height limitation by no more than 2 feet.
- (11) Parking Requirements. Each Single Family dwelling constructed on a Lot shall have as an accessory thereto a Garage large enough to accommodate at least two (2) automobiles. In addition, two (2) surfaced guest parking spaces shall be provided on each Lot.
- (12) Abandoned Construction. If construction of a dwelling or any other Improvement is at any time abandoned, the Lot Owner shall cause the Lot to be cleared and returned to its original condition until recommencement of construction, except that landscaping and other features which, in the opinion of the Design Committee, are an asset to the appearance of the property, shall be left in place.
- (13) Driveways. Driveways shall use asphalt or concrete pavement, crushed stone, or other materials approved by the Design Review Committee; provided that the portion of the driveway between the road and the front yard setback of any Lot shall be paved with either asphalt or concrete. Other paving material may be approved by the Design Committee on a case-by-case basis.
- (14) Lighting. Exterior lighting plans shall be a part of the plans submitted to the Design Committee for review and approval. Exterior light sources shall not be visible from neighboring Lots. Colored lights (nonwhite) or high intensity discharge exterior lights shall not be permitted. Temporary holiday lights, installed for the holiday season, shall be exempt from the provisions of this paragraph.
- (15) Agriculturally Related Improvements. All agriculturally related Improvements shall be subject to special review as to placement on the Lot, materials used and design with respect to the functional nature and use of such Improvements. The architectural design requirement of materials, roofs and exterior walls for such Improvements may be modified by the Design Committee where appropriate for the intended and actual agricultural use. Floriculture or nursery structures may, for example, utilize shade cloth material for the roofs or sides; equipment, storage and processing structures may be partially enclosed or utilize metal siding or roofing materials provided such structures incorporate other design features and color finishes to enhance their visual appearance, are not open to road view, blend with the surrounding landscape, are maintained in good repair and condition and are used for continuous, full time agricultural purposes. The Design Committee may require special landscaping or screening, where appropriate, for agriculturally related Improvements. These modifications as to materials for agriculturally related Improvements shall not apply to any

single-family dwelling, guesthouse or Garage used in connection with such dwelling or guesthouse.

D. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS

- (1) Submission of Topographical Survey. Prior to any grubbing or grading of any Lot and prior to commencing with a final design for any construction or reconstruction of, or the refinishing or alteration of, any part of the exterior of any Improvement on any Lot, the Owner shall deliver to the Design Committee, for its approval, a topographical survey map **prepared by a registered surveyor licensed in the State of Hawaii** which shall, at a minimum, indicate (a) the property lines of the Lot, (b) the natural topography of the Lot on a scale of 1 inch equals 10 feet with two foot height intervals on a 24" x 36" drawing, (c) the Buildable Area of the Lot, as such area is defined in the Declaration, indicating the point of highest elevation inside the Buildable Area, which shall then be known as the Recorded High Point of the Lot.
- (2) Requirement of Plans. Two (2) copies of all plans for any new building, grading, or other Improvement within the Kealakekua Bay Estates shall be submitted to the Design Committee for approval, and shall include, without limitation, the following:
  - (a) A plot showing all Improvements, utilities, service area, fences and walls, accessory buildings, lighting plans, paved areas and parking areas, and roof plan of the structures (noting, among other things, the finished height of the highest point of the structure above finished grade).
  - (b) A grading plan showing existing and proposed finished elevations and civil engineer's analysis, as required.
  - (c) Building plans to include:
    - (i) Floor plans.
    - (ii) All exterior elevations.
  - (d) Specifications of all exterior materials.
  - (e) The exterior color scheme with a sample of each separate finish.
  - (f) Plans, specifications and colors for all signs, mailboxes and house numbers.

- (g) Plans showing the location of all utility connections, transformers, ducts, etc.
- (h) Other items as required by the Design Committee from time to time upon review of each individual project.

All plans are to be stamped as prepared by an architect or structural or other engineer licensed to practice in the State of Hawaii, as required in these Design Requirements, with construction to be under such architect's or engineer's supervision.

The plans for any **alteration, modification or addition** to the exterior of any existing building, grading, or other Improvement, including, without limitation, alterations such as exterior painting (except for those items specifically allowed in the Declaration), shall be submitted to the Design Committee for its approval and shall contain the same information as is required for any new building, landscaping, grading or other Improvement.

- (3) Waiver for Agriculturally Related Improvements. The Design Committee may waive or modify any or all of the requirements for plans, under subsection (2) above, for any agriculturally related Improvement to be erected on a Lot. This provision for waiver or modification of the requirements for plans shall not apply to any single-family dwelling, guesthouse or Garage to be used in connection with a single-family dwelling or guesthouse.
- (4) Review of Plans. The Design Committee shall review and act on the plans submitted as provided within the Declaration, within the time limits stated in the Declaration.
- (5) Standards of Review. In reviewing plans submitted to it, the Design Committee shall consider whether the plans conform to any applicable Design Requirements, and the effect of the proposed building, landscaping, grading, or other Improvement on the Kealakekua Bay Estates. The approval or disapproval of the plans by the Design Committee in any one case shall not be deemed a waiver by the Design Committee of its right to approve, disapprove, object to or consent to any of the features or elements embodied in plans submitted in any other cases.
- (6) Revocation of Design Review Committee approval: Inspection of Work by Design Committee. Failure to commence construction within one hundred eighty (180) days from the date of approval of plans by the Design Committee, cessation of work being performed pursuant to approved plans for a continuous period of ninety (90) days or more, or failure to complete the proposed work strictly in accordance with the plans approved by the Design Committee, shall operate to automatically revoke the approval of plans previously approved by the Design Committee.



Upon demand by the Design Committee, the Lot upon which such construction, alteration or other work was undertaken shall be restored or caused to be restored by the Lot Owner as provided in paragraph C (10) above. The Design Committee and its duly appointed agents may enter upon any Lot at any reasonable time to inspect the progress or status of any construction, alteration or other work being performed on the Lot.

- (7) Fees. The Design Committee shall have the right to require payment of a reasonable fee for review of proposed plans. Such fee shall not exceed \$250.00
- (8) Professional Advice. The Design committee may employ the services of an attorney, architect, landscape architect, or civil or structural engineer licensed to practice in the State of Hawaii or any other consultant to render professional advice, and may pay a reasonable compensation for such services, which compensation may be charged to any Person who has submitted plans requiring review by such attorney, architect, engineer or other consultant, in addition to any other processing fee.

#### E. REMEDIES

In the event that any Lot Owner fails to comply with the Declaration or any of these Design Requirements, the Design Committee shall have available to it all of the rights and remedies described in the Declaration, including without limitation, the following:

- (1) Enforcement Costs and Lien Rights: If any court proceedings are instituted in connection with the right of enforcement or the remedies provided in these Design Requirements or the Declaration, the Design Committee shall be entitled in the event that it prevails in such proceeding, to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and court costs. The Design Committee shall have a lien against an Owner's Lot for any unpaid fees, compensation or other charges for which such Owner is obligated under these Design Requirements or the Declaration to pay to the Design Committee. Such lien shall be enforceable in the manner provided by the Declaration. The rights and remedies provided for in this Section are cumulative with all other rights and remedies available to the Design Committee under these Design Requirements, the Declaration and at law and in equity.
- (2) Notice of Nonconformance: The Design Committee may record a Notice of nonconformance against an Owner's Lot if Improvements have not been approved, if any approval has been revoked, and if any ImprovementHas not been completed in accordance with approved plans, if any Improvement has not been completed within the appropriate time period, or if any Improvement has not been maintained in conformity with these Design Requirements.