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E-MAIL AND MAIL

Re: Restrictive Covenants Covering Waialae Iki Ridge, Units II, III, and IV

Dear Waialae Iki Ridge Homeowner:

I have been retained by the Board of Directors of your Waialae Iki Ridge Community Association ("WIRCA") to assist in various matters concerning the restrictive covenants covering Units II, III and IV of Waialae Iki ridge. From time to time, the WIRCA Board receives inquiries from Waialae Iki owners regarding the restrictive covenants. The inquiries are generally made either by owners who want to make certain their own lots are in compliance, or by owners who are concerned their neighbor's lot may not be in compliance.

Many of you, particularly those of you who are long-time owners, are most likely familiar with the restrictive covenants. You may recall receiving a similar letter to this in November 2007. The documents pertaining to each Unit are available on WIRCA's website, www.wirca.org. The following is a brief history and summary of the restrictive covenants.

In 1985, Bishop Estate executed and recorded in the Bureau of Conveyances a Declaration of Protective Provisions (the "Declaration") covering Units II, III and IV of Waialae Iki. The Declaration's general purpose was "the preservation of the values and amenities" of the Units and it was designed to "preserve the area as an attractive residential district for the advantage of the residents of the district and community at large." The Declaration sets forth requirements on, among other items, landscaping, setback lines, drainage ditches, repair, maintenance, and refuse container enclosures. The Declaration runs with the land and is binding on all owners, lessees, and occupants of any lot in the Units. Article III, Section 2 allows all owners (and long-term lessees) to enforce

the Declaration's provisions, and provides for reimbursement of the costs and expenses of an enforcement action including reasonable attorney's fees.

In addition to the Declaration, Units III and IV are also each subject to Building Requirements recorded in the Bureau of Conveyances. Although there are some differences between the Building Requirements for Units III and IV, overall they are very similar. The Building Requirements contain, among other items, design and construction details for dwellings, standards regarding garages, setback lines, lot coverage, and requirements regarding landscaping plans, termite treatment and drainage.

The Building Requirements provisions that raise the most frequent inquiries to your Board are the provisions regulating view channels and view planes. In a nutshell, each lot in Units III and IV is subject to a Master Drain and View Channel Plan which created view channels for each lot. In connection with the view channels, a view plane limits the height of all structures, trees, hedges or other plants. In Unit III, the view planes are uniform, beginning at the point "six (6) feet above the mauka or higher corner(s) of the view channel area and sloping toward the lower corner(s) at a ratio of 1¼:10." In contrast, the view planes for Unit IV are specifically designated for each lot. In both cases, however, the owners have enforcement rights for violations by neighbors.

Unit II, however, is not subject to the Building Requirements and does not have protected view channels and view planes. However, Unit II lots must still comply with building restrictions in the City and County Building Code, including height limitations therein. And, of course, Unit II lots must comply with all the restrictions set forth in the Declaration.

Your Board also would like to provide you with information regarding the County's new accessory dwelling unit ("ADU") ordinance and its impact, if any, on residences in the Waiialae Iki community. Article II, Section 1 of the Declaration—applicable to Units II, III, and IV—provides that "only one (1) single-family dwelling (exclusive of outbuildings) shall be erected, placed, and maintained or allowed on a Residential Lot." Further "[n]o building or structure on a Residential Lot shall be used as a tenement house, rooming house or apartment house or for or in connection with the carrying on of any business or trade whatsoever." No subdivisions are allowed. The County's new ADU ordinance generally permits accessory dwelling units on residential properties of a certain size to increase the number of rental units in the County, but it does not supersede Waiialae Iki's restrictive covenants. We interpret the Declaration as prohibiting owners from building additional dwelling units on their lots, whether attached or detached from the main dwelling.

Restrictive covenants are fairly common, particularly in upscale residential areas. Hawai'i's appellate courts have issued a long line of decisions upholding such restrictive covenants. The Supreme Court of Hawai'i upheld both the restrictive covenants in question and the right of the homeowner's association to reimbursement of its fees and costs in its

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enforcement action in a case called *Kaanapali Hillside Homeowners' Association v Doran*, 114 Hawaii 361, 162 P.3d 1277 (2007).

Your Board strongly recommends that each owner comply with the Declaration and the applicable Building Restrictions. These documents benefit your community as a whole and increase property values. The documents have withstood all challenges against their enforcement and applicability. In the Board's opinion, they remain in full force and effect. If your neighbor raises a legitimate concern that your lot is in violation of the Declaration or applicable Building Restrictions it would behoove you to resolve the situation. If you are unsure of whether you are in compliance, or whether any proposed renovations or other changes will be in compliance, you should consult a professional, such as an architect or engineer. Ultimately, however, each owner is responsible for the full compliance of his or her own lot.

If you have questions on these issues please contact your Board.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. C. Byrns', written in a cursive style.

William C. Byrns