

**DEVELOPMENT RULES AND RESTRICTIONS**

**OF**

**KAKELA MAKAI OCEANVIEW SUBDIVISION**

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The following Development Rules And Restrictions for KAKELA MAKAI OCEANVIEW SUBDIVISION (hereinafter, "Development Rules") have been enacted by the Board of Directors of the KAKELA MAKAI OCEANVIEW COMMUNITY ASSOCIATION (hereinafter, "Board of Directors") to preserve and protect the rights of all property owners and occupants of the KAKELA MAKAI OCEANVIEW SUBDIVISION.

**ARTICLE I  
PURPOSE**

These Development Rules are the means to preserve and protect all property owners and occupants from annoyance or nuisance caused by improper conduct or use of the property and common areas of the Subdivision during the Construction (as the term is defined in Article III herein) of a residence or other improvement on a Lot.

**ARTICLE II  
DEVELOPMENT RULES AND RESTRICTIONS**

**1. Application of Rules and Restrictions.**

The responsibility of enforcement of these Development Rules shall reside with the Board of Directors and Design Committee, but such responsibility may be delegated to the Managing Agent by the Board of Directors. In the event of any inconsistency, the Declaration, Articles and By-Laws will prevail, in that order.

**2. Enforcement**

The Development Rules shall be enforced during Construction of a residence or other improvement on a Lot and all Owners, contractors and their respective agents, employees and subcontractors shall be bound by these regulations. All Owners will be responsible for the conduct and behavior of their agents, representatives, contractors, and subcontractors on the Project (as the term is defined in Article III herein). Any violation by a contractor, subcontractor, agent or employee of the Owner shall be deemed a violation by the Owner of the Lot.

**A. Occupational Safety and Health Act Compliance (OSHA)**

All applicable OSHA regulations and guidelines must be strictly observed at all times.

B. Construction Trailers, Portable Field Offices, Etc.

Any Owner or contractor who desires to bring a Construction trailer, field office, or the like to the Project shall first apply for and obtain written approval from the Design Committee at the time of second plans submittal. The Design Committee will work closely with the Owner or the contractor to determine the best possible location thereof. Such temporary structures shall be located only in a location approved by the Design Committee, shall be removed upon completion of Construction, and shall otherwise comply with the provisions of the Declaration. No temporary trailer, field office, etc., established for the Construction supervision and temporary convenience may be used for overnight or residential purposes or may remain on the site for a period exceeding one (1) year.

C. Debris and Trash Removal

Owners and contractors shall clean up all trash and debris on the Construction site at the end of each day. Trash and debris shall be removed from each Construction site at least once a week and before any overflow condition occurs, to a legal dumping site located outside the Subdivision. Owners and contractors are prohibited from dumping, burying or burning trash anywhere within the Subdivision.

Lightweight material, packaging, and other items shall be covered or weighted down to prevent wind from blowing such materials off the Construction site or Project Lot. Personnel should be specifically instructed to properly dispose of all food sacks, beverage containers, coffee cups, sandwich wrappers and the like so that the same are never strewn on the ground where the wind can blow such items around or off the Construction site or the Project Lot.

Concrete suppliers and contractors shall not clean any equipment, including spill pans within the Subdivision, with the exception of the Project Lot where their work is being performed.

Dirt, mud, debris or concrete resulting from any Construction activity shall be promptly removed from roads and driveways or other portions of the Property by any means appropriate for accomplishing the task thoroughly.

During the Construction period, each Construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore, or affecting other Lots. Any clean-up costs incurred by the Design Committee or the Association (acting through its Board of Directors) in enforcing these requirements will be billed to and shall be paid by the Project Owner.

D. Sanitary Facilities

Each Owner and contractor shall provide adequate sanitary facilities for his Construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the Construction site itself.

E. Access, Traffic, Parking

Access to the Construction site shall only be along the route designated by the Design Committee. The only approved Construction access to the Owner's Lot during the time the residence or other improvements is being built will be over the approved driveway unless the Design Committee approves an alternative access point.

Street parking is permitted during the Construction period; provided, however that such parking shall not create a nuisance or hazard, violate any laws or ordinances, or inhibit or interfere with access or parking by property Owners, guests and the public.

The willing cooperation of all Construction personnel in carefully observing all speed limits, and other traffic controls within the Subdivision is required. Violation of the speed limits and other traffic controls would disturb the quiet enjoyment of property, or endanger persons, animals and/or property within the Project or Subdivision, and force the application of sanctions against a violator.

All tracked equipment shall be hauled to the Construction site on trailers and not "walked" across pavement without adequate protection. Any damage shall be the responsibility of the Owner.

F. Excavation Materials

Any excess dirt or excavation material shall be hauled away from the Project Lot, and shall not be stockpiled, disposed of or deposited on or within the Property or any Lot (other than the Project Lot and only for a reasonable period during Construction) without the prior written approval of the Design Committee after review of a written grading, excavation or fill plan or drawing prepared and submitted in accordance with the Kakela Makai Oceanview Subdivision Design Review Requirements.

G. Blasting; Impact Digging

Generally, blasting will not be permitted. If blasting or discharge of explosives is deemed essential and required for Construction, no blasting may take place until a permit for same has been issued by the Design Committee. Before the contractor undertakes any blasting or impact digging, the contractor shall apply in writing to the Design Committee for a permit therefor at least thirty (30) days in advance to allow it to make such investigation as it deems appropriate to confirm that all proper measures, including protective and safety actions, and noise and dust mitigation, will be taken prior to and during the blasting and digging. If a permit is required by the County of Kauai or other governmental agency concerning any such blasting or impact digging, the contractor shall furnish such permit to the Design Committee with the contractor's application.

H. Restoration or Repair of Other Property Damaged

Damage and scarring to other Lots or improvements is prohibited. If any such damage occurs, it shall be repaired and/or restored promptly at the expense of the person causing the damage or by the Owner of the Unit for whose benefit the work which caused the damage was undertaken, including but not limited to restoring grades, planting shrubs and trees as approved or required by the Design Committee, and repair of structures, improvements, streets, driveways, drains, culverts, ditches, signs, lighting, and fencing. Prompt attention to such repair or restoration by the Owner responsible will preclude the need for the Association to repair or restore the damaged element at the expense of that Owner.

I. Animals and Pets

Contractors, subcontractors, agents and their employees are strongly discouraged from bringing animals or household pets onto the Property. In the event that an animal or pet is brought onto the Property, the person responsible for bringing the animal or pet onto the Property must confine the pet to the Construction site and comply at all times with all State and County laws applicable to such pets. In the event of any violation thereof, the Design Committee or the Association (acting through its Board of Directors), shall have the right to contact the County of Kauai authorities to impound the pets, or refuse to permit such contractor, subcontractor or agent to continue work at the Project, or to take such other action as may be permitted by law, the Declaration, or Bylaws of the Kakela Makai Oceanview Community Association.

J. Miscellaneous Construction Practices

The following practices are prohibited on the Project:

- 1) Changing oil on any vehicle or equipment other than on the Construction site itself.
- 2) Allowing concrete suppliers and contractors to clean their equipment other than on the Construction site itself.
- 3) Removing any rocks, plant material, topsoil, or similar items from any property of others within the Project or Subdivision, including Construction sites, unless specifically agreed to by the Owner of such items or material.
- 4) Using disposal methods or units other than those approved by the Design Committee.
- 5) Careless disposition of cigarettes and other flammable material. At least one 10-pound ABC-rated dry chemical fire extinguisher shall be present and available in a conspicuous place on the Construction site at all times.

6) Construction related personnel may not use or transit over the Property easements or common areas, including clubhouse and recreation facilities unless as the guest of, and accompanied by, the Owner.

K. Noise

There are certain levels of noise generated by Construction operations that are necessary and unavoidable. Arrangements for temporary power at the site, and a temporary connection to the electric utility lines must be completed as soon as possible. Auxiliary generators may be used at the site only briefly, and in an extreme emergency. The Owner and contractor shall make every effort to keep noise to a minimum. Audio devices will be kept at a low level to minimize disturbance to neighbors and animals. No noise generating activity is permitted outside of the normal daily working hours as specified in subparagraph 2.L below.

L. Dust Control

Blowing dust resulting from grading operations must be controlled by watering or other effective means. The Project Owner is responsible for ensuring that all Construction generated dirt and debris is contained within the site and does not drop from any vehicle hauling such materials, or otherwise migrate to any other Lot, road or other common area, whether because of storm or wind, or for any other cause, inadvertent or otherwise. The Owner of the Lot under improvement from which the dust, dirt, trash and/or other debris originated or was intended, will be responsible for any prompt clean up, and or restoration that is necessary, including, without limitation, any dust removal or cleaning of homes downwind from said Construction site.

M. Daily Operation

Daily working hours for each Construction site shall be from 7:30 a.m. to 5:30 p.m., Monday through Friday. Work on Saturdays between the same hours is only permitted as long as the provisions for Noise are strictly observed, and in particular the use of back hoes, power tools, air compressors and any other noise generating equipment on Saturdays is strictly prohibited. All work on Sundays and Holidays is prohibited except in the case of emergency, which will require special permission from a member of the Design Committee.

ARTICLE III  
DEFINITIONS

"Association Properties" shall mean all real and personal property, including Improvements, and all Common Areas, now or hereafter owned by the Association or with respect to which the Association holds an easement for the use, care, or maintenance thereof, or for which the Association has a right or duty to maintain, held for the common use and enjoyment of certain of its members as provided herein, and for other purposes as may be permitted by this Declaration.

"Construction" shall mean construction, alterations, repairs, replacements, additions, demolition, excavation, grading, paving, filling in, landscaping, seeding, sodding, planting and similar activities.

"Declaration" shall mean the Kakela Makai Oceanview Subdivision Declaration of Covenants, Conditions and Restrictions.

"Design Committee" shall mean the committee provided for in Article II of the Declaration.

"Improvement" shall mean and include all buildings, outbuildings, roads, driveways, parking areas, swimming pools, fences, screens, retaining walls, stairs, decks, hedges, windbreaks, trash enclosures, utilities, excavation, grading, landscaping, poles, signs, sewers, culverts and other drainage structures, and any and all other structures, facilities and amenities of any type or kind whatsoever, whether above, below or at grade.

"Laws" shall mean all applicable laws, ordinances, rules and regulations (state, federal or county or any agency thereof).

"Lot" shall mean a legally subdivided parcel of land located within the Subdivision.

"Owner" shall mean the person, or, if more than one, all persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder. However, the purchaser under an "agreement of sale" or similar installment purchase contract, and not the seller thereunder, shall be deemed as the "Owner" of the Lot described therein unless the agreement or similar contract clearly provides otherwise.

"Project" shall mean an Owner's planned undertaking involving the building or constructing of a structure, house, or other Improvement.

"Property" shall mean all of the land and improvements within the area known as the Kakela Makai Oceanview Subdivision.

"Subdivision" shall mean the Kakela Makai Oceanview Subdivision, including all phases or stages of development of the same.

#### ARTICLE IV CONFLICTS

Notwithstanding anything herein to the contrary, these Development Rules shall be subject to the Declaration, Articles, and Bylaws of the Kakela Makai Oceanview Community Association, and in the event of any conflict between the foregoing documents, the Declaration, Articles and Bylaws shall govern and the Board of Directors shall make such changes to these Development Rules from time to time to comply with the Declaration, Articles and Bylaws.

IN WITNESS WHEREOF, the Board of Directors of the KAKELA MAKAI OCEANVIEW COMMUNITY ASSOCIATION has adopted these Development Rules and Restrictions as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

KAKELA MAKAI OCEANVIEW COMMUNITY ASSOCIATION

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