



**REAL ESTATE COMMISSION**  
 STATE OF HAWAII  
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
 PROFESSIONAL AND VOCATIONAL LICENSING DIVISION  
 P. O. Box 3469  
 Honolulu, Hawaii 96801

**CONDOMINIUM PUBLIC REPORT**

KIPAPA TERRACE  
 AGRICULTURAL CONDOMINIUM  
 Kipapa Estates Subdivision,  
 Kapaa Homesteads, Second Series,  
 Waipouli, Kawaihau, Kauai, Hawaii

Registration No. 2673

Issued: October 30, 1992  
 Expires: November 30, 1993

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of September 24, 1992, and is issued by the Commission for informational purposes only. It represents neither approval nor disapproval of the project. Buyers are encouraged to read this report carefully.

Type of Report:

- PRELIMINARY:**  
*(yellow)* The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued when complete information is filed.
- FINAL:**  
*(white)* The developer has legally created a condominium and has filed complete information with the Commission.  
 No prior reports have been issued  
 Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_
- SUPPLEMENTARY:**  
*(pink)* Updates information contained in the  
 Prelim. Public Report dated \_\_\_\_\_  
 Final Public Report dated \_\_\_\_\_  
 Supp. Public Report dated \_\_\_\_\_
- And  Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_  
 This report reactivates the \_\_\_\_\_  
 public report(s) which expired on \_\_\_\_\_

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required  Not Required - disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the Commission.

Changes made are as follows:

\* \* \* \* \*  
\* **SPECIAL NOTICE:** \*  
\* \* \* \* \*  
\* THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF \*  
\* RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH \*  
\* MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE \*  
\* PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL \*  
\* DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL \*  
\* BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE \*  
\* PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER \*  
\* WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL \*  
\* STRUCTURE TO A RESIDENTIAL USE. THE PURCHASER SHOULD \*  
\* CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO \*  
\* DETERMINE WHETHER THE PURCHASER MAY BUILD A RESIDENTIAL \*  
\* DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, UPON THE \*  
\* PROPERTY. \*  
\* \* \* \* \*  
\* 1. THERE ARE PRESENTLY NO RESIDENTIAL STRUCTURES ON \*  
\* THE PROPERTY. THE ONLY BUILDINGS ON THE PROPERTY \*  
\* IS TWO (2) STORAGE SHEDS, EACH OF WHICH IS DEFINED \*  
\* AS AN APARTMENT UNDER THE CONDOMINIUM PROPERTY \*  
\* ACT. \*  
\* \* \* \* \*  
\* 2. This Public Report does not constitute an approval \*  
\* of the project nor that all County Codes, \*  
\* Ordinances and subdivision requirements have been \*  
\* complied with. \*  
\* \* \* \* \*  
\* 3. This project does not involve the sale of \*  
\* individual subdivided lots. The dotted lines on \*  
\* the Condominium Map are for illustration purposes \*  
\* only. \*  
\* \* \* \* \*  
\* 4. Facilities and improvements normally associated \*  
\* with County approved subdivision, such as fire \*  
\* protection devices, County street lighting, \*  
\* electricity, upgraded water facilities, improved \*  
\* access for owner and emergency traffic, drainage \*  
\* facilities, etc., may not necessarily be provided \*  
\* for, and services such as County street maintenance \*  
\* and trash collection will not be available for \*  
\* interior roads and driveways. \*  
\* \* \* \* \*

\* 5. In addition to the foregoing matters, the Kauai \*  
 \* County Planning Department has advised as to the \*  
 \* following matters. You are requested to read the \*  
 \* following with care and seek advice from the \*  
 \* Kauai Planning Department, your architect/engineer \*  
 \* and your attorney, if necessary: \*  
 \* \*  
 \* A. The Kauai County CZC standards presently \*  
 \* require a minimum of two (2) parking stalls \*  
 \* for each residential dwelling unit. \*  
 \* \*  
 \* B. When applying for zoning permits with the \*  
 \* Planning Department, 75% of the owners or \*  
 \* their assignee are required to sign the permit \*  
 \* form(s). Should an assignee be designated, \*  
 \* such assignee shall present proof of authority \*  
 \* from 75% of the owners at the time a permit is \*  
 \* applied for. \*  
 \* \*  
 \* C. The use of the limited common elements shall \*  
 \* be limited to those listed as permissible \*  
 \* within the "A" Agricultural District in the \*  
 \* State Land Use Commission's Rules and \*  
 \* Regulations. (See Exhibit "F", including \*  
 \* Exhibit "A" of the Declaration of Restrictive \*  
 \* Covenants, Conditions) \*  
 \* \*  
 \* D. Any dwelling constructed after the first one \*  
 \* will require an inspection of the property by \*  
 \* the Kauai Planning Department to verify \*  
 \* whether agricultural activities are being \*  
 \* conducted on the property. If not, such \*  
 \* permits to construct additional farm \*  
 \* dwellings could be denied. \*  
 \* \*  
 \* **THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY** \*  
 \* **REVIEW THE DOCUMENTS FOR FURTHER INFORMATION WITH** \*  
 \* **REGARD TO THE FOREGOING.** \*  
 \* \*  
 \* \* \* \* \*

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## GENERAL INFORMATION ON CONDOMINIUMS

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of Hawaii's "Condominium Property Act" (Chapter 514A, Hawaii Revised Statutes) must be followed.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owner/tenant) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements. The leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

Common elements are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called limited common elements and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged, or encumbered, and they may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

### Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without a vote of the owners. Some of these actions may significantly impact the quality of life for all apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is vitally important to all apartment owners that the transition from developer to owner control be accomplished in an orderly manner and in a spirit of cooperation.

## SUMMARY OF THE CONDOMINIUM PROJECT

**Interest to be Conveyed to Buyer:**

- Fee simple interest in an apartment and an undivided feehold interest in the common elements.
- Leasehold interest in an apartment and an undivided leasehold interest in the common elements.
- Fee simple interest in an apartment and an undivided leasehold interest in the common elements.

**Types of Project:**

1.  New Building(s)  Conversion  
 Both New Building(s) and Conversion
  
2.  Residential  Commercial  Ohana  
 Mixed Residential and Commercial  Agricultural  
 Other \_\_\_\_\_
  
3.  High Rise (5 stories or more)  Low Rise
  
4.  Single or  Multiple Buildings

**5. Apartment Description**

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
Unit A	1	N/A	64 sq. ft.	N/A
Unit B	1	N/A	64 sq. ft.	N/A
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 2

*\*Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.*

*Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.*

**6. Parking:**

	<u>Number of Stalls</u>
Assigned Stalls (Individual Units)	_____
Guest Stalls	_____
Unassigned Stalls	_____
Extra Stalls Available for Purchase	_____
Other: _____	<u>Not Designated</u>
<b>Total Parking Stalls</b>	<u>Not Designated</u>

**7. Recreational amenities:** None



**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

- Proposed  
 Recorded - Bureau of Conveyances - Document No. 92-92447  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

- B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyance Condo Map No. 1677  
 Filed - Land Court Condo Map No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the way in which meetings will be conducted, and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances - Document No. 92-92448  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

The Condominium Statute (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- D. **House Rules.** The Board of Directors may adopt house rules to govern the use and operation of the common elements and individual apartments. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais, keeping of pets, and occupancy limits. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial house rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt house rules.

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>Majority vote of Board</u>

The percentages for individual condominium projects may be more than the minimum set by law.

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules

Developer has reserved the right under Paragraph 15.0 of the Declaration to alter the units in the Project which it owns without the approval of the Association or the other apartment owner and to amend the Condominium Map to note changes resulting from the exercise of the Developer's reserved rights under Paragraph 15.0. Developer has also reserved the right under Paragraph 16.0 to record any "as built" statements as required by law.



**For Subleaseholds:**

- Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is
  - Cancelled       Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is cancelled or foreclosed.

**B. Underlying Land:**

**Address:** Kipapa Estates Subdivision, Kapaa Homesteads Tax Map Key: (4) 4-4-02-90 (por.)  
Second Series, Waipouli, Kawaihau, Kauai, (TMK)  
Hawaii

Address       TMK      is expected to change because \_\_\_\_\_

**Land Area:** 3.000       square feet       acre(s)      **Zoning:** Agriculture

**Fee Owner:** Robert W. Brower      Garth H. Masters and  
Name      Kathi Masters

P. O. Box 220      4267 Punee Road  
**Address**

Anahola, HI 96703      Koloa, HI 96756

**Sublessor:** \_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Address**

**C Buildings and Other Improvements:**

- 1.  New Building(s)       Conversion of Existing Building(s)
- Both New Building(s) and Conversion

2. **Buildings:** 2      **Floors Per Building** 1 Floor

Exhibit \_\_\_\_\_ contains further explanations.

3. **Principal Construction Material:**

Concrete       Hollow Tile       Wood

Other \_\_\_\_\_

4. Permitted Uses by Zoning:

	<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>		<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>
<input type="checkbox"/> Commercial	_____	_____	<input type="checkbox"/> Industrial	_____	_____
<input type="checkbox"/> Residential	_____	_____	<input checked="" type="checkbox"/> Agricultural	<u>2</u>	<u>Yes</u>
<input type="checkbox"/> Timeshare/Hotel	_____	_____	<input type="checkbox"/> Recreational	_____	_____
<input type="checkbox"/> Other: _____				_____	_____

Is/Are this/these use(s) specifically permitted by the project's declaration or bylaws?

Yes                       No

5. Special Use Restrictions:

The Declaration, Bylaws, and House Rules may contain restrictions on the use and occupancy of apartments. Restrictions for this condominium project include but are not limited to:

- Pets: \_\_\_\_\_
- Number of Occupants: \_\_\_\_\_  
See Building and House Rules and the Amended Declaration
- Other: of Easements Covenants and Restrictions
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators 0                      Stairways 0                      Trash Chutes 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>Unit A</u>	<u>1</u>	<u>N/A</u>	<u>64 sq. ft.</u>	<u>N/A</u>
<u>Unit B</u>	<u>1</u>	<u>N/A</u>	<u>64 sq. ft.</u>	<u>N/A</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 2

*\*Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.*

*Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.*

**Boundaries of Each Apartment:**

The exterior surfaces of the structures and the description of the limited common element for each of the units as set forth in the Condominium Map.

**Permitted Alterations to Apartments:**

Either apartment owner can increase the total square footage of his structure, add additional structures, alter the location of his structure and/or subdivide in accordance with the building code, zoning and subdivision ordinances.

**7. Parking Stalls:**

Total Parking Stalls: Not Designated

	Regular		Compact		Tandem		TOTAL
	covered	open	covered	open	covered	open	
Assigned (for individual units)	_____	_____	_____	_____	_____	_____	_____
Guest Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra Available for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	_____	_____	_____	_____	_____	_____	_____

Each apartment will have the exclusive use of at least Not Designated parking stall(s). Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

**8. Recreational and Other Common Facilities:**

There are no recreational or common facilities.

Swimming pool

Storage Area

Recreation Area

Laundry Area

Tennis Court

Trash Chute

Other: \_\_\_\_\_

9. Present Condition of Improvements

(For conversions of residential apartments in existence for at least five years):

a. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

N/A

b. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

N/A

10. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	X		
Structures	X		
Lot	X		

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

**D. Common Elements, Limited Common Elements, Common Interest:**

1. **Common Elements:** Common Elements are those parts of the condominium project intended to be used by all apartment owners. They are owned jointly by all apartment owners.

Exhibit     A     describes the common elements.

As follows:

2. **Limited Common Elements:** Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which may use them are:

described in Exhibit \_\_\_\_\_

as follows:

The land area of each dwelling, consisting of the land beneath it as shown and delineated on the Condominium Map, is a limited common element for the use of the owner of each respective unit.

Unit A - 1.587 acres

Unit B - 1.412 acres

NOTE: These are not legally subdivided lots and under County Ordinances, they may not be subdivided.

3. **Common Interest:** Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is often used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium. It may also be used for other purposes, including voting on matters requiring action by apartment owners.

Exhibit \_\_\_\_\_ describes the common interests for each apartment.

As follows:

Unit A - 50% appurtenant common interest

Unit B - 50% appurtenant common interest

E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property.

Exhibit  B  describes the encumbrances against the title contained in the title report dated  June 10, 1992  and issued by  First Hawaii Title Corporation .

**Blanket Liens:**

A blanket lien is a mortgage on a condominium project that secures a construction loan. It is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ ] There are no blanket liens affecting title to the individual apartments.

[ X] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. Buyer's interest will be affected only if the developer defaults prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest If Developer Defaults</u>
Purchase Money Mortgage dated October 2, 1991, recorded October 16, 1992, in the Bureau of Conveyances, State of Hawaii as Document No. 91-141021.	Mortgagee may terminate buyer's interest but latter is entitled to return of all deposits.

F. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a managing agent to assist the Association in managing the condominium project.

**Initial Managing Agent:** When the developer or the developer's affiliate is the initial managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial managing agent for this condominium is:

[ ] not affiliated with the Developer.

[ ] the Developer or the Developer's affiliate.

[ X] self-managed by the Association of Apartment Owners.

[ ] other \_\_\_\_\_

**G. Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be liened and sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided to each apartment.

Exhibit E contains a schedule of maintenance fees and maintenance fee disbursements.

NOTE: No maintenance fees are immediately contemplated. Paragraph 13.0 of the Declaration provides that the Association may allow each apartment owner to maintain his own insurance and name the Association as an additional insured.

**H. Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

Not applicable

Electricity

Television Cable

Gas

Water & Sewer

Other \_\_\_\_\_

**I. Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements: None

2. Appliances: None



#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

1. Purchasers should examine Exhibit "F" carefully. Each purchaser must obtain a building permit should he desire to construct a dwelling on the premises, pull purchaser's own utility lines and install purchaser's own cesspool. The moving on to the project of used homes and quonset huts is prohibited.
2. Purchasers should be aware that the land is subject to agricultural activities being pursued as required by Chapter 205, Hawaii Revised Statutes, as amended.
3. Purchasers should be aware that the land is subject to Restrictive Covenants and Conditions relating to the use of the land (Exhibit "F").
4. PURCHASERS SHOULD BE AWARE OF BUILDING PERMIT REQUIREMENTS IMPOSED BY THE COUNTY OF KAUAI AS WELL AS THE DECLARATION OF CONDOMINIUM REGIME, BY LAWS AND BUILDING RULES AND DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS (EXHIBIT "F"), THE AVAILABILITY OF UTILITIES AND THE SIZE AND LOCATION OF CONNECTIONS AND BUILDING PERMITS AND CONSTRUCTION OF IMPROVEMENTS AND ALL OTHER MATTERS RELATING TO THE COST, USE AND ENJOYMENT OF THE CONDOMINIUM UNITS PRIOR TO THEIR ENTERING INTO A PURCHASE CONTRACT. THE COMMISSION, BY ISSUING THIS REPORT, IS NOT APPROVING OR DISAPPROVING THE PROJECT, NOR IS IT WARRANTING THE CORRECTNESS OR COMPLETENESS OF INFORMATION SUPPLIED TO IT BY ANY PARTY OR PARTIES.
5. Buyers should be aware that 75% of the owners must concur on any application for building permit.

C:\WP5\CONDO\KTA.P18

**Buyer's Right to Cancel Sales Contract:**

**A. Rights Under the Condominium Statute:**

**Preliminary Report:** Sales made by the Developer are not binding on the prospective buyer. Sales made by the Developer may be binding on the Developer unless the Developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

**Supplementary Report to a Preliminary Report:** Same as for Preliminary Report.

**Final Report, Supplementary Report to a Final Report:** Sales made by the Developer are binding if:

1. The Developer delivers to the buyer a copy of:
  - a. Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report;  
**AND**
  - b. Any other public report issued by the Commission prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
2. The buyer is given an opportunity to read the report(s); and
3. One of the following has occurred:
  - a. The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - b. Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - c. The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

**Material Change:** Binding contracts with the Developer may be rescinded by the buyer if:

1. There is a material change in the condominium which directly, substantially, and adversely affects (a) the use or value of the buyer's apartment or its limited common elements; or (b) the amenities available for buyer's use; and
2. The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

**B. Rights Under the Sales Contract:**

Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the condominium. These include but are not limited to the:

1. Condominium Public Reports issued by the Hawaii Real Estate Commission.
2. Declaration of Condominium Property Regime and Condominium Map.
3. Bylaws of the Association of Apartment Owners.
4. House Rules.
5. Escrow Agreement.
6. Hawaii's Condominium Law (Chapter 514A, HRS, as amended; Hawaii Administrative Rules, Chapter 16-107, adopted by the Real Estate Commission).
7. Other Declaration of Easements, Covenants and Conditions dated June 27, 1990 and Amended Declaration of Easements, Covenants and Restrictions dated August 2, 1990

If these documents are not in final form, the buyer should ask to see the most recent draft.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS, and Hawaii Administrative Rules, Chapter 16-107) are available at the Department of Commerce and Consumer Affairs, 1010 Richards Street, P. O. Box 541, Honolulu, HI 96809.

This Public Report is part of Registration No. 2673 filed with the Real Estate Commission on  
June 19, 1992.

Reproduction of Report. When reproduced, this report must be on:

yellow paper stock                       white paper stock                       pink paper stock

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the date of issuance unless a Supplementary public Report is issued or unless the Commission issues an order extending the effective period for the report.

  
\_\_\_\_\_  
MARCUS NISHIKAWA, Chair  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

Department of Finance, County of Kauai  
Planning Department, County of Kauai  
Federal Housing Administration

EXHIBIT "A"

Common Elements. The common elements of the project which the apartments have access include:

- a. The land in fee simple.
- b. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, hot and cold water and like utilities.
- c. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the project.

EXHIBIT "B"

ENCUMBRANCES AGAINST TITLE: The title report dated June 10, 1992 issued by First Hawaii Title Corporation that title to the land is subject to the following encumbrances:

1. For real property taxes as may be due and owing, reference is made to the Director of Finance, County of Kauai. Tax Key: 4-4-02-107 (4) - Area Assessed: 3.00 acres

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Easement "D", for access and utility purposes.

4. Building Setback lines and Drainageway lines as shown on Subdivision Map made by Dennis M. Esaki, Registered Land surveyor Certificate Number 4383, dated April 23, 1990.

5. The following Department of Water conditions"

"Due to the high elevation of this lot, a dependable supply of water cannot be assured. The lot owner will be required to sign an elevation agreement with the Department of Water upon application for water service. Agreeing to accept such water service as the Department is able to render and agreeing to install and maintain suitable booster pumps and storage tanks, if necessary".

6. Declaration of Easements, Covenants and Conditions dated June 27, 1990, recorded July 9, 1990 in the Bureau of Conveyances of the State of Hawaii as Document No. 90-102363 to which reference is hereby made.

7. Amended Declaration of Easements, Covenants and Restrictions dated August 2, 1990, recorded August 13, 1990 in the Bureau of Conveyances of the State of Hawaii as Document No. 90-102884 to which reference is hereby made.

8. Purchase Money Mortgage by and between Garth H. Masters and Kathi Masters, husband and wife, as to an undivided one-half (1/2) interest, as Mortgagor, and Robert W. Brower, husband of Laurel Brier, as Mortgagee, dated October 2, 1991, recorded October 16, 1991, in said Bureau as Document No. 91-141021.

9. Declaration of Additional Restrictions dated February 24, 1992, recorded April 8, 1992, in said Bureau as Document No. 92-051690 to which reference is hereby made.

10. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the Declaration of Condominium Property Regime of "Kipapa Terrace Agricultural Condominium" dated February 24, 1992, recorded June 10, 1992, in said Bureau as Document No. 92-092447. Condominium Map No. 1677, to which reference is hereby made.

11. By-Laws dated February 24, 1992, recorded on June 10, 1992 in the Bureau of Conveyances of the State of Hawaii as Document No. 92-092448, to which reference is hereby made.

EXHIBIT "C"

Summary of Sales Contract

The Sales Contract contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Sales Contract says:

(a) A buyer must obtain his own financing. Buyer acknowledges that this Sales Contract is contingent on any financing after the issuance of the final public report.

(b) That a purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(c) That interest on deposits shall belong to the buyer so long as said funds are held in escrow.

(d) That the unit will be subject to various other legal documents which the buyer certifies that he has examined.

(e) That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

(f) If Buyer defaults, Seller shall give written notice to Buyer by certified mail and if such default is not cured within 10 days after receipt of notice, Seller may terminate the Sales Contract and retain the Buyer's deposits as liquidated damages. Seller may in addition pursue any other remedy including specific performance and all costs by reason of such default shall be borne by Buyer.

(g) If Buyer has paid all payments required under the Sales Contract, Buyer shall be entitled to specific performance.

The Sales Contract contains various other provisions with which the purchaser should become acquainted.

EXHIBIT "D"

Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement these things will or may happen:

(a) Developer will let purchasers know when payments are due.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement says under what conditions a refund will be made to a purchaser.

(d) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

EXHIBIT "E"

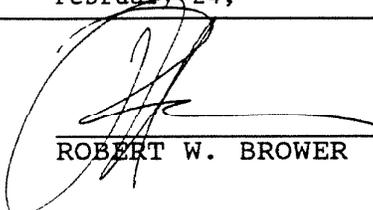
KIPAPA TERRACE AGRICULTURAL CONDOMINIUM

REGISTRATION NO. 2673

DISCLOSURE STATEMENT AS OF FEBRUARY 24, 1992

1. Name of Project: KIPAPA TERRACE AGRICULTURAL CONDOMINIUM
2. Address: Kipapa Estates Subdivision, Kapaa Homesteads,  
Second Series, Waipouli, Kawaihau, Kauai, Hawaii
3. Name of Developers: ROBERT W. BROWER, GARTH H. MASTERS and  
KATHI MASTERS  
  
Addresses of Developers: Robert W. Brower, P. O. Box 220,  
Anahola, Hawaii 96703;  
Garth H. Master and Kathi Masters,  
4267 Punee Road, Kola, Hawaii  
96756  
  
Telephone Numbers: Robert W. Brower (808) 822-0616  
Garth H. Master and Kathi Master  
(808) 742-6925
4. Project Manager or Agent: Robert W. Brower  
  
Address: P. O. Box 220, Anahola, Hawaii 96703
5. Maintenance Fees: None at present. In the future as the  
need and necessity arises for maintenance fees it shall be  
based upon generally accepted accounting principles.
6. Commencement of Maintenance Fees: At such time that the  
Association decides to assess maintenance fees.
7. Warranties: The Project is a fee simple condominium project  
and there are no warranties.
8. Project: The Project consists of 2 condominium apartments,  
the land areas of which are to be utilized for agricultural,  
residential and other uses permitted under the zoning  
ordinances for the County of Kauai.

DATED: Anahola, Hawaii, February 24, \_\_\_\_\_, 1992.

  
\_\_\_\_\_  
ROBERT W. BROWER

Subscribed and sworn to before me  
this 24<sup>th</sup> day of February, 1992.

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF HAWAII

My commission expires: 2-20-93

DATED: Koloa, Hawaii, February 24, 1992.

*Garth H. Masters*  
GARTH H. MASTERS

*Kathi Masters*  
KATHI MASTERS

Subscribed and sworn to before me  
this 24<sup>th</sup> day of February, 1992.

*Daniel Wilson*  
NOTARY PUBLIC, STATE OF HAWAII

My commission expires: 2-20-93

C:\WP5\CONDO\DAN.DS

EXHIBIT "F"

**BUILDING AND HOUSE RULES  
KIPAPA TERRACE AGRICULTURAL CONDOMINIUM**

The purpose of these Building and House Rules ("Rules") is to protect all owners and occupants from annoyance and nuisance caused by improper conduct and improper use of the **KIPAPA TERRACE AGRICULTURAL CONDOMINIUM**, hereinafter referred to as "Project", and to provide for the maximum enjoyment of the premises. All owners and occupants, their agents, employees and invitees shall be bound by these Rules and standards of reasonable conduct whether covered by these Rules or not.

1. Definitions. As used herein:

a. The "Area" refers to the land set aside for the use of each owner as a limited common element.

b. The "Apartment" refers to the existing buildings built on the land designated as the limited common element for the owner and any subsequent improvements built within the Area.

c. The "lot" refers to Lot 6 of the Kipapa Estates Subdivision, situate at Kapaa Homesteads, Second Series, Waipouli, Kawaihau, Kauai, Hawaii, and described in Warranty Deed dated July 11, 1990 and October 21, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document Nos. 90-124004 and 91-143633. The condominium unit described in the Declaration of Condominium Property Regime established for said Lot 6 shall be referred to as an "apartment" or "unit" in the project.

2. Building Permit. Any owner desiring to make an addition to the existing buildings and/or construct any new building will have to comply with the building and zoning ordinances as the same may be changed from time to time. The requirements of the County of Kauai Ordinance No. 317 approved on June 27, 1977 is required to be observed in the construction of a single family dwelling as well as the following:

a. No building shall exceed three (3) stories in height.

b. In any grading and/or excavation of the Apartment the grade of the Apartment shall not be altered in such a manner as to affect the drainage of any adjoining Apartment.

3. Garbage and Trash. Each unit shall place his own garbage, trash and rubbish in covered receptacles or in plastic or fastened bags. Each owner shall exercise reasonable care to avoid exposure of waste materials to flies, roaches, rodents and other insects or materials.

4. General Appearance.

a. Storage. No open storage of furniture, fixtures, appliances and other goods not in use will be permitted if not screened from the street and the other apartment.

b. Mailboxes and Street Address. Mailboxes and street address shall be in an Area that is set aside for each apartment at the driveway entrance.

5. Water and Utilities. The water, electricity and telephone lines will be drawn from the street to each Apartment abutting the street at their own cost and expense.

6. Setbacks. Any dwelling and/or structure placed in an Area by an owner will observe a minimum 10-foot setback from the perimeter boundaries of each Area.

7. Building Permit and Construction. The following shall be observed to secure the Association's approval to obtain the building permit, the construction of the improvements and the amendment of the Declaration of Condominium Property Regime.

a. The owner shall have plans for the dwelling prepared by a licensed architect or engineer and submitted to the Association for its approval under Section 21, A (2) of the Declaration. The submission shall state the name of the contractor and the method by which the improvements will be financed.

b. The plans shall conform to the Building Code of the County of Kauai.

c. After approval by the Association, the plans are to be submitted to the County of Kauai for the issuance of the building permit.

d. The owner should provide a construction contract and a 100% bond against mechanic's and materialmen's lien to the Association with the Association as an additional obligee.

e. Upon the completion of the dwelling a Notice of Completion shall be published in the Garden Isle for two (2) successive weeks at least seven (7) days apart and the Notice of Completion filed with the Clerk of the Fifth Circuit Court.

f. The plans as drawn should meet the requirements of a Condominium Map. The plan should show a site plan indicating where the dwelling will be located in the unit's limited common element land area. There should be a floor plan indicating the living/dining room, bedrooms, kitchen, bathrooms, lanai, etc. and the total net living area. The plans should show the elevations of the dwelling. The project and the architect's or engineer's stamp should be stamped on the plans.

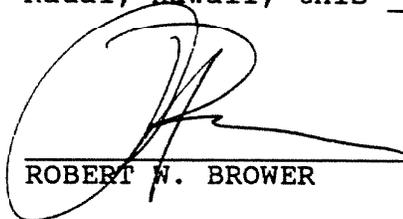
g. An architect or engineer's certificate should be executed reflecting the "as built" condition of the dwelling.

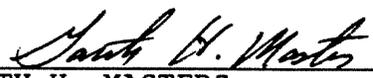
h. The owner should have prepared at his own cost the amendment to the Declaration reflecting the change in description of the apartment and the amendment to the Condominium Map.

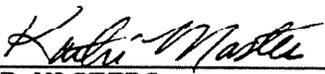
i. The amendment to the Declaration should then be filed for record in the Registrar of Conveyances, State of Hawaii.

8. Amended Declaration of Easements, Covenants and Restrictions. The Amendment dated August 2, 1990, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 90-102884 is attached hereto and made a part hereof by reference to be observed by the owners, occupants, agents, employees and invitees.

Adopted at Anahola, Kauai, Hawaii, this 25th day of February, 1992.

  
\_\_\_\_\_  
ROBERT W. BROWER

  
\_\_\_\_\_  
GARTH H. MASTERS

  
\_\_\_\_\_  
KATHI MASTERS

AMENDED  
DECLARATION OF EASEMENTS COVENANTS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, KIPAPA PARTNERS, a Hawaii registered general partnership, with its business address at Kapaa, Kauai, Hawaii, and post office address at P. O. Box 645, Kapaa, Hawaii 96746, hereinafter called "Declarant," is the owner of that certain parcel of land situate at Kapaa Homesteads, Kauai, Hawaii, identified as Lot 162 of Kapaa Homesteads, containing an area of 22-31/100 acres, more or less;

WHEREAS, Declarant has applied for and has obtained final subdivision approval from the County of Kauai to subdivide said Lot 162 into a subdivision known as the Kipapa Estates Subdivision, being Lots 1 to 11, inclusive, containing a total area of approximately 22-31/100 acres, as shown on the subdivision map on file in the Planning Department of the County of Kauai, State of Hawaii, and consisting of 10 agriculturally zoned lots and 1 roadway lot; and,

WHEREAS, Metes and bounds descriptions of said Lots 1 to 11, along with easements affecting same, are contained in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, Declarant intends to develop, sell and convey Lots 1 to 10, for residential and agricultural use and desires to impose upon said lots mutual and beneficial restrictions, covenants and conditions under a plan of development and improvement for the benefit of all residential lots in said Kipapa Estates Subdivision;

NOW, THEREFORE, Declarant does hereby declare that Lots 1 to 11, inclusive, of said Kipapa Estates Subdivision, as shown on said map on file at the County of Kauai Planning Department, and as described in said Exhibit A, exclusive of roadway or street lot shown thereon, are and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following declarations:

1. Residence Only. All lots shall be utilized for residential purposes only. If allowed by the State and the County, an additional dwelling unit in addition to a primary dwelling may be constructed on any lot in the subdivision.
2. Size of Dwelling. Residences and dwellings shall contain at least 800 sq. ft. of living space, exclusive of any garage, carport, outside porch, or outbuilding.
3. Used Construction Materials and Buildings. No used or secondhand lumber or other material shall be used or incorporated in the construction of any improvements on any lot, nor shall there be placed or maintained upon any lot any used buildings which have been moved from another location. All construction shall be of new masonry or lumber material free of dry rot and termites. The use of the following types of roofs is prohibited: (1) Asphalt felt roll roofing, (2) Corrugated metal roofing and (3) Flat metal roofs.
4. Nuisances. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which

may be or may become an annoyance or nuisance to the neighborhood; and no animals, livestock or poultry of any kind shall be raised, bred or kept on the lot, except that not more than two (2) dogs or cats, or a reasonable number of other common household pets may be kept; provided, however, that they are not kept, bred, or maintained for any commercial purpose. No chickens, pigs or bees shall be raised on any lot.

5. Maintenance of Lot. The owner of each lot shall at all times maintain said lot in a good, neat and clean condition so as to prevent it from becoming overgrown with grass and weeds, unsightly, unsanitary or a hazard to health. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall be kept in sanitary containers.

6. Agricultural Activity. As long as the lots are agriculturally zoned by the County of Kauai, uses on the lots in the subdivision shall be limited to those listed as permissible uses within the "A" Agriculture District in the State Land Use Commission Rules and Regulations. Dwellings on the lots shall mean single-family dwellings located on and used in connection with a farm where agriculture activity provides income to the family occupying the dwelling.

7. Water Availability. Due to the high elevations of the lots in the subdivision, a dependable supply of water cannot be assured. Lot owners will be required to sign an elevation agreement with the Department of Water upon application for water service, agreeing to accept such water service as the Department is able to render and agreeing to install and maintain suitable booster pumps and storage tanks, if necessary.

8. Wastewater Disposal. The subdivision is NOT currently served by a sewer system. Since the Wailua Homesteads area is not serviced by any wastewater treatment works, the use of individual wastewater systems may be allowed, provided that the minimum requirements of Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, are satisfactorily complied with. Kipapa Estates Subdivision is located above or mauka of the Underground Injection Control (UIC) Line. As stated in Chapter 23, Underground Injection Control, Title 11, Administrative Rules, State of Hawaii, the UIC line was established "to protect the quality of the State's underground sources of drinking water from pollution by subsurface disposal of fluids". The Department of Health will not be approving any new cesspools above the UIC line effective January 1, 1990; however, other individual wastewater treatment systems, such as septic tanks, may be utilized subject to the approval of the Department of Health.

9. Lot Construction. No part of any lot shall be filled, excavated or otherwise altered as to grade in such manner as to adversely affect drainage of any adjoining lot.

10. Electricity Availability. The Declarant discloses and represents that the subdivision is to be furnished with a single-phase electrical line extension which may not be adequate for the operation of electrical equipment requiring heavy or extraordinary power. If Purchaser requires or desires any additional or other type of electric service, it shall be Purchaser's sole responsibility to procure such additional or

other service, and that such additional or other service shall be at Purchaser's expense.

11. Easements Within Residential Lots. All easements for installation and maintenance of utilities, drainage facilities and entry areas for subdivision signs as shown on said map on file at the County of Kauai Planning Department and as described in said Exhibit A are reserved for the purpose and benefit of the subdivision and for dedication by the Declarant. Within said easements no structure, planting (other than ground cover), or material shall be placed, grown or permitted to remain therein which may damage or interfere with the installation and maintenance of such utilities, drainage facilities and entry signs, or which may change the directional flow of drainage channels or swales. The easement areas of residential lots, including drainage ditches and swales therein, shall be maintained in good ground cover condition by the respective owners of said lots.

12. Covenants Running With the Land. Each and all of the foregoing covenants and restrictions shall run with the land, and jurisdiction may be taken in equity at suit of the Declarant, its successors or assigns, or of any other grantee of any of said lots within said subdivision, to restrict or prevent by injunction, mandatory or restraining, any violation of any of said covenants upon the part of the Grantee to be observed and performed, without prejudice to the right of the Declarant, its successors or assigns, or any other grantee, to adopt or pursue any other remedy thereafter for the same breach or failure, or for any subsequent breach or failure, or to take any action to recover damages for any such breach or failure.

13. Amendments. The covenants, agreements, conditions, reservation, restrictions, and charges created and established herein may be waived, terminated, or modified with the written consent of at least 51% of all the lot owners in Kipapa Estates Subdivision, as long as such modifications do not conflict with governmental regulations or laws or conditions imposed by governmental agencies to obtain subdivision approval.

14. The acceptance of this deed by the Grantee shall constitute an acceptance of all the terms, conditions, limitations, restrictions, and uses to which the property herein conveyed is made.

15. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other covenants, which shall remain in full force and effect.

16. No Effect on Road Lots. The covenants herein shall not be applicable to any road lot shown on said map on file at the Planning Department of the County of Kauai and described in said Exhibit A, nor to all or any portion of a lot which may hereafter be used for public road purposes, or which may be sold or conveyed to any public utility for public utility purposes or to the County of Kauai or the State of Hawaii for public purposes.

17. Captions. All captions in this Declaration are for convenience only and do not in any way limit or amplify the provisions hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration  
on the 2nd day of August, 1990.

KIPAPA PARTNERS

By Bruce A. Laymon  
Its General Partner

By Andrew Borilez  
Its General Partner

By David M. McCleary  
Its General Partner

STATE OF HAWAII, )  
                          ) ss.  
COUNTY OF KAUAI, )

On this 2nd day of August, 1990, before me  
appeared BRUCE A. LAYMON, DAVID M. McCLEARY, and ANDREW BORILEZ,  
to me personally known, who being duly sworn, did say that they  
are the general partners of KIPAPA PARTNERS, a Hawaii registered  
general partnership, and that said instrument was signed by them  
individually and on behalf of said partnership; and said  
BRUCE A. LAYMON, DAVID M. McCLEARY, and ANDREW BORILEZ,  
acknowledged said instrument to be the free act and deed of said  
partnership.

Anna R. Bump 1-5  
Notary Public, State of Hawaii

My commission expires: Dec. 12, 1990

90-120884

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

'90 AUG 7 AM 8 15

S. FURUKAWA, REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL ( ) PICKUP (X)

7-2534  
FITC

FIRST HAWAII TITLE CORPORATION  
201 Merchant Street #2000  
Honolulu, Hawaii 96813

35909

TITLE OF DOCUMENT:

AMENDED DECLARATION OF EASEMENTS COVENANTS AND RESTRICTIONS

PARTIES TO DOCUMENT:

DECLARANT: KIPAPA PARTNERS

PROPERTY DESCRIPTION:

LIBER/PAGE:

DOCUMENT NO.  
TRANSFER CERTIFICATE OF  
TITLE NO(S):

AMENDED  
DECLARATION OF EASEMENTS COVENANTS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, KIPAPA PARTNERS, a Hawaii registered general partnership, with its business address at Kapaa, Kauai, Hawaii, and post office address at P. O. Box 645, Kapaa, Hawaii 96746, hereinafter called "Declarant," is the owner of that certain parcel of land situate at Kapaa Homesteads, Kauai, Hawaii, identified as Lot 162 of Kapaa Homesteads, containing an area of 22-31/100 acres, more or less;

WHEREAS, Declarant has applied for and has obtained final subdivision approval from the County of Kauai to subdivide said Lot 162 into a subdivision known as the Kipapa Estates Subdivision, being Lots 1 to 11, inclusive, containing a total area of approximately 22-31/100 acres, as shown on the subdivision map on file in the Planning Department of the County of Kauai, State of Hawaii, and consisting of 10 agriculturally zoned lots and 1 roadway lot; and,

WHEREAS, Metes and bounds descriptions of said Lots 1 to 11, along with easements affecting same, are contained in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, Declarant intends to develop, sell and convey Lots 1 to 10, for residential and agricultural use and desires to impose upon said lots mutual and beneficial restrictions, covenants and conditions under a plan of development and improvement for the benefit of all residential lots in said Kipapa Estates Subdivision;

NOW, THEREFORE, Declarant does hereby declare that Lots 1 to 11, inclusive, of said Kipapa Estates Subdivision, as shown on said map on file at the County of Kauai Planning Department, and as described in said Exhibit A, exclusive of roadway or street lot shown thereon, are and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following declarations:

1. Residence Only. All lots shall be utilized for residential purposes only. If allowed by the State and the County, an additional dwelling unit in addition to a primary dwelling may be constructed on any lot in the subdivision.

2. Size of Dwelling. Residences and dwellings shall contain at least 800 sq. ft. of living space, exclusive of any garage, carport, outside porch, or outbuilding.

3. Used Construction Materials and Buildings. No used or secondhand lumber or other material shall be used or incorporated in the construction of any improvements on any lot, nor shall there be placed or maintained upon any lot any used buildings which have been moved from another location. All construction shall be of new masonry or lumber material free of dry rot and termites. The use of the following types of roofs is prohibited: (1) Asphalt felt roll roofing, (2) Corrugated metal roofing and (3) Flat metal roofs.

4. Nuisances. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which

may be or may become an annoyance or nuisance to the neighborhood; and no animals, livestock or poultry of any kind shall be raised, bred or kept on the lot, except that not more than two (2) dogs or cats, or a reasonable number of other common household pets may be kept; provided, however, that they are not kept, bred, or maintained for any commercial purpose. No chickens, pigs or bees shall be raised on any lot.

5. Maintenance of Lot. The owner of each lot shall at all times maintain said lot in a good, neat and clean condition so as to prevent it from becoming overgrown with grass and weeds, unsightly, unsanitary or a hazard to health. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall be kept in sanitary containers.

6. Agricultural Activity. As long as the lots are agriculturally zoned by the County of Kauai, uses on the lots in the subdivision shall be limited to those listed as permissible uses within the "A" Agriculture District in the State Land Use Commission Rules and Regulations. Dwellings on the lots shall mean single-family dwellings located on and used in connection with a farm where agriculture activity provides income to the family occupying the dwelling.

7. Water Availability. Due to the high elevations of the lots in the subdivision, a dependable supply of water cannot be assured. Lot owners will be required to sign an elevation agreement with the Department of Water upon application for water service, agreeing to accept such water service as the Department is able to render and agreeing to install and maintain suitable booster pumps and storage tanks, if necessary.

8. Wastewater Disposal. The subdivision is NOT currently served by a sewer system. Since the Wailua Homesteads area is not serviced by any wastewater treatment works, the use of individual wastewater systems may be allowed, provided that the minimum requirements of Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, are satisfactorily complied with. Kipapa Estates Subdivision is located above or mauka of the Underground Injection Control (UIC) Line. As stated in Chapter 23, Underground Injection Control, Title 11, Administrative Rules, State of Hawaii, the UIC line was established "to protect the quality of the State's underground sources of drinking water from pollution by subsurface disposal of fluids". The Department of Health will not be approving any new cesspools above the UIC line effective January 1, 1990; however, other individual wastewater treatment systems, such as septic tanks, may be utilized subject to the approval of the Department of Health.

9. Lot Construction. No part of any lot shall be filled, excavated or otherwise altered as to grade in such manner as to adversely affect drainage of any adjoining lot.

10. Electricity Availability. The Declarant discloses and represents that the subdivision is to be furnished with a single-phase electrical line extension which may not be adequate for the operation of electrical equipment requiring heavy or extraordinary power. If Purchaser requires or desires any additional or other type of electric service, it shall be Purchaser's sole responsibility to procure such additional or

other service, and that such additional or other service shall be at Purchaser's expense.

11. Easements Within Residential Lots. All easements for installation and maintenance of utilities, drainage facilities and entry areas for subdivision signs as shown on said map on file at the County of Kauai Planning Department and as described in said Exhibit A are reserved for the purpose and benefit of the subdivision and for dedication by the Declarant. Within said easements no structure, planting (other than ground cover), or material shall be placed, grown or permitted to remain therein which may damage or interfere with the installation and maintenance of such utilities, drainage facilities and entry signs, or which may change the directional flow of drainage channels or swales. The easement areas of residential lots, including drainage ditches and swales therein, shall be maintained in good ground cover condition by the respective owners of said lots.

12. Covenants Running With the Land. Each and all of the foregoing covenants and restrictions shall run with the land, and jurisdiction may be taken in equity at suit of the Declarant, its successors or assigns, or of any other grantee of any of said lots within said subdivision, to restrict or prevent by injunction, mandatory or restraining, any violation of any of said covenants upon the part of the Grantee to be observed and performed, without prejudice to the right of the Declarant, its successors or assigns, or any other grantee, to adopt or pursue any other remedy thereafter for the same breach or failure, or for any subsequent breach or failure, or to take any action to recover damages for any such breach or failure.

13. Amendments. The covenants, agreements, conditions, reservation, restrictions, and charges created and established herein may be waived, terminated, or modified with the written consent of at least 51% of all the lot owners in Kipapa Estates Subdivision, as long as such modifications do not conflict with governmental regulations or laws or conditions imposed by governmental agencies to obtain subdivision approval.

14. The acceptance of this deed by the Grantee shall constitute an acceptance of all the terms, conditions, limitations, restrictions, and uses to which the property herein conveyed is made.

15. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other covenants, which shall remain in full force and effect.

16. No Effect on Road Lots. The covenants herein shall not be applicable to any road lot shown on said map on file at the Planning Department of the County of Kauai and described in said Exhibit A, nor to all or any portion of a lot which may hereafter be used for public road purposes, or which may be sold or conveyed to any public utility for public utility purposes or to the County of Kauai or the State of Hawaii for public purposes.

17. Captions. All captions in this Declaration are for convenience only and do not in any way limit or amplify the provisions hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration  
on the 2ND day of August, 1990.

KIPAPA PARTNERS

By Bruce A. Laymon  
Its General Partner

By Andrew Borilez  
Its General Partner

By David M. McCleary  
Its General Partner

STATE OF HAWAII, )  
                          : ss.  
COUNTY OF KAUAI, )

On this 2ND day of August, 1990, before me  
appeared BRUCE A. LAYMON, DAVID M. McCLEARY, and ANDREW BORILEZ,  
to me personally known, who being duly sworn, did say that they  
are the general partners of KIPAPA PARTNERS, a Hawaii registered  
general partnership, and that said instrument was signed by them  
individually and on behalf of said partnership; and said  
BRUCE A. LAYMON, DAVID M. McCLEARY, and ANDREW BORILEZ,  
acknowledged said instrument to be the free act and deed of said  
partnership.

Ann R. Bunnell 1-5  
Notary Public, State of Hawaii

My commission expires: Oct. 12, 1990

R-108

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

APR 08, 1992 / 08:01 AM

Doc No(s) 92-051690

/s/ R. FURUKAWA  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

LAND COURT SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICKUP ( )

SHERMAN SHIRAISHI, ESQ.  
SHIRAISHI, YAMADA & MURASHIGE  
P O BOX 1246  
LIHUE HI 96766-5246

Accom 17961

THIS INSTRUMENT FILED FOR RECORD  
FIRST AMERICAN TITLE CO. OF HA  
ING. AS AN ACCOMMODATION ONLY  
HAS NOT BEEN EXAMINED AS TO  
EXCLUSION OR AS TO ITS EFFECT  
ON THE TITLE.



TITLE OF DOCUMENT:

DECLARATION OF ADDITIONAL RESTRICTIONS

PARTIES TO DOCUMENT:

PROPERTY DESCRIPTION:

KIPAPA ESTATES SUBDIVISION

LIBER/PAGE:

DOCUMENT NO.  
TRANSFER CERTIFICATE OF  
TITLE NO(S):

DECLARATION OF ADDITIONAL RESTRICTIONS

THIS DECLARATION OF ADDITIONAL RESTRICTIONS is made this 24<sup>th</sup> day of February, 1992, by ROBERT W. BROWER, whose residence is in Anahola, Kauai, Hawaii, and whose mailing address is P. O. Box 220, Anahola, Hawaii 96703 and GARTH H. MASTERS and KATHI MASTERS, husband and wife, whose residence and mailing address is 4267 Punee Road, Koloa, Kauai, Hawaii 96756; BRUCE A. LAYMON, husband of Norma E. Laymon, whose residence address is 6185 Oloheua Road, Kapaa, Hawaii 96746 and whose mailing address is P O Box 645, Kapaa, Hawaii 96746; ERIC TANIGUCHI and SUSAN JANE TANIUCHI, husband and wife, whose residence and mailing address is 6301 Kipapa Road, Kapaa, Hawaii 96746; PATRICK BALBARINO and SUSAN KAWAMURA BALBARINO, husband and wife, whose residence is in Kapaa, Kauai, Hawaii, and whose mailing address is P. O. Box 206, Kapaa, Hawaii 96746;

W I T N E S S E T H :

WHEREAS, ROBERT W. BROWER, GARTH H. MASTERS and KATHI MASTERS are the owners of Lot 6, Kipapa Estates Subdivision, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, BRUCE A. LAYMON is the owner of Lot 7, Kipapa Estates Subdivision, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, ERIC TANIGUCHI and SUSAN JANE TANIUCHI are the owners of Lot 8, Kipapa Estates Subdivision, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, PATRICK BALBARINO and SUSAN KAWAMURA BALBARINO are the owners of Lot 9, Kipapa Estates Subdivision, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, Fill material was placed on said Lots 6, 7, 8, and 9, which if not properly maintained, may cause drainage and or erosion problems;

WHEREAS, The placement of fill material and certain grading activity on said Lots 6, 7, 8, and 9 was done without the consent or proper permits from the County of Kauai (the "County");

WHEREAS, The County desires certain restrictions and disclosures be placed which would affect said Lots 6, 7, 8, and 9 to protect the integrity of the fill material and also to insure that future owners of the affected Lots have knowledge about the condition of the Lots;

NOW, THEREFORE, The owners of said Lots 6, 7, 8, and 9 hereby declare that their respective Lots shall be subject to the following covenants and restrictions:

1. No part of Lots 6, 7, 8, and 9 shall be filled, excavated or otherwise altered as to grade in such manner as to adversely affect drainage of any adjoining lot or property. The surfaces of Lots 6, 7, 8, and 9 shall not be modified so as to cause ponding or concentrated runoff over the fill slopes, to assure that the slopes remain stable.

2. The lotowners of Lots 6, 7, 8, and 9 shall construct and maintain the slopes and drainageways of their respective Lots as necessary to prevent landslides and severe erosion and flooding per the soils report for the subdivision prepared by Snyder & Associates.

3. Lots 6, 7, 8, and 9 are subject to a Building Setback Line in addition to a Drainageway Setback Line. There shall be no construction of structures within the Building Setback Line unless and until a soils test is done to the satisfaction of the County of Kauai Public Works Department concluding that such areas between the Building Setback Line and the Drainageway Setback Line is stable enough to support the structures contemplated within said area. The Building Setback Line and Drainageway Setback Line is shown on the map attached as Exhibit "B" and incorporated herein by reference.

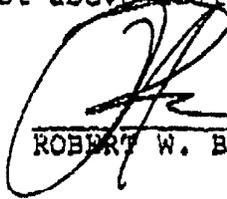
4. The parties do for themselves and for their successors and assigns hereby release, indemnify and hold harmless and forever discharge the County from any and all actions, causes of action, suits at law or in equity, liabilities, claims, demands or damages of whatsoever kind or nature, which the parties or any successor in interest now have or may have, whether now known or whether anticipated or not, resulting from, arisen out of, arising out of, to arise out of, connected with, or traceable either directly or indirectly to the fill material on their respective Lots.

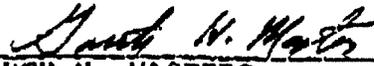
5. No deed, mortgage, lease or other instrument of conveyance affecting any of said Lots 6, 7, 8, or 9 shall be made or delivered unless such deed, mortgage, lease or other instrument of conveyance shall contain or be subject to the same restrictive covenants as in this Declaration set forth, including this covenant.

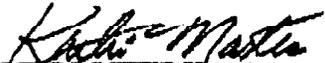
6. All of the foregoing are also covenants running with the land at law as well as in equity and are binding upon the successors and assigns of the parties hereto and all future persons owning or having an interest in any of said Lots or a part thereof. Jurisdiction may be taken in equity at suit of the

County or any owner of any lot within the Kipapa Estates Subdivision, to restrict or prevent by injunction, mandatory or restraining, any violation of any of said covenants upon the part of the parties herein to be observed and performed, without prejudice to the right of the County or any lot owner in Kipapa Estates Subdivision, to adopt or pursue any other remedy thereafter for the same breach or failure, or for any subsequent breach or failure, or to take any action to recover damages for any such breach or failure.

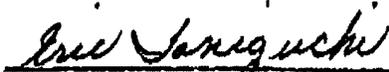
IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of the date first above written.

  
ROBERT W. BROWER

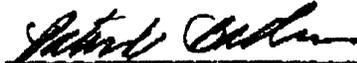
  
GARTH H. MASTERS

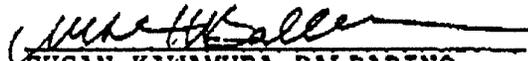
  
KATHI MASTERS

  
BRUCE A. LAYMON

  
ERIC TANIGUCHI

  
SUSAN JANE TANIGUCHI

  
PATRICK BALBARINO

  
SUSAN KAWAMURA BALBARINO

STATE OF HAWAII, )  
 ) SS.  
COUNTY OF KAUAI. )

On this 24<sup>th</sup> day of February, 19 92, before me personally appeared ROBERT W. BROWER, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

4

[Signature]  
Notary Public, State of Hawaii

My commission expires: 2-20-93

STATE OF HAWAII, )  
 ) SS.  
COUNTY OF KAUAI. )

On this 24<sup>th</sup> day of February, 19 92, before me personally appeared GARTH H. MASTERS and KATHI MASTERS, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

49

[Signature]  
Notary Public, State of Hawaii

My commission expires: 2-20-93

STATE OF HAWAII, )  
 ) SS.  
COUNTY OF KAUAI. )

On this 25<sup>th</sup> day of February, 19 92, before me personally appeared BRUCE A. LAYMON, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

45

[Signature]  
Notary Public, State of Hawaii

My commission expires: 2-20-93

STATE OF HAWAII, )  
 ) SS.  
COUNTY OF KAUAI. )

On this 11<sup>th</sup> day of MARCH, 1992, before me personally appeared ERIC TANIGUCHI and SUSAN JANE TANIGUCHI, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

*Joseph L. Ballarac*  
Notary Public, State of Hawaii

My commission expires: 7/26/92

L.S.

STATE OF HAWAII, )  
 ) SS.  
COUNTY OF KAUAI. )

On this 2<sup>nd</sup> day of April, 1992, before me personally appeared PATRICK BALBARINO and SUSAN KAWAMURA BALBARINO, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

*Cheryl Lee Swai*  
Notary Public, State of Hawaii

My commission expires: 1/30/95.

L.S.

DESCRIPTION

## LOT 6

## LAND SITUATED AT WAIPOULI, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot 162  
 Kapaa Homesteads, Second Series  
 Being also a Portion of Grant 9165

Beginning at the West corner of this parcel of land on the East side of Kipapa Road Extension (Lot 11), the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 5,687.89 feet North and 9,273.05 feet West, thence running by azimuths measured clockwise from True South:

1. 243° 36' 248.72 feet along the remainder of Grant 9165 (Lot 5);
2. 256° 33' 04" 294.03 feet along the remainder of Grant 9165 (Lot 5);
3. 329° 30' 408.26 feet along the remainder of Grant 9165 (Lot 5 and 10);
4. 59° 30' 281.08 feet along the remainder of Grant 9165 (Lot 10);
5. 149° 30' 479.20 feet along the remainder of Grant 9165 (Lot 9, 8, and 7);
6. 63° 36' 251.24 feet along the remainder of Grant 9165 (Lot 7);

Thence along the East side of Kipapa Road Extension (Lot 11), on a curve to the right with a radius of 1,478.00 feet, the chord azimuth and distance being:

7. 158° 53' 08.5" 15.30 feet along the East side of Kipapa Road Extension (Lot 11) to the point of beginning and containing an area of 3.000 acres.

TOGETHER, WITH, EASEMENT "C"

SUBJECT, HOWEVER, to:

1. Easement "D" for access and utility purposes.
2. Building Setback Lines and Drainageway Lines as shown on the Subdivision Map.

3. The following Department of Water conditions:

"Due to the high elevation of this lot, a dependable supply of water cannot be assured. The lot owner will be required to sign an elevation agreement with the Department of Water upon application for water service, agreeing to accept such water service as the Department is able to render and agreeing to install and maintain suitable booster pumps and storage tanks, if necessary".



Lihue, Kauai, Hawaii  
April 23, 1990

DESCRIPTION PREPARED BY:  
Kodani & Associates, Inc.

A handwritten signature in black ink, appearing to read "Dennis M. Esaki".

\_\_\_\_\_  
Dennis M. Esaki  
Registered Land Surveyor  
Certificate Number 4383

DESCRIPTION

## LOT 7

LAND SITUATED AT WAIPOULI, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot 162  
 Kapaa Homesteads, Second Series  
 Being also a Portion of Grant 9165

Beginning at the South corner of this parcel of land on the East side of Kipapa Road Extension (Lot 11), the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 5,521.85 feet North and 9,198.46 feet West, thence running by azimuths measured clockwise from True South:

1. 153° 36' 38.12 feet along the East side of Kipapa Road Extension (Lot 11);

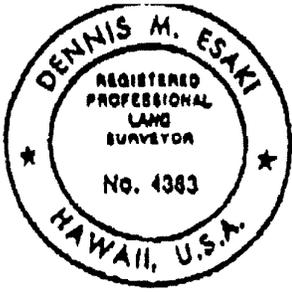
Thence along the East side of Kipapa Road Extension (Lot 11), on a curve to the right with a radius of 1,478.00 feet, the chord azimuth and distance being:

2. 156° 05' 40.5" 128.66 feet;
3. 243° 36' 251.24 feet along the remainder of Grant 9165 (Lot 6);
4. 329° 30' 167.09 feet along the remainder of Grant 9165 (Lot 6);
5. 63° 36' 268.79 feet along the remainder of Grant 9165 (Lot 8) to the point of beginning and containing an area of 1.000 acre.

SUBJECT, HOWEVER, to:

1. Building Setback Lines and Drainageway Lines as shown on the Subdivision Map.
2. The following Department of Water conditions:

"Due to the high elevation of this lot, a dependable supply of water cannot be assured. The lot owner will be required to sign an elevation agreement with the Department of Water upon application for water service, agreeing to accept such water service as the Department is able to render and agreeing to install and maintain suitable booster pumps and storage tanks, if necessary".



Lihue, Kauai, Hawaii  
April 23, 1990

DESCRIPTION PREPARED BY:  
Kodani & Associates, Inc.

A handwritten signature in black ink, appearing to read "Dennis M. Esaki".

---

Dennis M. Esaki  
Registered Land Surveyor  
Certificate Number 4383

EXHIBIT "A"

(Page 4 of 7 pages)

DESCRIPTION

LOT 8

LAND SITUATED AT WAIPOULI, KAWAII, KAUAI, HAWAII

Being a Portion of Lot 162  
Kapaa Homesteads, Second Series  
Being also a Portion of Grant 9165

Beginning at the West corner of this parcel of land on the East side of Kipapa Road Extension (Lot 11), the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 5,521.85 feet North and 9,198.46 feet West, thence running by azimuths measured clockwise from True South:

- 1. 243° 36' 268.79 feet along the remainder of Grant 9165 (Lot 8);
- 2. 329° 30' 159.11 feet along the remainder of Grant 9165 (Lot 6);
- 3. 63° 36' 280.17 feet along the remainder of Grant 9165 (Lot 9);

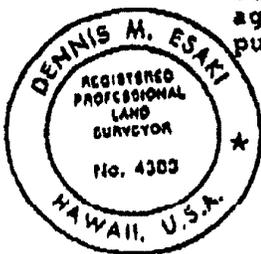
Thence along the East side of Kipapa Road Extension (Lot 11), on a curve to the right with a radius of 278.00 feet, the chord azimuth and distance being:

- 4. 153° 27' 10" 1.43 feet;
- 5. 153° 36' 157.27 feet along the East side of Kipapa Road Extension (Lot 11) to the point of beginning and containing an area of 1.000 acre.

SUBJECT, HOWEVER, to:

- 1. Building Setback Lines and Drainageway Lines as shown on the Subdivision Map.
- 2. The following Department of Water conditions:

"Due to the high elevation of this lot, a dependable supply of water cannot be assured. The lot owner will be required to sign an elevation agreement with the Department of Water upon application for water service, agreeing to accept such water service as the Department is able to render and agreeing to install and maintain suitable booster pumps and storage tanks, if necessary".



Lihue, Kauai, Hawaii  
April 23, 1990

DESCRIPTION PREPARED BY:  
Kodani & Associates, Inc.

*[Signature]*  
 \_\_\_\_\_  
 Dennis M. Esaki  
 Registered Land Surveyor  
 Certificate Number 4383

DESCRIPTION

LOT 9

LAND SITUATED AT WAIPOULI, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Lot 162  
Kapaa Homesteads, Second Series  
Being also a Portion of Grant 9165

Beginning at the South corner of this parcel of land on the East end of Kipapa Road Extension (Lot 11), the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 5,248.64 feet North and 9,009.46 feet West, thence running by azimuths measured clockwise from True South:

- 1. 131° 20' 71.47 feet along the East side of Kipapa Road Extension (Lot 11);

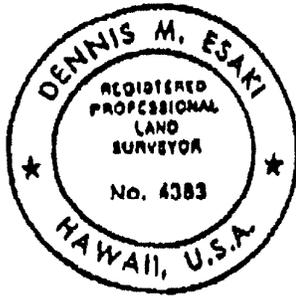
Thence along the East side of Kipapa Road Extension (Lot 11), on a curve to the right with a radius of 278.00 feet, the chord azimuth and distance being:

- 2. 142° 19' 10" 105.96 feet;
- 3. 243° 36' 280.17 feet along the remainder of Grant 9165 (Lot 8);
- 4. 329° 30' 153.00 feet along the remainder of Grant 9165 (Lot 10);
- 5. 59° 30' 243.92 feet along the remainder of Grant 9165 (Lot 10) to the point of beginning and containing an area of 1.000 acre.

SUBJECT, HOWEVER, to:

- 1. Building Setback Lines and Drainageway Lines as shown on the Subdivision Map.
- 2. "Due to the high elevation of this lot, a dependable supply of water cannot be assured. The lot owner will be required to sign an elevation agreement with the Department of Water upon application for water service, agreeing to accept such water service as the Department is able to render and agreeing to install and maintain suitable booster pumps and storage tanks, if necessary"

EXHIBIT "A"



Lihue, Kauai, Hawaii  
April 23, 1990

DESCRIPTION PREPARED BY:  
Kodani & Associates, Inc.

*[Handwritten signature]*

Dennis M. Esaki  
Registered Land Surveyor  
Certificate Number 4383

EXHIBIT "A"

(Page 7 of 7 pages)

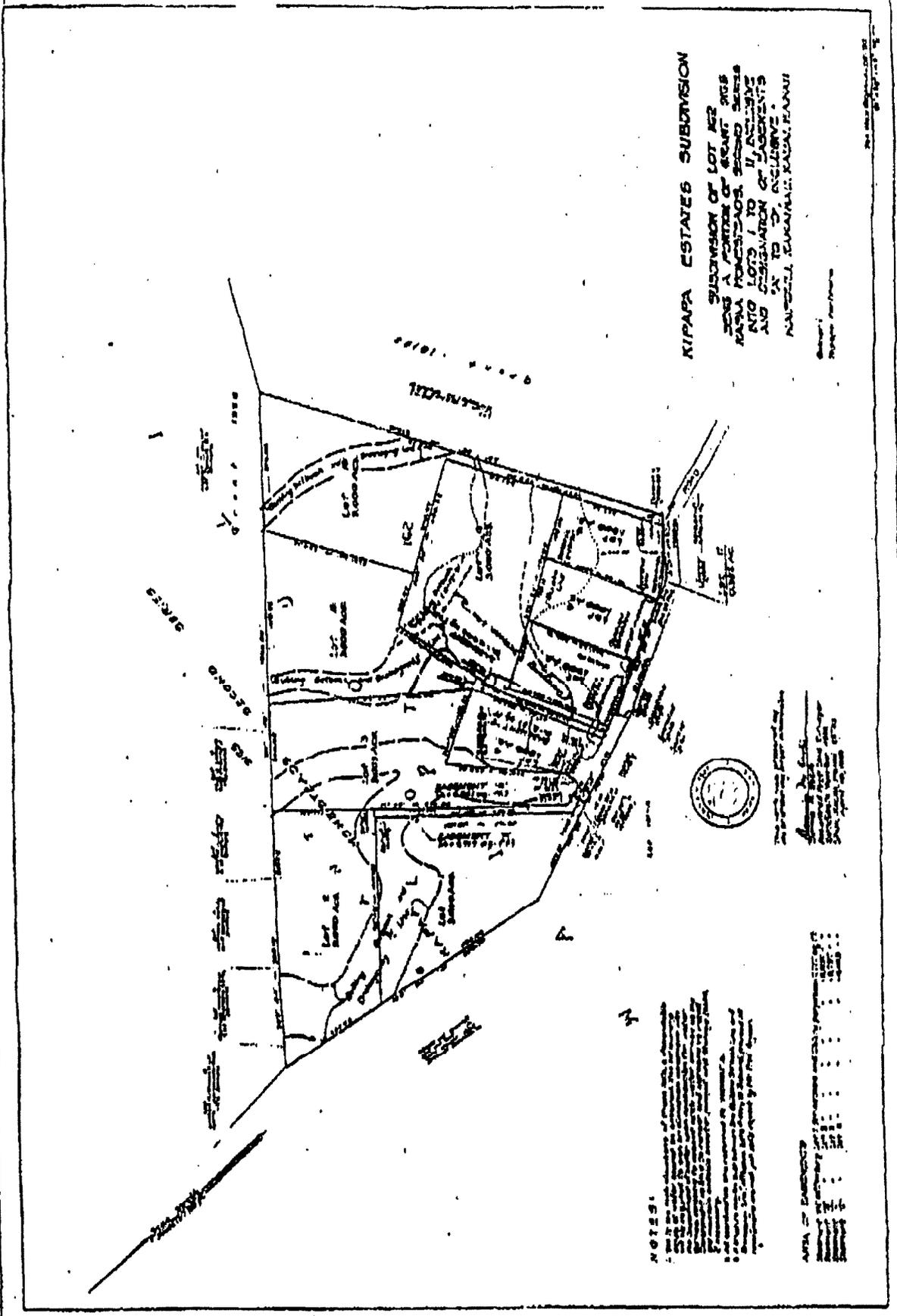


EXHIBIT "B"

JOANN A. YUKIMURA  
MAYOR



JEFFREY R. LACY  
PLANNING DIRECTOR

DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4280 RICE STREET  
LIHUE, KAUAI, HAWAII 96766

September 8, 1992

**COPY**

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
250 South King Street, Suite 702  
Honolulu, Hawaii 96813

**RECEIVED**  
SEP 9 1992  
LAW OFFICE OF SAKAI

Subject: Comments on Kipapa Terrace Agricultural  
Condominium Report  
Tax Map Key:4-4-02:90  
Kapaa Homesteads, Kauai  
LOTR:08/12/92

After reviewing the subject document, we have the following  
comments to offer:

The amount of limited common elements proposed corresponds to the allowable unit density permitted by the CZO. The subject property is zoned Agriculture District (A) and qualifies for one (1) unit, however, an additional dwelling unit facilities clearance form has been obtained by the developer for this property pursuant to Ord. No. 551, relating to the construction of additional dwelling units (ADU). It should be noted that the ordinance prohibits the construction a guest house when a parcel is issued a permit to construct an ADU.

When applying for Zoning Permits with the Planning Department, the owners must be made aware that 75% of the owners or their assignee, are required to sign the permit form(s). Should an assignee be designated, such assignee shall present proof of authorization from the 75% of the owners at the time a permit is applied for. This is a requirement because the Planning Department does not recognize the Condominium Public Report to be a legal subdivision of land.

EXHIBIT "I"

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Page 2  
September 8, 1992

There should be a disclosure provision written into this and all ensuing condominium reports stating that the report should not mean that all County Codes and Ordinances have been complied with. Subsequent development and use shall comply with all applicable County Codes and Ordinances. It should also be made clear that the Condominium Public Report does not necessarily mean that all County requirements pertaining to subdivision of lands have been met. Therefore, such facilities/improvements that are normally associated with County-approved subdivisions such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for. Further, such services as County street maintenance and trash collection will not be available for interior road/driveways.

Should you have any questions, please feel free to contact Bryan Mamaclay of my staff at 245-3919.

  
JEFFREY LACY  
701 Planning Director

cc: Hiroshi Sakai