

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

Doc 2009-139935
SEP 11, 2009 02:00 PM

AFTER RECORDATION, RETURN BY MAIL [] PICKUP [X]

Cades Schutte LLP (GNK)
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Telephone No.: (808) 521-9200

This Document Contains 13 Pages

Tax Map Key No.: (1) 8-6-027-1 through 127

FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(Ke Ola O Poka'i Bay)

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "*First Amendment*") is made this 9th day of September, 2009, by MARK DEVELOPMENT LLC, a Hawaii limited liability company (the "*Declarant*").

RECITALS:

A. The Declarant, as the declarant, did execute that certain Declaration of Covenants, Conditions and Restrictions dated as of July 31, 2007, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-188045 (the "*Declaration*") and which Declaration imposed certain covenants, conditions and restrictions, on certain property at Lualualei, Waianae, City and County of Honolulu, State of Hawaii, which is more particularly described in Exhibit "A" to the Declaration (the "Subdivision").

B. The Subdivision includes one hundred twenty-five (125) single-family residential lots and other lots for use for roadways and other purposes.

C. Paragraph 10(a) of the Declaration provides in pertinent part that any provision of the Declaration may, from time to time, be amended by filing in the Bureau of Conveyances of the State of Hawaii, an instrument duly executed by the Declarant during the Declarant's Control Period (as such term is defined in the Declaration and as described below), provided that such

amendment shall have been previously approved by vote or written consent of the owners of at least two-thirds (2/3) of the residential lots in the Subdivision and including the Declarant. The Declaration defines the term "Declarant's Control Period" as the period during which the Declarant owns any interest in any portion of the Subdivision, or such shorter period, as the Declarant may establish by an amendment to the Declaration.

D. The Declarant who is the current owner of over two-thirds (2/3) of the residential lots in the Subdivision, acting within the Declarant's Control Period (as described above), now approves of and desires to amend the Declaration in certain respects as more particularly set forth herein.

AMENDMENT TO DECLARATION:

NOW, THEREFORE, in consideration of the Recitals set forth above and pursuant to the provisions for amendment contained in the Declaration, the Declarant, acting within the Declarant's Control Period and as the owner of over two-thirds (2/3) of the residential lots in the Subdivision, does hereby amend the Declaration in the following respects:

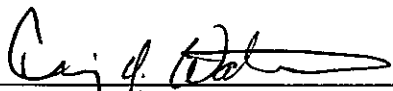
1. Exhibit "B" attached to the Declaration and entitled "Guidelines for Improvements and Landscaping of Ke'ola O Poka'i Bay" is hereby deleted in its entirety and Exhibit "B" (2009) attached hereto is substituted in its place.

2. Ratification. The Declaration, as hereby amended by this First Amendment, is hereby ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment has been executed as of this 7th day of September, 2009.

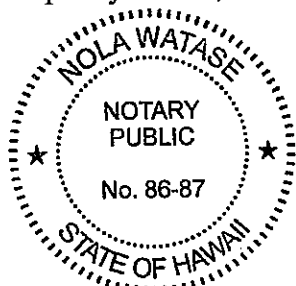
Declarant:

MARK DEVELOPMENT LLC,
a Hawaii limited liability company

By 
Craig Y. Watase
Its Manager

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 9th day of September, 2009, before me personally appeared CRAIG Y. WATASE, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

Signature: *Nola Watase*
Name: Nola Watase
Notary Public, State of Hawaii
My commission expires: 9/9/10

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: First Amendment to Declaration of Covenants, Conditions or Restrictions (Ke Ola O Poka'I Bay)

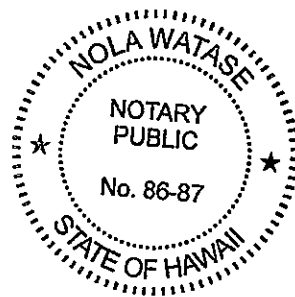
Doc. Date: 9/9/09 or Undated at time of notarization.

No. of Pages: 13 Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and Certification Statement

Nola Watase
Printed Name of Notary



(Official Stamp or Seal)

GUIDELINES FOR IMPROVEMENTS AND LANDSCAPING
OF
KE'OLA O POKA'I BAY

The Declarant has adopted these initial Guidelines, which are attached to and form a part of the Declaration of Covenants, Conditions and Restrictions (the "**Declaration**") for the Subdivision. All Houses and other improvements on the Residential Lots shall conform to the Guidelines. All capitalized terms used in the Guidelines without definition shall have the meanings given to such terms in the Declaration.

1. ALTERATIONS AND MODIFICATIONS

(a) No Owner shall violate or permit the violation on his Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of his Lot. Improvements shall conform with all applicable building codes and regulations of the City and County of Honolulu.

(b) No Owner shall construct any building or structure between the street boundary of the Lot and any applicable building setback line along such boundary; provided, however, that an Owner may construct walks, fences, walls, driveways and garbage receptacle enclosures if not otherwise in violation of any other restriction contained in the Declaration, including these Guidelines.

(c) No Owner shall finish any roof with built-up tar and gravel, except that flat roofs may be finished with built-up tar and gravel in colors of dark brown to red-brown and gray to blue-gray.

(d) No Owner shall install metal siding on a House, and no Owner may install liquid petroleum gas tanks on any Lot which are Visible from a Neighboring Lot.

(e) Standard Conditions for Alterations and Modifications. The following are several conditions that apply:

(i) Exterior materials such as siding, trim details, colors, roofing, windows, and doors for the extensions/enclosures must match existing ones. No used or second-hand building material may be used.

(ii) Areas beneath concrete slabs should be treated for ground termites by a licensed professional.

(iii) Eaves must be a minimum of 30 inches.

(iv) All telephone and electric power lines, water pipe lines and all other conduits for utilities shall be installed underground when outside the walls of the House.

(v) All work must conform with all applicable laws and codes. Building permits from the City & County of Honolulu must be obtained when required.

(f) Grading. Existing site drainage patterns must be maintained. Surface runoff water shall not be altered from its natural or designed course, nor shall it be redirected in a manner that results in erosion or damage to the Lot or any adjoining Lot.

(g) Rain Gutters. All gutters shall be white or match the existing exterior trim or house color. An exception is copper gutters, which is approved in a natural state.

(h) Irrigation. Irrigation heads shall be directed away from spraying into adjacent properties.

(i) Exterior Lighting. Exterior lighting shall be directed away from shining onto adjacent properties. Landscape lighting fixtures shall be mounted at a height not exceeding 18 inches above grade. Landscape lighting fixtures are generally permitted within front yards along driveways, walkways, and garden planting areas. No exterior lighting shall be installed that creates an annoyance or nuisance to other Lots.

(j) Exterior Painting. Neutral, pastel, and earth colors are generally acceptable. In any case, paint colors must be compatible with the color scheme of the surrounding homes. No Owner shall use any reflective finishes on exterior surfaces (other than non-mirrored glass). Exterior paint shall be either flat or semi-gloss. No gloss or reflective paint will be permitted on any exterior surfaces. Any additions, alterations, or modifications to residences shall be painted to match the existing paint provided that entire residence is not being repainted. Original paint colors were based on Sherwin Williams Paints, "Historic Collection" dated 2006.

(k) Screen Door. Steel, aluminum and wood doors are acceptable. The allowable colors are white, black, bronze, or match the existing color of a homes front door.

(l) Roof/Attic Attachment. Attachments may not exceed the height of the roof's ridgeline. No exterior mounted storage tanks are permitted. Attachments must be parallel with the roof and not exceed a height of six (6) inches. Solar panels, skylights, and vent frames must be dark bronze or black in color. No exposed pipes are permitted.

(m) Unattached Structures. Freestanding, covered gazebos and trellis structures which are open on all sides are permitted. Also, freestanding storage structures in rear and some side yards are permitted when they meet setback requirements.

(n) Walkways/Slab Criteria. There are three (3) categories: general concrete work, walkways and slabs; and driveways.

(i) General Concrete Work. Concrete work in front yards is limited to the area between the garage door face and front property line. No fences, walls, or structures of any kind may be placed within ten (10) feet of the front property line. No more than 60 percent of this area may be covered by driveways, walkways, and other impervious surfaces. Concrete work in side yards should not be closer than one (1) foot from the property line. The only exception is permitted when concrete slabs are used to abut CMU or rock walls.

(ii) Walkway Slabs. Any walkway consisting of gravel, concrete, or other paving material that wraps around a garage or house and is perpendicular to a driveway or

another walkway is limited to a maximum of 3 feet and 6 inches in width. Walkways from the sidewalk to the front entry of a house, which are parallel to the driveway, are permitted only if they are separated by a two (2) foot-wide grass planting strip.

(iii) Driveways. The widening of driveway is permitted. Two types of extensions are permissible: (1) an extension up to three (3) feet is allowable on one side only; or (2) two extensions up to two (2) feet are allowed on each side of the driveway.

(o) Swimming Pool/Hot Tubs. Care must be taken to ensure that the design and location of swimming pools and/or hot tubs do not adversely affect other Lots and shall conform with all applicable building codes and regulations of the City and County of Honolulu. Swimming pools, hot tubs, and all related equipment should be visually screened

(p) Clothesline. Clotheslines shall be located within fenced areas. In addition to the foregoing, the top of the clotheslines shall not exceed 6 feet above the adjacent grade.

(q) Fences, Gates, Walls, Retaining Walls. Fences, gates, walls, retaining walls or structures of any kind are not allowed within 10 feet of the front Lot line unless otherwise allowed by the Declaration. Fences, gates, walls and retaining walls are allowed at side and rear yards and shall not project within 10 feet of the front Lot line unless otherwise allowed by the Declaration. Fences, gates, walls and retaining walls shall conform with all applicable building codes and regulations of the City and County of Honolulu.

(i) Fences. Fences must be of opaque, non-reflective material. PVC type solid or picket style fencing is allowed. Fencing must be white, tan or grey in color.

(ii) Gates. Gates must match the appearance of the fence. Gates constructed for CMU or Rock Masonry walls can be a PVC fencing design.

(iii) Walls. CMU walls and Rock Masonry walls are permitted and are subject to the requirements of the Declaration. Walls are allowed within 10 feet of the front Lot line and shall not exceed a height of 24 inches, measured from existing grade to the top of the wall along the exposed face of the wall, as shown in Figure "1" attached hereto and made a part hereof.

(iv) Retaining walls. Retaining walls are subject to the requirements of the Declaration and are restricted to CMU and Rock Masonry. Front yard retaining walls are allowed within 10 feet of the front Lot line and shall not exceed 24 inches, measured from existing grade to the top of the wall along the exposed face of the wall as shown in Figure "2" attached hereto and made a part hereof.

(v) Footings. Fence, gate and wall (including retaining wall) footings including post holes shall be wholly within an Owner's Lot and shall not encroach upon any adjacent Lot unless by specific agreement between the Lot Owners.

(vi) Height: Maximum height of fences, gates or walls (including retaining walls) shall not exceed the legal limit allowed by the building codes and regulations of the City and County of Honolulu. Walls and retaining walls located within 10 feet of the front Lot line shall not exceed heights as allowed by the Declaration.

(vii) Chain Link Fencing. Chain link fencing will not be allowed, except for any existing chain link fences installed by the Declarant. Any such existing chain link fencing shall be maintained by Lot Owner if any such existing chain link fencing occurs on Owner's Lot.

(viii) Rock Fall Fencing. Rock Fall Fencing made of chain link (Cyclone fencing) shall not be altered but shall be maintained by Lot Owner as installed if any such Rock Fall Fencing occurs on Owner's Lot.

(ix) Declarant Exception. Notwithstanding any to the contrary contained herein, the restrictions and specifications regarding Fences, Gates, Walls, Retaining Walls in this subsection (q) shall not apply to any fences, gates, walls or retaining walls installed by the Declarant which fences, gates, walls, and retaining walls may be installed, repaired, maintained or replaced by the Declarant subject to applicable building codes and regulations of the City and County of Honolulu.

2. AIR CONDITIONING INSTALLATION

These provisions are aesthetic guidelines only and are not a substitute for any structural engineering, mechanical engineering, acoustical engineering or electrical engineering advice which may be needed for the installation of an air conditioning system. It is the Owner's responsibility to seek professional assistance.

Unit Air Conditioning, Split System Air Conditioning and Central Air Conditioning installations are permitted. Before installation, the homeowner is required to obtain the necessary permits from the City and County of Honolulu.

Owners should, if applicable, take into consideration how the planned air conditioning system will affect home warranties.

(a) General Guidelines

(i) Noise. The selection of air conditioning equipment and its location for installation should take into consideration the noise that will be generated. Under all circumstances, it is the responsibility of each of the individual Owner to undertake noise mitigation measures so that adjacent residences are not disturbed.

(ii) Drainage of Condensation. It is not acceptable for condensation from air conditioning equipment to drain onto adjacent properties. Condensation from air conditioning equipment shall not be allowed to drip down or splash against the exterior siding of the residence.

(b) Unit (Window) Air Conditioning:

Unit air conditioning is permitted within the fenced area of the yard.

Unit air conditioning is not permitted along the front facade of any House. The front facade is defined as all exterior wall of the House in which the overhead garage door is located. Exception: When room has only window openings in the front facade.

When installing unit air conditioning in a sliding window, the affected window areas above, below and to the sides of the air conditioning unit must be replaced with matching fixed glass or plexiglass panels and matching frame. When installing unit air conditioning in a single-hung window, standard manufacturers installation kits are acceptable.

Holes in walls made specifically for unit air conditioning are permitted and should include aesthetic considerations. For example, the unit should align horizontally and/or vertically with adjacent window or door trim.

If any portion of a unit air conditioner's factory finish becomes damaged, worn, or rusted and does not have a like-new appearance and is visible from a public street or Visible from a Neighboring Lot, the unit air conditioner shall be re-finished, re-painted or screened by a lattice enclosure with corner trims. Finish shall be white or match adjacent window trim or house color scheme.

Window/wall air conditioner enclosure.

(1) Enclosure frame and corner trim shall be white or match adjacent window trim or house color scheme.

(2) Lattice for window and wall installations shall be criss-cross type lattice. Color shall be white or match adjacent window trim or house color scheme.

(3) NOTE: The enclosure is not intended to be a substitute for hardware required by the installer for mounting the air conditioner unit. The enclosure is for aesthetic purposes only.

(c) Split System Air Conditioning:

Split system condenser equipment installation is permitted only on the ground floor within the fenced area of the yard and shall conform with all applicable building codes and regulations of the City and County of Honolulu. No air conditioning equipment should be installed at the ground floor of any residence that is visible from the street and not concealed by the fence. Air conditioner condensers and other equipment exceeding 30" in height from grade are not permitted in any required yards as defined by the City and County of Honolulu.

All necessary piping and wiring from the ground where the compressor unit rests to any air handling unit should occur internally within the walls. Any piping and wiring mounted to the exterior surface of the residence must be concealed with an appropriate material such as wood trim or rain gutter stock. Regardless of the material used for concealment, the color must be painted to match the color of the adjacent existing exterior surface. Ducting and wiring mounted to the exterior surface of the House must be located in an aesthetically pleasing manner. Exposed vertical runs should be minimized; exposed horizontal runs are discouraged.

(d) Central Air Conditioning:

Houses have been preplumbed and partially ducted for central air conditioning.

Central air condenser equipment installation is permitted only on the ground floor within the fenced area of the yard and shall conform with all applicable building codes and regulations of the City and County of Honolulu. No air conditioning equipment should be installed at the ground floor of any House that is visible from the street and not concealed by the fence. Air conditioner condensers and other equipment exceeding 30" in height from grade are not permitted in any required yards as defined by the City and County of Honolulu.

All necessary, piping and wiring from the ground where the compressor unit rests to any air handling unit should occur internally within the walls. Any piping and wiring mounted to the exterior surface of the residence must be concealed with an appropriate material such as wood trim or rain gutter stock. Regardless of the material used for concealment, the color must be painted to match the color of the adjacent existing exterior surface. Ducting and wiring mounted to the exterior surface of the residence must be located in an aesthetically pleasing manner. Exposed vertical runs should be minimized; exposed horizontal runs are discouraged. Ducting over any roof surface or exterior surface is not acceptable.

3. LANDSCAPE GUIDELINES

(a) GENERAL DESIGN CONSIDERATIONS.

(i) The landscaping design upon these three objectives:

- (1) To establish an overall identity and character;
- (2) To provide continuity;
- (3) To create an attractive and aesthetically pleasing environment.

(ii) Homeowners should maintain a landscaping scheme which is consistent with the foregoing objectives.

(b) **FRONT YARD LANDSCAPING.** The predominant landscape theme at Ke Ola O Poka'I Bay is the preservation of the visual openness at the front yards created by the contiguous lawn areas and low ornamental plants.

(i) Front Yard Landscaping.

(1) Visual Openness Restriction. All front yards shall be landscaped and maintained in a neat and attractive condition.

(2) Ground Cover and shrubs are allowed in the front yard and shall not exceed 30 inches in height. Shrubs are permitted as screening elements around electric transformer boxes.

(3) Plants, palms, small trees and gardens (including both flower and rock gardens) are allowed in the front yard.

(4) Water features are allowed in the front yard and shall not exceed 30 inches in height.

(ii) Planting and Lawn Dividers.

(1) Lawn Dividers Between Adjacent Properties. Black vinyl landscape dividers which are flush with the lawn are acceptable. When pavers or brick units are utilized, they should be grouted in place for stability. Rock, pavers or brick units used for borders between properties should generally not exceed four inches in width and the top should be flush with the lawn except when it abuts a sidewalk, in such a case, the top of the border should not be higher than the sidewalk.

(2) Around Front Yard Gardens and Driveways. Planting dividers (brick, stone, black vinyl, etc.) which are less than six inches in height from grade and four inches or less in width are generally permitted except when such dividers abut a public sidewalk.

(c) REAR AND SIDE YARD LANDSCAPING. The entire range of recommended types of trees, shrubs, palms, and ground covers can be used in the rear and side yards. Trees and palms should be planted 2 feet apart and 1 foot from all fences. Extensive paved areas in this area are discouraged.

(d) LANDSCAPING SPECIES AND GRAVEL. The following is a list of recommended trees, shrubs, palms, ground covers, and grasses. Invasive species are strictly prohibited.

Recommended Trees

- a. Allspice (*Pimenta Officinalis*)
- b. Autograph Tree (*Clusia Rosea*)
- c. Banana tree
- d. Citrus Trees
- e. False Olive (*Olea Europaea*)
- f. Fern Tree (*Filicium Decipens*)
- g. Fiddlewood (*Citharexylum Spinosum*)
- h. Fiji Fan Palm (*Pritchardia Pacifica*)
- i. Hong Kong Orchid (*Bauhinia Blakeana*)
- j. Kou (*Cordia Subcordata*)
- k. Kou Haole (*Cordia Sebestena*)
- l. Madagascar Olive (*Noronhia Emarginata*)
- m. Papaya tree
- n. Pink Tecoma (*Tabebuia Pentaphylla*)
- o. Plumeria (*Plumeria Obtusa*, *Plumeria Acuminata*, *Plumeria Rubra*)
- p. Rainbow Shower (*Cassia X Nealiae*)
- q. Red Coral Tree (*Erythrina Crista-gallii*)
- r. Silver Buttonwood (*Conocarpus Erecta*)
- s. Silver Trumpet (*Tabebuia Argentea*)
- t. Singapore Plumeria (*Plumeria Obtusa*)
- u. Strawberry Guava (*Psidium Guineense*)
- v. Tulipwood (*Harpulia Pendula*)
- w. Weeping Bottle Brush (*Callistemon Viminalis*)

Recommended Shrubs

- a. Agave
- b. Aloe
- c. Asparagus Fern
- d. Azaleas
- e. Beefsteak
- f. Bird of Paradise
- g. Bougainvillea
- h. Crepe Gardenia
- i. Croton
- j. Dusty Miller
- k. Dwarf Pittosporum (Pittosporum T. 'Wheelerii')
- l. Ginger
- m. Heliconia)
- n. Hibiscus
- o. Impatiens
- p. Ixoras
- q. Natal Palm
- r. Plumbago
- s Rhapsiolepis (Rhapsiolepis 'Princess')
- t. Russelia
- u. Snowbush (Breynia Nivosa Var. 'Roseo Picta')
- v. Spathiphyllum
- w. Spider Lily
- x. Tiare Gardenia

Recommended Palms

- a. Areca
- b. Dwarf Date Palm
- c. Joannis Palm (Veitchia Joannis)
- d. Licuala Grandis
- e. Loulu
- f. MacArthur Palm
- g. Manila (Veitchia Merillii)
- h. Raphis
- i. Royal Palms
- j. Sago Palm
- k. Travelers Palm
- l. Triangle Palm

Recommended Ground Covers

- a. Asparagus Fern (Asparagus Fern)
- b. Asystasia (Asystasia Gangetica)
- c. Bacopa (Baby's Tears)
- d. Blue Daze (Convulvulus Mauritanicus)
- e. Gazania

- f. Hearts and Flowers
- g. Ice Plant (Carpobrotus Edule)
- h. Mondo Grass
- i. Oyster Plant
- j. Portulaca
- k. Purple Joyweed (Alternanthera Amoena 'Purple')

Recommended Grasses

- a. Bermuda (Common, Manienie, Mahiki)
- b. Bermuda (Hybrid, Tifdwarf, Tifgreen, Tifway, Sunturf, Green Velvet)
- c. Centipede
- d. St. Augustine (Buffalograss, Dwarf St. Augustine)
- e. Seashore Paspalum
- f. Zoysia (El Toro, Emerald, Manila Grass, Macarene, Temple, Japonica, Korean Velvet, Tropic Green, Z-3)

Recommended Gravel

- a. Black Cinder
- b. Blue Rock
- c. Red Cinder
- d. White Coral

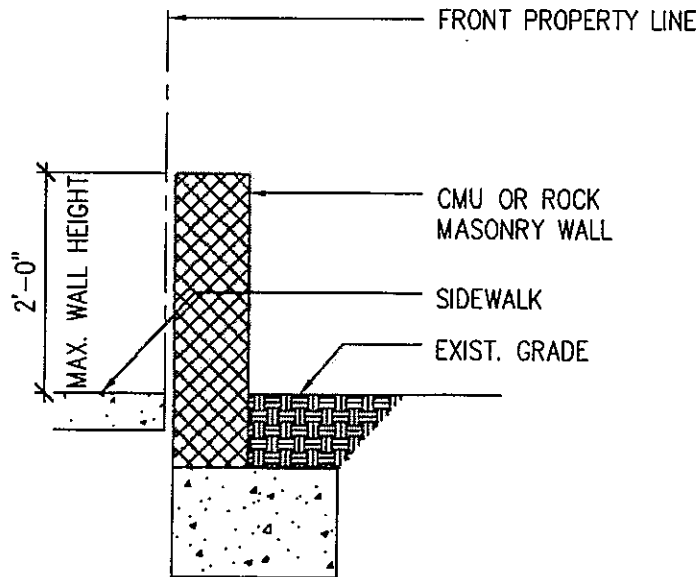


FIGURE 1:
ALLOWABLE FRONT YARD WALL
WITHIN 10 FT. FROM FRONT LOT LINE

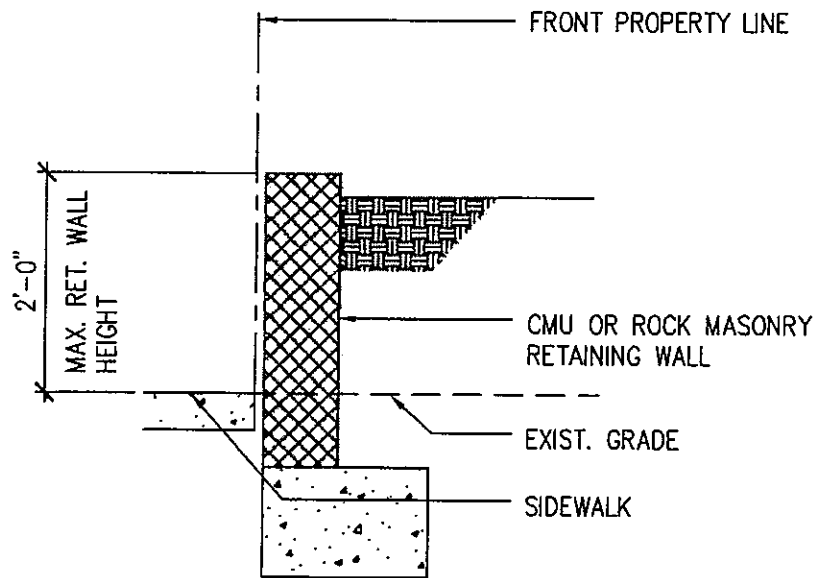


FIGURE 2:
ALLOWABLE FRONT YARD RETAINING WALL
WITHIN 10 FT. FROM FRONT LOT LINE