

CONDOMINIUM PUBLIC REPORT

Prepared &
Issued by: Developer: RONALD C. YANKE
Address: P. O. Box 5405, Boise, Idaho 83705

Project Name(*): ALIOMANU ESTATES X CONDOMINIUM
Address: Aliomanu, Kawaihau, Kauai, Hawaii

Registration No. 2890
(Conversion)

Effective date: Augusts 22, 2001
Expiration date: September 22, 2002

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, in any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

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 by the developer 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.
[] This report supersedes all prior public reports.
[] This report must be read together with _____
- SUPPLEMENTARY:
(pink) This report updates information contained in the:
[] Preliminary Public Report dated: _____
[X] Final Public Report dated: September 20, 1993
[] Supplementary Public Report dated: _____
- And [X] Supersedes all prior public reports
[] Must be read together with _____
[] This report reactivates the _____
public report(s) which expired on _____

(*) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report 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 developer.

Changes made are as follows:

1. The Limited Common Element area of Unit 10B has been increased from 1.500 acres to 1.664 acres.
2. The Limited Common Element area of Unit 10C has been decreased from 1.500 acres to 1.338 acres.
3. A First Amendment to Declaration of Condominium Property Regime of Aliomanu Estates X Condominium dated July 12, 2000, was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-098980, to note the above changes, together with an amended Condominium Map.
4. The agricultural shed on Unit 10B has been replaced with a two-story residential building as more particularly described herein.
5. A Second Amendment to Declaration of Condominium Property Regime of Aliomanu Estates X dated December 22, 2000, was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-003470, to note the change in paragraph 4 above, together with an amended Condominium Map.
6. The Escrow Company has changed.
7. The Attorney for Developer has changed.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT 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 the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

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 owners/tenants) 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 at the lessee's expense. 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 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 project's 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 the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the 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 important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: RONALD C. YANKE Phone: (208) 342-8901
P. O. Box 5405
Boise, Idaho 83705

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

N/A

Real Estate Broker: Pacific Ocean Properties, Inc. Phone: (808) 742-6428
2253 Poipu Road
Koloa, Kauai, Hawaii 96756

Escrow: FIRST HAWAII TITLE CORPORATION Phone: (808) 245-1608
4366 Kukui Grove Street, Suite 205
Lihue, Kauai, Hawaii 96766

General Contractor: N/A Phone:

Condominium Managing Agent: Self-managed by the Association of Unit Owners Phone:

Attorney for Developer: Donald H. Wilson Phone: (808) 245-4705
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766-1388

*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**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. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and 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.

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. 93-089348

Book _____ Page _____

Filed - Land Court: Document No. _____

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration of Condominium Property Regime dated July 12, 2000, and recorded as Document No. 2000-098980; and Second Amendment to Declaration of Condominium Property Regime dated December 22, 2000, and recorded as Document No. 2001-003470.

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 Conveyances Condo Map No. 1867

Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration of Condominium Property Regime dated July 12, 2000, and recorded as Document No. 2000-098980; and Second Amendment to Declaration of Condominium Property Regime dated December 22, 2000, and recorded as Document No. 2001-003470.

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 manner in which meetings will be conducted, whether pets are prohibited or allowed 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. 93-089349

Book _____ Page _____

Filed - Land Court: Document No. _____

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. 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 interests 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>N/A</u>

*The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

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:

The Developer reserves the right to change the Declaration and Condominium Map as provided for in Section L.2. of the Declaration, and further the Developer reserves the right to change the Bylaws as provided for in Section 13.5(b) of the Bylaws.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit _____ contains further explanation regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per Month Year

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
 Canceled 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 canceled or foreclosed.

- Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per: Month Year

Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: Lot 10, Aliomanu Estates
Aliomanu, Kawaihau, Kauai, Hawaii

Tax Map Key: (TMK): (4) 4-9-5:25

Address TMK is expected to change because CPR numbers will be added to the current
TMK number.

Land Area: 21.313 square feet acre(s) Zoning: Agriculture

Fee Owner: RONALD C. YANKE
P. O. Box 5405
Boise, Idaho 83705

YANKE/MILLER LLC, a Hawaii Limited Liability Company
2253 Poipu Road
Koloa, Kauai, Hawaii 96756

JAMES T. ROACH and ROZANN MARS ROACH
4460 Nehe Road, #114
Lihue, Kauai, Hawaii 96766

MITCHELL J. FISHER and KAREN J. FISHER, Co-Trustees
under that certain unrecorded Fisher Family Trust dated January 8, 1997
30912 Mauna Kea Place
Laguna Niguel, California 92677

Lessor: N/A
Name _____
Address _____

C. Buildings and Other Improvements:

1. New Building(s)
 Conversion of Existing Building(s)
 Both New Building(s) and Conversion
2. Number of Buildings: 6 Floors Per Building 1 (Units A, C, D and E)
2 (Unit B)
 Exhibit "A" contains further explanations.
3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other _____
4. Permitted Uses by Zoning:

	No. of Apts.	<u>Use Permitted by Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: Shed	<u>4</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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

Yes No

5. Special Use Restrictions:

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

- Pets: No animals or pets other than those allowed pursuant to Article VII, Section 10 of the Declaration of Covenants, Conditions and Restrictions for Aliomanu Estates. See Section 13.1 of the Bylaws.
- Number of Occupants: _____
- Other: There are special use restrictions contained in the project documents. See paragraph G. of the Declaration.
- 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>Net Other Area (sf)</u>	<u>Identify</u>
<u>Unit 10A</u>	<u>1</u>	<u>0</u>	<u> </u>	<u>100</u>	<u>Shed</u>
<u>Unit 10B</u>	<u>1</u>	<u>3/2</u>	<u>2,646</u>	<u>756</u>	<u>Lanai</u>
<u>Unit 10C</u>	<u>1</u>	<u>0</u>	<u> </u>	<u>100</u>	<u>Shed</u>
<u>Unit 10D</u>	<u>1</u>	<u>0</u>	<u> </u>	<u>100</u>	<u>Shed</u>
<u>Unit 10E</u>	<u>1</u>	<u>0</u>	<u> </u>	<u>100</u>	<u>Shed</u>

Total number of Apartments: 5

***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:

See Exhibit "A"

Permitted Alterations to Apartments:

See Exhibit "B"

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of residential apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by Section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has not elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls:	<u>10</u>						
	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>TOTAL</u>
Assigned (for each unit)	_____	<u>2</u>	_____	_____	_____	_____	<u>10</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>10</u>		_____		_____		<u>10</u>

Each apartment will have the exclusive use of at least 2* parking stall(s).
Buyers are encouraged to find out which stall(s) will be available for their use.

*Each Unit has ample space for parking within its limited common element area.

- 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/Enclosure(s)
- Other: _____

9. Compliance With Building Code and Municipal Regulations: Cost to Cure Violations

- There are no violations. Violations will not be cured.
- Violations and cost to cure are listed below. Violations will be cured by _____
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations
(For conversions of residential apartments in existence for at least five years):

N/A

11. 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 lawfully at one time but which does not now conform to present zoning requirements:

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

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 Interests:

1. Common Elements. Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

- described in Exhibit "C" .
 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 use them, as described in the Declaration, are:

described in Exhibit _____.

as follows: The limited common elements consist of the land area surrounding each unit as shown on the Condominium Map.

NOTE: Land areas referenced herein are not legally subdivided lots.

3. Common Interests: Each apartment will have an undivided fractional interests in all of the common elements. This interest is called the "common interests." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit "D".

as follows:

E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property on or your purchase and ownership of an apartment in the project.

Exhibit "E" describes the encumbrances against the title contained in the title report dated July 16, 2001 and issued by First Hawaii Title Corporation.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien 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. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	Buyer's interest will be terminated and Buyer may be entitled to a refund of deposit, less escrow cancellation fees.
* Mortgage covers Unit 10B only	

F. 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: Units are sold "as is".

2. Appliances:

N/A

G. **Status of Construction and Date of Completion or Estimated Completion Date:**

The construction of the Agricultural Sheds on 10A, 10C, 10D, and 10E were completed in December 1993. The construction of the residential dwelling on Unit 10B was completed in August 2000.

H. **Project Phases:**

The developer has has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

V. MISCELLANEOUS

A. **Sales Documents Filed With the Real Estate Commission:**

Sales documents on file with the Real Estate commission include but are not limited to:

- Notice to Owner Occupants
- Specimen sales Contract
Exhibit "G" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated February 22, 2001.
Exhibit "H" contains a summary of the pertinent provisions of the escrow agreement.
- Other _____

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

1. **Rights Under the Condominium Property Act (Chapter 514A, HRS):**

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 or Supplementary Report to a Final Report: Sales made by the developer are binding if:

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

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) 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.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all the documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
 - B) Declaration of Condominium Property Regime, as amended.
 - C) Bylaws of the Association of Apartment Owners, as amended.
 - D) House Rules, if any.
 - E) Condominium Map, as amended.
 - F) Escrow Agreement.
 - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
 - H) Other Declaration of Covenants, Conditions & Restrictions for Aliomanu Estates, dated January 13, 1992, as amended.

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 Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541, Honolulu HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 2890 filed with the Real Estate Commission on June 16, 1993.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

C. **Additional Information Not Covered Above:**

1. For the purpose of Exhibit "F" of the Final Condominium Public Report, the Developer has not conducted a reserve study in accordance with § 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.
2. Purchasers should be aware that Chapter 205, Hawaii Revised Statutes ("H.R.S."), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

The term "farm dwelling" is defined in H.R.S. Chapter 205-4.5(a)(4) as a "single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwelling permitted within agricultural parks developed by the State or where agricultural activity provides income to the family occupying the dwelling."

The penalty for violation of H.R.S. Section 205-4.5, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

In order for any purchaser to obtain a building permit to construct a single family residential unit (farm dwelling), the County of Kauai will require the purchase to sign a Farm Dwelling Agreement in the form attached hereto as Exhibit "I".

In addition, Section K.2. of the Declaration imposes a duty of each unit owner to bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units with the Project. See Section J.2. of Exhibit "B", Alteration of Project.

3. Purchasers should be aware that condominium Units are subject to the restrictions contained in that certain Declaration of Covenants, Conditions and Restrictions for Aliomanu Estates, as amended, attached hereto as Exhibit "J".

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-] (The developer is required to make this declaration for issuance of an effective date for a final public report.
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

RONALD C. YANKE
Owner/Developer

Ronald C. Yanke
RONALD C. YANKE

2/7/2001
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

***Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner, Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.**

EXHIBIT "A"

DESCRIPTION OF BUILDINGS

The project consists of four (4) agricultural shade sheds of principally wood construction, without a basement, on a concrete post footing foundation, and one (1) two-story residential dwelling of principally wood construction, without a basement, hereinafter collectively referred to as "units" or "apartments".

The apartments are five (5) separate structures designated and shown as Units 10A, 10B, 10C, 10D and 10E on the site plan, as more particularly described in the Declaration, as amended, and as shown on the Condominium Map, as amended.

EXHIBIT "B"

ALTERATION OF PROJECT

Paragraph J of the Declaration provides that:

1. Each unit owner shall have the right at his sole option at any time and from time to time, as hereafter set forth, without the consent and/or approval of the owner of any other unit or any other persons or entity, to improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon the limited common element appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit owner shall have the right without the consent or joinder of any other person to amend the Declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the owner of the altered unit shall duly record such amendment to the Declaration in the Bureau of Conveyances, together with a complete set of the floor plans of such unit as so altered, certified by a registered architect or professional engineer to fully and accurately depict the altered portions of the property as built. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, consent to all such alterations and agree to give and shall be deemed to have given the owner of the altered unit a power of attorney to execute an amendment to the declaration solely for the purpose of describing the alterations to such unit in the declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable.

2. Pursuant to Chapter 205, Hawaii Revised Statutes, each unit owner is entitled to construct a farm dwelling on each unit within the Project, and each unit owner is required to enter into an agreement with the County of Kauai certifying that the Farm Dwelling will be used in connection with a farm or where agricultural activity provides income to the family occupying the Farm Dwelling. In addition, the Planning Department of the County of Kauai requires that any farm dwelling constructed after the first farm dwelling within the Project requires an inspection by the Planning Department to confirm whether the agricultural activities are being conducted on the Project in accordance with Chapter 205, Hawaii Revised Statutes. Each unit owner in the Project, therefore, shall bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area, for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units within the Project. Any assessment that may be necessary to maintain agricultural activities pursuant to this paragraph may be imposed upon each unit in accordance with the Bylaws as a common expense of the association in connection with the operation of the Project.

3. Any alteration of the plans of a unit pursuant to this paragraph J shall be subject to the following conditions:

(a) All building plans for any such alterations shall conform with County building or zoning laws and other applicable County ordinances.

(b) Such alterations must conform to the Declaration of Covenants, Conditions and Restrictions For Aliomanu Estates and the Aliomanu Estates Design Committee Rules.

(c) Such alterations may decrease or increase the size of the affected unit, provided that no alteration shall extend or place the unit outside of the limits of the yard appurtenant to such unit.

(d) All such alterations shall be at the sole expense of the unit owner making the change and shall be made within one (1) year of the commencement thereof and in a manner that will not unreasonably interfere with the other unit owner's use of his unit or yard.

(e) The owner of the altered unit shall have the right to utilize, relocate and realign existing and/or to develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services and when applicable, to add, delete, relocate, realign, designate and grant easement and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith; provided that the same shall not cause any interruption in the service of such utilities to any other part of the project, nor shall it unreasonably interfere with the other unit owner's use or enjoyment of his unit or yard.

(f) Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a unit shall reserve to all unit owners the rights set forth in this paragraph.

* **SPECIAL NOTATION:** When applying for zoning permits with the Planning Department of the County of Kauai, 75% of the owners of the project must sign the permit forms. This requirement is binding on all purchasers as well as future assignees.

The issuance of an effective date for the Condominium Public Report should not be construed to mean that all County Codes and Ordinances have been complied with and all subsequent development and use shall comply with applicable County Codes and Ordinances.

Additionally, the creation of the Condominium Property Regime does not mean that the land has met the subdivision requirements of the County. As such, certain facilities and improvements normally associated with County approved subdivisions may not be necessarily provided for.

EXHIBIT "C"

COMMON ELEMENTS

The common elements of the project shall specifically include, but are not limited to, the following:

1. The land described in Exhibit "A", attached to the Declaration, in fee simple.
2. The common element driveway, as shown on the Condominium Map, shall be common area (and not part of a private yard) for use by the owner(s) of each unit for purposes of ingress to and egress from his or her respective yard and unit.
3. All yards, grounds, landscaped areas, retaining walls, parking areas and driveways around and between the units.
4. All central and appurtenant installations for common services, including power, light, water, telephone and sewer.
5. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance or safety, or normally in common use.

EXHIBIT "D"

COMMON INTEREST

<u>Unit</u>	<u>Land Area</u>	<u>Percentage Interest</u>
10A	15.114 Acres	20%
10B	1.664 Acres	20%
10C	1.338 Acres	20%
10D	1.500 Acres	20%
10E	<u>1.500 Acres</u>	<u>20%</u>
	21.116 Acres	TOTAL 100%

NOTE: The percentage common interest for each apartment is determined by apportioning an equal twenty percentage (20%) interest to each of the five (5) units irrespective of the actual land areas contained in each of the five (5) units.

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. An easement for ingress to and egress from the Triangulation Station "PAPAA", as set forth in Commissioner's Deed dated September 24, 1932, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1179 at Page 107.
4. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in Warranty Deed dated February 6, 1986, and recorded in said Bureau in Book 19278 at Page 95, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.
5. Right-of-Entry in favor of Citizens Utilities Company, a Delaware corporation, dated October 22, 1990, and recorded in said Bureau as Document No. 91-002273, granting an easement for utility purposes.
6. Drainage way as delineated on File Plan No. 2023.
7. Building Setback Line as delineated on File Plan Map No. 2023.
8. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

Declaration Of Covenants, Conditions And Restrictions For Aliomanu Estates dated January 13, 1992, and recorded in said Bureau as Document No. 92-040191, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

The foregoing Declaration was amended by instrument dated December 17, 1993, and recorded in said Bureau as Document No. 93-218267.

9. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

Declaration of Condominium Property Regime Of "Aliomanu Estates X Condominium" dated May 3, 1993, and recorded in said Bureau as Document No. 93-089348, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Condominium Map No. 1867, as amended, to which reference is hereby made.

The foregoing Declaration was amended by the following:

<u>Document No.</u>	<u>Dated</u>
2000-098980	July 12, 2000
2001-003470	December 22, 2000

10. Bylaws of the Association of Unit Owners of Aliomanu Estates X Condominium dated May 3, 1992, and recorded in said Bureau as Document No. 93-089349, to which reference is hereby made.
11. Easement W-2 for waterline purposes, in favor of Aliomanu Estates Community Association, a Hawaii non-profit corporation, as set forth by that certain Declaration Of Easements dated May 3, 1994, recorded in said Bureau as Document No. 94-077333 (AS TO UNIT 10B).
12. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in Waiver and Release dated June 21, 1993, and recorded in said Bureau as Document No. 93-120671, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons (AS TO UNIT 10B).
13. View And Use Easement Agreement in favor of Mandalay Properties Hawaii LLC, a Hawaii limited liability company dated January 9, 1998, and recorded in said Bureau as Document No. 98-006015, granting a perpetual non-exclusive View Easement over and across Easement "V", containing an area of 57,938 square feet, and a perpetual, exclusive Use Easement over and across Easement "U", containing an area of 44,391 square feet (AS TO UNIT 10B, 10C and 10D).

The foregoing View and Use Easement Agreement was amended by First Amendment To View And Use Easement Agreement (Lot 10) dated April 30, 1999, and recorded in said Bureau as Document No. 99-078120.

14. Farm Dwelling Agreement dated November 2, 1998, by and between Ronald C. Yanke, "Applicant", and the County of Kauai Planning Department, "Department", recorded in said Bureau as Document No. 98-177682 (AS TO UNIT 10B).
15. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Apartment Deed (original) dated February 9, 1999, and recorded in said Bureau as Document No. 99-032841, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.
16. That certain Mortgage dated February 9, 1999 made by Yanke/Miller LLC, a Hawaii Limited Liability Company, in favor of Ronald C. Yanke, husband of Linda L. Yanke, recorded in said Bureau as Document No. 99-032842.

The foregoing mortgage was amended by that certain Amendment Of Promissory Note And Purchase Money First Mortgage dated June 4, 2001, and recorded in said Bureau as Document No. 2001-088466.

17. Encroachment Agreement by and between Yanke/Miller LLC, a Hawaii Limited Liability Company, and Mandalay Properties Hawaii LLC, a Hawaii Limited Liability Company, dated June 22, 2000, and recorded in said Bureau as Document No. 2000-114938.

EXHIBIT "F"

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>
Unit 10A	\$207.20 x 12 = \$2,486.40
Unit 10B	\$207.20 x 12 = \$2,486.40
Unit 10C	\$207.20 x 12 = \$2,486.40
Unit 10D	\$207.20 x 12 = \$2,486.40
Unit 10E	\$207.20 x 12 = \$2,486.40

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

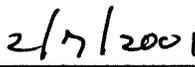
Estimate of Maintenance Fee Disbursements:

	<u>Monthly Fee</u> x 12 months =	<u>Yearly Total</u>
Utilities and Services		
Air Conditioning		
Electricity		
<input checked="" type="checkbox"/> common elements only	100.00 x 12 =	1,200.00
<input type="checkbox"/> common elements and apartments		
Elevator		
Gas		
<input type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and apartments		
Refuse Collection		
Telephone		
Water and Sewer	100.00 x 12 =	1,200.00
Maintenance, Repairs and Supplies		
Common area road should maintenance	536.00 x 12 =	6,435.96
Building		
Grounds		
Management		
Management Fee	100.00 x 12 =	1,200.00
Payroll and Payroll Taxes		
Office Expenses		
Insurance	100.00 x 12 =	1,200.00
Reserves(*)		
Taxes and Government Assessments		
Audit Fees	50.00 x 12 =	600.00
Other	50.00 x 12 =	600.00
TOTAL	1,036.00 x 12 =	<u>12,432.00</u>

I, RONALD C. YANKE, the developer for the ALIOMANU ESTATES X CONDOMINIUM project, hereby certifies that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.



 RONALD C. YANKE



 Date

(*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

End of EXHIBIT "F"

NOTE: Developer discloses that Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules.

EXHIBIT "G"

SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

The Deposit Receipt and Sales Contract, including the terms and conditions attached thereto as Article IV (hereinafter collectively called the "Sales Contract") contain the price and other terms and conditions under which a purchaser will agree to buy a unit in the Project. Among other things, the Sales Contract states:

- (a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a unit.
- (b) That the purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Sales Contract.
- (c) That the Developer makes no representations concerning rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.
- (d) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.
- (e) Requirements relating to the purchaser's financing of the purchase of a unit.
- (f) That the unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.
- (g) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.
- (h) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
- (i) That the purchaser will not receive interest on deposits made under the Sales Contract.
- (j) If the buyer shall default:
 - (1) The contract may, at the seller's option, be terminated by written notice to the buyer; and
 - (2) Any sums paid by the buyer shall belong to the seller as liquidated damages (up to a maximum of 20% of the total purchase price); and

(3) The seller may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorneys' fees, incurred by reason of default by the buyer shall be borne by the buyer.

Further, if the buyer shall default in making any payment when due, a late charge of one percent (1%) per month shall accrue from the due date until such payment, together with such late charge, is paid, or at any time prior to the time that such payment and late charge is paid in full, the seller may, at its option, terminate this contract as provided in paragraphs (1) through (3) above.

The Sales Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon purchasers and prospective purchasers to read with care the specimen sales Contract on file with the Real Estate Commission.

EXHIBIT "H"

SUMMARY OF ESCROW AGREEMENT

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

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) The purchaser is entitled to a refund if the purchaser or seller cancels the Sales Contract in accordance with its cancellation provisions, or if the purchaser terminates its reservation before the Sales Contract is binding. However, Escrow may deduct from the refund cancellation fees in accordance with the Sales Contract.

In the event of a default by the purchaser, the funds paid by the purchaser shall belong to the seller as liquidated damages (up to a maximum of twenty percent (20%) of the total purchase price).

The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. It is incumbent upon purchasers and prospective purchasers to read with care the executed Escrow Agreement on file with the Real Estate Commission.

(d) The purchaser's funds that are placed in trust prior to closing may be used by the seller after (1) the purchaser has (i) been provided with a final public report; (ii) executed a receipt and notice and has waived his right to cancel or thirty (30) days have elapsed since the purchaser has been provided with the final public report and receipt and notice of right to cancel; and (2) the seller notifies escrow in writing that since (i) and (ii) have happened, the Sales Contract is binding; and (3) the seller's attorney advises escrow that the Sales Contract is binding and the requirements of Hawaii Revised Statutes, Sections 514A-63 and -65 have been met.

(e) Escrow may not disburse any buyer's funds in the construction of the project until completion of the project and the expiration of the mechanic's and materialmen's lien period. Escrow may disburse prior to completion of the project and expiration of the applicable lien period if the Developers would furnish each purchaser an Owners Title Insurance with an endorsement against any future liens placed on the apartments or project as a result of the development, plus providing the Real Estate Commission a release of the General Contractor's lien rights.

EXHIBIT "I"

LAND COURT SYSTEM

REGULAR SYSTEM

RETURN BY: MAIL [] PICKUP [] To:

County of Kauai
Planning Department
4280 Rice Street
Lihue, Kauai, Hawaii 96766

FARM DWELLING AGREEMENT

This agreement made and entered into as of the _____ day of

_____, 19 _____, by and between _____

whose mailing address is _____

hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI, Planning Department, whose business and mailing address is 4280 Rice Street, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT",

W I T N E S S E T H :

WHEREAS, the APPLICANT(S) warrant and represent that they are the _____ of that certain

parcel of land, Tax Map Key No. _____ more particularly described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, this document pertains only to _____ as shown in Exhibit "B" and made part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use Commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, the parcel identified by Tax Map Key No. _____ is entitled to _____ residential units and one guest house; and

WHEREAS, this agreement is evidenced that _____ is entitled to one of those residential units; and

WHEREAS, a "family" as used in the definition of a "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the State Land Use District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes; and

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on that certain parcel of land described in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

NOW THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District Regulations and as recited herein, who derive income from the agricultural activity on the parcel; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this agreement; and

4. That this agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S); and

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself/herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4396 Rice Street, Lihue, Hawaii, 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

11. This Agreement shall be a covenant running with the portion of land described in Exhibit A, and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors, and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnity agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the _____ day of _____, 19 _____.

APPROVED:

Applicant(s)

Planning Director

APPROVED AS TO FORM AND LEGALITY:

County Attorney

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this _____ day of _____, 19 _____, before me personally appeared _____

to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Notary Public, Fifth Judicial Circuit
State of Hawaii

My commission expires:

Certified to be a true, correct and complete copy of
the instrument recorded in the Bureau of
Conveyances of the State of Hawaii on
MAR 19 1992, at 9:21 AM PM
as Document Number 92-11111

SECURITY TITLE CORPORATION

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REGULAR SYSTEM

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1200 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Phone 521-9511

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR ALIOMANU ESTATES

THIS DECLARATION is made this 13th day of January, 1992, by RONALD C. YANKE, husband of Linda L. Yanke, whose mailing address is P. O. Box 5405, Boise, Idaho 83705, herein-after called "Declarant."

RECITALS

WHEREAS, the Declarant is the owner in fee simple of those certain lands (the "Property") situate at Papaa and Aliomanu, Koolau (Kawaihau), Island and County of Kauai, State of Hawaii, known as "Aliomanu Estates," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Declarant will in the future acquire certain additional property adjacent to the Property described herein and will annex said additional property into Aliomanu Estates; and

WHEREAS, the Declarant intends to develop Aliomanu Estates as an integrated agricultural and residential development including farm lots, single family residences, common roadways and public access areas, and to that end wishes to create and maintain the project in a desirable, attractive and safe condition for the benefit and protection of owners of property within Aliomanu Estates Subdivision.

NOW, THEREFORE, the Declarant for the mutual benefit and protection of all Owners (as hereinafter defined), hereby declares that the Property shall be held, leased, encumbered, conveyed, sold, used, occupied and improved, subject to and with the benefit and protection of the limitations, restrictions, covenants and conditions set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These limitations, restrictions, covenants and conditions shall run with the Property and shall inure to the benefit of and be binding on all parties having or who acquire any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration or in the Bylaws applicable to the Association shall have the following meaning:

(a) "Association" shall mean and refer to the ALIOMANU ESTATES COMMUNITY ASSOCIATION, its successors and assigns.

(b) "Board" shall mean and refer to the Board of Directors of the Association.

(c) "Common Areas" or "Common Area Lot" shall mean all real property owned or leased by the Association, including all easements.

(d) "Declarant" shall mean and refer to RONALD C. YANKE, or such other person or corporation whom RONALD C. YANKE may by a recorded document designate as the Declarant.

(e) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Aliomanu Estates, as the same may be amended from time to time.

(f) "Lot" shall mean and refer to any individual parcel of land which is subject to this Declaration.

(g) "Member" shall mean and refer to the Owner (or Declarant) who is a member of the Association as provided in Article III of this Declaration.

(h) "Owner" shall mean and refer to the record owner (including, if applicable, the Declarant), whether one or more persons or entities, of the fee simple title to any Lot, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

(i) "Property" or "Properties" shall mean and refer to the properties described in this Declaration and such additions thereto as may hereafter be annexed to or brought within the jurisdiction of the Association.

ARTICLE II

LAND SUBJECT TO THIS DECLARATION

Section 1. Initial Property. The land described in Exhibit "A" attached hereto shall be held, sold, conveyed, leased, encumbered, occupied and improved subject to this Declaration.

Section 2. Annexation. The Declarant may, pursuant to the following provisions of this Section, from time to time and in his sole discretion, annex to Aliomanu Estates all or any part of the land owned by him at the time of such annexation and located within, or in the immediate area of, the Property described in Exhibit "A," and described as follows:

Remnant R-1 of Kuhio Highway F.A.P. F-056-1(2), containing an area of 2.196 acres, more or less, and shown on Tax Map No. 4:4-9-03 as "old gov't main road."

The provisions for annexation are:

(a) The annexation of such land shall be effected by Declarant having recorded a declaration describing the land to be annexed; setting forth such additional limitations, restrictions, covenants and conditions, if any, as are applicable to such land; and declaring the land is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to this Declaration.

(b) Upon the annexation becoming effective, the land covered by such annexation shall become a part of Aliomanu Estates.

(c) The declaration described in Section 2(a) above may provide for any of the following:

(1) Such limitations, restrictions, covenants and conditions with respect to use as Declarant may deem to be appropriate for the development of such land;

(2) A declaration of restrictions applicable exclusively to a specified area.

ARTICLE III

ALIOMANU ESTATES COMMUNITY ASSOCIATION

Section 1. General Purposes. The Association is a non-profit corporation charged with the duties and empowered with the rights set forth herein and its Articles of Incorporation and Bylaws.

Section 2. Membership. Every Owner of a Lot in Aliomanu Estates shall be a member of the Association; provided that any such person or entity who holds such interest merely as a security for performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot in Aliomanu Estates.

Section 3. Declarant's Membership. The Declarant shall remain as a member of the Association until (a) all common area and infrastructure construction in Aliomanu Estates, and related development activity, in the sole opinion of the Declarant has been completed, and (b) there remains no additional property which may be annexed to Aliomanu Estates. This Section shall not restrict or otherwise be deemed to affect any membership rights the Declarant may have under Section 2 above.

Section 4. Voting. The voting rights of the members shall be as set forth in this Declaration, and in the Articles of Incorporation and Bylaws of the Association. All voting rights of any member shall be conditional on that member being current in the payment of his and/or her assessments due to the Association. For purposes of membership, if an Owner of a Lot enters into a long-term lease of more than five years, then the lessee, rather than the Owner, of the Lot shall be considered a member, unless the lessee fails to pay his assessments and the Owner of the Lot pays for the same, in which case the Owner shall be the member for the purposes of voting in Association meetings. In no event shall more than one vote be cast with respect to any Lot.

Section 5. Duties and Powers. The Association shall have the rights, obligations, duties and powers set forth in the Articles of Incorporation and in this Declaration to do and perform each and every one of the following, and any and all things which may be otherwise authorized, required or permitted for the benefit of the Owners and for the maintenance and improvement of Aliomanu Estates:

(a) The Association shall accept all Owners as members of the Association, subject to any restrictions on voting rights of members who are delinquent in their assessment obligations as may be stated herein or in the Bylaws.

(b) The Association shall accept title to all Common Areas and other land or easements from time to time conveyed to it, including without limitation Roadway Lot 13 (Aliomanu Estates Drive), public access and parking Easements 1, 2, 3, 4, 8 and 9, drainage Easements 5, 6 and 7, grading Easements 11 and 12, and well, tank and pump Easement 10, all as shown on the final subdivision map for Aliomanu Estates approved by the County of Kauai Planning Commission. The Association may also acquire and accept title to any other property, real, personal or mixed. The Association shall be under no obligation to accept any roadway, utility, access or parking Lot or easement which may be established on or within Lot 9C-1 and/or the road remnant parcel referred to in Article II, Section 2 of this Declaration. The Association may charge reasonable fees for use of any improvements or facilities on the Common Areas to help defray the costs of construction (except for those required to be constructed by the Declarant), maintenance, repair or operation of such improvements or facilities, or of other facilities owned by the Association.

(c) The Association shall maintain or provide for the maintenance of Common Areas and improvements located on the Common Areas, including landscaping.

(d) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas.

(e) Unless provided by a municipal, county or other governmental agency, and unless the cost thereof is assessed directly or indirectly against the Owners by such party, the Association may contract for, employ

or otherwise provide security and refuse disposal services.

(f) The Association shall obtain and maintain in force such insurance policies as the Board may deem appropriate.

(g) The Association shall have the power to levy assessments (subject to the terms contained in Article VI below), to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by this Declaration or the Bylaws, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of this Declaration, the Bylaws and any rules promulgated pursuant to the Bylaws.

(h) The Association shall operate and maintain the private non-potable irrigation system for the benefit of the Owners, subject to the terms, conditions and restrictions contained in Article V below.

(i) The Association shall have the power to make contracts, to acquire and dispose of property, and to borrow money and encumber the property of the Association to secure any loan made by the Association. The Association may also, in the event that there is a foreclosure of any lien against a Lot, be a purchaser of such foreclosed Lot.

(j) The Association shall have the power to promulgate such rules, regulations and restrictions as may be necessary from time to time in furtherance of the rights, obligations, duties and powers contained herein, in the Articles of Incorporation and the Bylaws.

(k) The Association shall have the power to issue and enforce special permits for public access through the Property to the beach and the designated public parking areas.

(l) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing any Lot, if for any reason the Owner fails to construct, maintain and repair the Lot as required under Articles IV and VII, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon

such area in violation of Article IV. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration.

(m) The Board shall be required to grant and convey to third parties easements or rights-of-way in, on, over or under any Common Area without payment to the Association when requested by Declarant.

(n) The Board may from time to time employ the services of a manager to manage the affairs of the Association. The Board may delegate to the manager any of its powers under this Declaration, provided, however, the Board cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$2,500; nor for the performance of any work or services, which work or services are not to be completed within 60 days; nor the power to sell, convey, mortgage or encumber any property of the Association.

Section 6. Liability. No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, or the manager, provided, however, that such member has with actual knowledge possessed by him, acted in good faith.

ARTICLE IV

DESIGN STANDARDS AND CONTROL

Section 1. Design and Construction Standards. All improvements and construction by the Owners on their respective Lots shall be undertaken only in strict compliance with the standards and procedures stated in this Article IV, with all applicable provisions contained elsewhere in this Declaration, and with all rules and regulations promulgated by the Declarant or the Board as stated herein. The following standards are intended to establish minimum criteria for residences, landscaping, fencing, out-structures and other improvements to each Lot.

Section 2. Plans. No building, fence, wall or other structure shall be constructed, erected or maintained on any Lot, nor shall any addition thereto or change or alteration therein be

made until the complete plans, drawings and specifications therefor (including, but not limited to, floor, elevation, plot and grading plans; specifications of principal exterior materials and color schemes; location, character and method of utilization of all utilities; landscaping plans, automobile parking provisions; and outside lighting plans), prepared by a registered architect licensed in the State of Hawaii, have been submitted to and approved by the Design Committee. No residence shall contain less than 1,000 square feet of covered space (excluding garage, lanais and out buildings).

Section 3. Building Setbacks. In addition to any applicable County building setback requirements, there shall be 100 foot building setbacks for all residences, other buildings and structures (other than fencing, walls and landscaping) along the entire lengths of Papaa Road and Aliomanu Road (except for the portion of Lot 9C-1 which abuts Aliomanu Road and except for the Lot 5 boundary along Aliomanu Road and the Lot 11 boundary along Papaa Road), on both sides of the entire length of Roadway Lot 13 (Aliomanu Estates Drive), and along the entire length of the mauka (i.e., southwest) boundaries of Lots 2, 3 and 4. Every residential structure (except for any residences constructed on Lot 9C-1 or any lot created from a subdivision of Lot 9C-1, both of which shall be governed by applicable County setback requirements) shall also have a minimum distance of 50 feet from all other Lot boundaries which are not described in the preceding sentence.

Section 4. Driveways. All driveways or other roads or vehicular access ways which connect onto Roadway Lot 13 (Aliomanu Estates Drive) shall be constructed only with asphalt, and no other surfacing material, for a distance of not less than 25 feet into the Lot from Aliomanu Estates Drive (such 25-foot distance measured along a line which is parallel to Aliomanu Estates Drive). Beyond the 25-foot distance, driveways or other roads or vehicular access ways may be of any surface selected by the Owner of that Lot. All other flat paved areas on each Lot shall be constructed only of concrete, asphalt, exposed aggregate concrete, stamped concrete, quarry tile, brick or paving blocks, but no other surfacing material. A maximum of three driveways or other roads or vehicular access ways per Lot shall be permitted to connect to Aliomanu Estates Drive, and there shall be a minimum distance between them of 50 feet. All driveways or other roads or vehicular access ways may be secured by a security gate of a type to be specified by the Declarant or, if Declarant is not a member of the Association at the time, by the Design Committee. All improvements constructed at the entryway(s) to all Lots shall be subject to Design Committee approval as to design and materials.

Section 5. Minimum Standards for Structures. Except as otherwise approved by the Design Committee:

(a) All vertical exterior surfaces of structures shall be of a natural material or stucco and shall be painted or finished in earth tone colors.

(b) The roof of structures constructed on the Lot shall be covered with such materials of earth tones as are from time to time established by the Design Committee.

(c) Each outbuilding constructed on a Lot must reasonably conform in architectural style and external construction materials to those used for the residence(s) constructed on such Lot.

(d) Laundry facilities, clotheslines and any service or utility area must be completely screened from view from all other Lots.

(e) All utility lines such as water, electric, telephone and tv cable must be installed entirely underground on each Lot.

Section 6. Landscaping. Not later than sixty (60) days after Design Committee approval of construction plans for his residence, each Owner shall submit a landscaping plan to the Design Committee for review and approval. Landscaping elements within 100 feet on each side of any approved residence shall be installed no later than one hundred eighty (180) days following the completion of said residence. If an Owner fails to install such landscaping elements within the one hundred eighty (180) day period, the Declarant reserves the right to install such landscaping elements on the Lot in accordance with the approved landscaping plans, at the Owner's cost and expense. The Declarant shall be deemed to have a non-exclusive right of entry for such purpose, such right of entry to be exercised only as reasonably necessary to accomplish the landscaping improvements stated herein.

Section 7. Design Committee; Members. There shall be a Design Committee consisting of three (3) members. The Declarant shall have the right to appoint the three initial members and one alternate for members of the Design Committee. Such alternate shall have the power as a voting member of the Design Committee in the event the member for whom he is alternate is unavailable to act as a member of the Design Committee. Each member and alternate may be, but need not be, an Owner or the Declarant (or a principal of an Owner or the Declarant if it is a partnership

or corporation) and shall hold his office until such time as he has resigned, has been removed or his successor has been appointed. Any member of the Design Committee or alternate may resign at any time by delivering written notice to the Declarant or by a notice recorded with the Hawaii Bureau of Conveyances. In the event of any vacancy, a replacement shall be selected by the Declarant if the Declarant then owns a Lot. If the Declarant does not then own a Lot, then the selection shall be by the Board. The Declarant may at any time relieve himself of the obligations imposed upon him by this Section by giving written notice of same to the Association at its last known address and by recording a notice of same with the Hawaii Bureau of Conveyances, in which case the Board shall have the obligations of Declarant as stated in this Section.

Section 8. Committee Duties. The Design Committee shall consider and act upon such proposals or plans from time to time submitted to it pursuant to this Declaration, to adopt Design Committee Rules (as hereinafter defined) and to perform such other duties from time to time delegated to it by this Declaration and by the Declarant.

Section 9. Meetings. The Design Committee shall meet or communicate from time to time as necessary to perform its duties.

Section 10. Committee Rules. The Declarant shall have the exclusive power to adopt, amend and repeal rules and regulations, to be known as "Design Committee Rules," which interpret or implement the provisions of this Declaration in so far as they relate to matters within the jurisdiction of the Design Committee. The Declarant may at any time delegate such exclusive power to the Board as stated in Article X, Section 5 of this Declaration. A copy of the Design Committee Rules, as they may from time to time be amended, shall be maintained with the records of the Design Committee and shall be available for inspection by any Owner.

Section 11. Approval Procedure.

(a) The Design Committee shall have thirty (30) days after the Owner has made preliminary and final submission of all of the documents required by Section 2 of this Article IV and the Design Committee Rules to approve the plan, drawings and specifications of the structure submitted to it only if the following conditions have been satisfied:

(1) The Design Committee finds that the plans, drawings and specifications of the proposed structure conform to this Declaration;

(2) The Design Committee finds that the proposed structure is aesthetically compatible with the physical site, the adjoining properties and the environment; and

(3) The Design Committee finds that all setback requirements, Design Committee Rules and government requirements have been complied with.

(b) If the Design Committee fails to act within the thirty (30) day period, then its approval shall be deemed to have been given. Upon receipt of the approval from the Design Committee, the Owner shall, as soon as practical, proceed with the commencement and completion of the work contemplated by the application, pursuant to the approved plans and specifications. If the Owner shall fail to complete the foundation of any structure within twelve (12) months from the date of approval, the approval shall be deemed revoked unless upon the written request of the Owner made to the Design Committee prior to the expiration of said twelve (12) month period, the Design Committee finds in writing that there has been no change in circumstances and extends the time for such completion. In any event, the Owner shall complete the construction of the structure and all landscaping within eighteen (18) months after commencing construction thereof, or such longer period as the Design Committee may approve in writing.

(c) Upon the completion of any work for which approval of the Design Committee is required under this Declaration, the Owner shall give notice thereof to the Design Committee, and within thirty (30) days thereafter the Design Committee, or its duly authorized representative, may inspect such work to determine whether it was done in substantial compliance with the approved application. If the Design Committee finds that such work was not done in substantial compliance with an approved application, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period and shall require the Owner to remedy such non-compliance. If upon the expiration of thirty (30) days from the date of the mailing of such notification the Owner shall have failed to remedy such non-compliance, the Design Committee shall notify the Declarant and the Association Board of such failure, and the Declarant and/or the Board, at their option shall have the right to remedy the non-compliance, remove the non-conforming improvement, or take any

appropriate legal action to remedy the non-compliance, and the Owner shall reimburse the Declarant or the Board, as the case may be, for all expenses incurred in connection therewith, including all attorneys' fees. If the Design Committee shall fail to notify the Owner of any non-compliance within thirty (30) days after receipt of said notice of completion thereof from the Owner, the work shall be deemed to be in accordance with said approved application.

(d) In reviewing plans submitted to it by any Owner, the Design Committee shall be authorized to waive or suspend any requirement of this Article IV or the Design Committee Rules relating to construction of improvements if it finds such waiver or suspension to be justified or in the best interests of the Property or all of the Owners.

Section 12. Non-Waiver. The approval by the Design Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Design Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter.

Section 13. Liability. Neither the Design Committee nor any member thereof, nor the Declarant, shall be liable to any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work of any kind by any Owner, whether or not pursuant to approved plans, drawings and specifications; or (c) the development or manner of development of any Lot within the Property.

ARTICLE V

WATER SYSTEM

Section 1. Non-Potable Irrigation Water. Potable water for household use and consumption shall be provided to all Lots through the County of Kauai Department of Water, and all assessments, charges and rates for the same shall be paid to the County of Kauai. Non-potable water for irrigation purposes shall be provided to all Lots by way of a privately-owned system of water well, pumps, storage facilities, transmission lines, meters and related appurtenances and facilities.

Section 2. Association Duties and Powers. The Association shall have all of the following duties, obligations, powers and authority concerning the non-potable irrigation water system, in all cases to be exercised exclusively unless otherwise stated:

(a) To operate, install, maintain, inspect and repair all facilities, improvements and support systems related to the system.

(b) To set rates, charges, penalties and fees for the use of water from the system.

(c) To establish such reasonable rules and regulations as it shall deem appropriate for the operation, maintenance and repair of the system, including without limitation assessments for capital improvements or repairs to the system, accounting and management procedures, billing practices, water allocation priorities, enforcement procedures and all other matters related to the effective and fair operation of the system.

(d) To hire or contract with such persons, including without limitation engineers, maintenance personnel, contractors, architects, managers, attorneys and inspectors, as may be reasonably necessary to carry out its duties and powers with regard to the system.

(e) To acquire and accept real and personal property, or interests therein, related to the system.

(f) To insure that no part of the assessments, charges, funds and property of the Association which relate to the system are applied directly or indirectly to or for the benefit of any persons other than Owners of Lots at Aliomanu Estates or the Association.

(g) To delegate any or all of the duties and powers stated in this Article V to such other association, corporation or entity as it may designate and which is established or organized for the purpose of operating the system.

(h) To take all other actions reasonably necessary or desirable in furtherance of the foregoing or for the benefit of the system.

Section 3. Easements. In furtherance of the construction, installation, operation, maintenance and repair of the system, the Declarant shall be entitled to, and does hereby reserve the right to, declare such easements and rights-of-entry affecting any Lot which may be reasonably necessary for the purposes stated in this Article V. Declarant shall endeavor to keep such easements and rights-of-entry as unobtrusive as possible, and with the least practical intrusion into any Lot; subject, however, to the reasonable design, operational and distribution requirements of the system. Neither the Declarant nor the Association, nor any of their respective agents, members or representatives, shall be liable to any Owner for ground disturbance, damage to property, personal injury or other cost or expense related to the use of any easement or right-of-entry area or the presence upon any Lot for the purposes stated herein, unless such disturbance, damage or injury is caused by gross negligence or willful misconduct.

Section 4. Water Quality. The quality and volume of the water produced by the irrigation water system is not guaranteed by the Declarant or the Association, and no representations or covenants, express or implied, are made concerning the same. The water in the system is provided and intended to be used only for irrigation and other non-consumptive purposes, and not for household purposes or for consumption by people or animals. Neither the Declarant nor the Association, nor their respective agents, members, representatives, heirs, successors or assigns, shall have any liability whatsoever for claims, demands, actions or obligations related in any way to personal injury, property damage, wrongful death or any other damage related to or caused by the quality, volume or supply of water in the system described in this Article V.

ARTICLE VI

ASSESSMENTS

Section 1. Assessments. Each Owner, or, in the event of multiple Owners of the same Lot, such multiple Owners jointly and severally, shall be obligated to, and shall, pay to the Association amounts as hereinafter provided, to be referred to as "Assessments." Assessments shall be either "Regular," "Special" or "Owner" Assessments. Subject to the provisions of this Article VI, the Board shall have the power and authority to determine all matters in connection with assessments, including without limitation determination of where, when and how Assessments shall be paid to the Association, and each Owner shall comply with all such determinations.

Section 2. Allocation. Each Owner's proportionate share of the Regular and Special Assessments shall be computed as follows:

$$\frac{\text{land area of Lot}}{\text{total land area of all Lots subject to Assessment}} \times \text{total Assessment}$$

Section 3. Determination of Assessments. At least 30 days prior to the commencement of each fiscal year, the Board shall fix the amount of the Regular Assessment for such fiscal year and shall, at that time, prepare a roster of the Lots and the Assessment applicable thereto. The amount of the Regular Assessment shall be based exclusively upon the anticipated operating costs and expenses which will be payable in the coming fiscal year to fulfill the Association's regular functions and obligations, and a copy of that operating budget, together with written notice of the Assessment, shall be sent to every Owner subject thereto. The Regular Assessment may include a reserve fund for future capital improvement repairs or construction. If the Board fails to determine the operating budget, fails to notify the Owners of the amount of such Regular Assessment for any fiscal year, or if the Association shall disapprove the operating budget by a two-thirds (2/3) vote at any regular or special Association meeting, then the amounts of Regular Assessments shall be deemed to be the amount assessed in the previous fiscal year.

Section 4. Supplemental Assessment. If at any time and from time to time during any fiscal year, the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a supplemental Regular Assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in Section 2 of this Article VI.

Section 5. Special Assessment. In addition to the Regular Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable only to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the votes of Members who vote in person or by proxy at a meeting duly called for this purpose.

Section 6. Owner Assessment. The Board may also levy an assessment against any Owner (an "Owner Assessment") for monies expended by the Association in performing its functions under this Declaration or the Bylaws where such moneys were expended as

a direct result of that Owner's acts or failure or refusal to act or otherwise to comply with this Declaration or the Bylaws or Association Rules. Such assessment shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, reasonable engineers', architects', attorneys' and accountants' fees incurred by the Association.

Section 7. Time for Payment. The amount of any Regular or Special Assessment shall become due and payable thirty (30) days after notice of the amount due has been given to the Owner of the Lot against which the Assessment is payable, or at such other time as the Board may determine (including, if so determined, in regular installments). All Assessments shall bear interest of one percent (1%) per month, but in no event more than the maximum amount permitted by law, from the due date until paid.

Section 8. Lien for Assessments. Each Assessment under this Article VI shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner by acceptance of Lot ownership, whether or not it shall be so expressed in any purchase or sale agreement, deed or lease, shall be deemed to covenant and agree to pay the same to the Association. If the Owner does not pay such Assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at 12% per annum and costs incurred by the Association in relation to the collection thereof, including reasonable attorney's fees, shall be and become a lien upon the Lot of such Owner upon recordation by the Association of a notice of default with the Hawaii Bureau of Conveyances. Such lien shall be subject to and subordinate to the lien of any then-existing mortgage of record on the Lot of such Owner. A foreclosure of any such paramount lien, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to payments of Assessments which became due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such Lot or the purchaser or transferee thereof from responsibility for Assessments thereafter becoming due. The Association Assessment lien may be foreclosed through suit by the Association in like manner as a mortgage of real property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the Lot. A suit to cover money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such Assessment obligations.

Section 9. Exempt Areas. The Common Areas as defined in Article 1 and such portions of Aliomanu Estates as may be conveyed or dedicated to and accepted by a public utility, State of Hawaii or the County of Kauai shall be exempt from assessments.

Section 10. Estoppel Certificate. When requested by an Owner, the Association shall execute a certificate stating the amount of Assessments, charges, fines or penalties, if any, due or accrued or then unpaid with respect to the Lot of the Owner and the amount of Assessments for the current fiscal period of the Association payable with respect to said Lot, and such certificate shall be conclusive upon the Association and the Owner in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall be entitled to a reasonable fee as a condition to issuing a certificate.

ARTICLE VII

LAND USE REGULATIONS

Section 1. Agricultural Activities. The Property, and certain adjacent and nearby properties, are zoned for agricultural use. Such activity is often associated with odor, smoke and/or dust nuisances, and those conditions, as well as others related to agricultural activities, may from time to time affect the Lots in Aliomanu Estates and the use and enjoyment thereof.

Section 2. State Land Use Restrictions. As long as a Lot shall remain in the State Land Use Agriculture District, then such Lot shall be subject to the following conditions:

(a) Pursuant to Chapter 205, Hawaii Revised Statutes, the use of the Lots shall be primarily in pursuit of agricultural activities and only for those uses permissible in an agricultural district as contained in Section 205-4.5, Hawaii Revised Statutes ("HRS"), as amended from time to time, which lists permissible uses as follows:

(1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber;

(2) Game and fish propagation;

(3) Raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use;

(4) Farm dwellings, employee housing, farm buildings or activity or uses related to farming and animal husbandry. Farm dwelling as used in this paragraph means a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling;

(5) Public institutions and buildings which are necessary for agricultural practices;

(6) Public and private open area types of recreational uses including day camps, picnic grounds, parks and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs and overnight camps;

(7) Public, private and quasi-public utility lines and roadways, transformer stations, communications equipment building, solid waste transfer stations, major water storage tanks and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;

(8) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interest;

(9) Roadside stands for the sale of agricultural products grown on the premises (provided that all signs used in connection with such stands shall comply with Section 14 of this Article VII);

(10) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-mentioned uses;

(11) Agricultural parks; or

(12) Wind energy facilities, including the appurtenances associated with the production and transmission of wind-generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.

(b) Notwithstanding the foregoing provisions of HRS §205-4.5, the uses and structures described above in sub-paragraphs (2), (3) [with the exceptions stated in Article VII, Sec. 10], (5), (6), (9) and (12) are not permitted on any Lot.

Section 3. Cultivation of Crops. All cultivation of crops, whether for personal or commercial use, shall be conducted only on locations designated on site plans for such activity, which have been approved by the Design Committee, and shall be conducted in conformance with applicable Design Committee approvals and good farming practices, including, but not limited to, adequate provision for: (a) control of dust; (b) use of sprays, pesticides, insecticides and other chemical insect control or fertilizing measures in accordance with all governmental regulations concerning such use, and in such manner as not to create a hazard or nuisance to any other Lot or Owner; (c) prompt control and removal of weeds, noxious or waste vegetation; (d) prompt disposal of excess plant material, or placement of same in an established compost pile maintained in a neat farmer-like manner; (e) control of water to prevent any flooding, erosion of, or deposit of silt on, adjoining land; (f) control of any planting near boundaries of Lots to prevent or eliminate unreasonable invasion of adjoining land by roots and/or branches of such plantings; (g) affirmative soil conservation practices to promote continued soil fertility, including, but not limited to measures to limit or minimize soil erosion and silt migration as well as measures to avoid accumulation of poisonous or deleterious chemicals in the soil; and (h) protection of all ground and surface water sources, from contamination or the introduction of deleterious chemicals or substances.

Section 4. Utility Facilities. No overhead power lines or wires may be erected, installed or maintained on or above any Lot except by the Declarant, or by a public or private utility authorized to do so by the Declarant. No antennae, aerials, satellite discs or dishes or other devices for the reception or transmission of radio or television broadcast signals or other means of communication shall be erected, installed, constructed or maintained on any Lot unless such devices are reasonably screened from adjoining properties and roadways. All other utilities within a Lot shall be placed underground or screened from view from adjoining properties and roadways.

Section 5. Temporary Structures. No house trailer, mobile home, temporary building, structure, outhouse, shed or tent of any kind shall be erected, constructed, placed or maintained on any Lot, except as expressly provided herein. Subject to prior Design Committee approval, temporary structures or trailers may be erected, constructed or placed on any Lot during the period of construction of permanent improvements, in no case to exceed the construction period, for use as a construction office and supply shelter, but in no event as a residence. The temporary construction structures or trailers shall remain upon the Lot only during the period of permanent improvements thereon, and must be removed within thirty (30) days after completion of such construction. Any surplus material from construction shall be removed within said thirty (30) day period of time.

Section 6. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out on any Lot, nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to Owners of other Lots. Any planting or vegetation which cannot be effectively limited from encroaching upon or infesting neighboring property shall be deemed a noxious activity, and each Owner shall take positive steps to eliminate such planting or vegetation from his Lot. No hunting is permitted and no guns shall be fired on any Lot. Lot Owners shall not allow any unreasonable odor, smoke, dust, light, electronic wave emissions or noise which is noxious or offensive to any other Lot Owner to emit or emanate from their Lot.

Section 7. Unsightliness. No unsightly structure or condition which may substantially diminish the value or quiet enjoyment of other Lots shall be caused or permitted on any Lot. Without limiting the generality of the foregoing, all unsightly structures, facilities, equipment, objects and conditions shall be reasonably screened from view from neighboring Lots or roadways. No Lot shall be used or maintained as a dumping ground or landfill area for rubbish, trash, garbage or other waste (with the exception of well and sanitarily maintained compost piles), and the storage of or accumulation of junk, trash, manure and other offensive or noxious materials is specifically prohibited. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition and containers. Rubbish, trash, garbage or other waste, including their containers, shall not be left for refuse pickup or disposal more than 24 hours prior to any scheduled pickup.

Section 8. Noise. No sound shall be permitted to emit or emanate from any Lot which is unreasonably loud or annoying or which violates any applicable governmental rule, law or ordinance. Security devices used exclusively for the protection of persons or property are permitted.

Section 9. Lighting. No exterior lighting on any Lot may be installed without prior approval of the Design Committee. All exterior lighting which is unreasonably bright or causes unreasonable glare must be shielded from view by neighboring Lots. High intensity discharge exterior lights, including, without limitation, mercury or sodium vapor lamps or lamps which emit light of a similar nature and character, strobe lamps, and neon lamps and tubing, are not permitted. All exterior lights shall have shields which deflect light towards the ground.

Section 10. Animals. Livestock, poultry, rabbits and other animals shall not be allowed or kept in any part of the Property, with the exception of the following: (a) dogs, cats and other household pets may be kept by residents in reasonable numbers in their respective dwellings and Lots, but shall not be kept, bred or used for any commercial purpose nor allowed on the Common Areas except in transit, when carried or on a leash; and (b) one horse for each one acre may be kept on each Lot with a barn constructed for their care and shelter, such barn structure to be approved by the Design Committee. Pets causing a nuisance or an unreasonable disturbance to any other occupant of the Property shall be permanently removed therefrom promptly upon notice given to the occupant by the Board. Financial and all other responsibility for any personal injury or property damage caused to any occupant, or to any member of the public, shall be that of the pet owner and/or occupant and not that of the Association. The Board has the authority to levy special assessments for damage done to Common Areas by pets and for removal of pets.

Section 11. Grading. Prior to commencing any site improvements in the nature of grading or grubbing, the Owner of each Lot shall obtain a grading or grubbing permit, as the case may be, from the County of Kauai if the same is required by any governmental rule, regulation, law or ordinance. Excessive cuts or filling shall be avoided. In the event of any excavation on a Lot, the Owner doing or causing such excavation to be done shall provide such artificial lateral support as may be necessary to support adjacent Lots. Each Owner shall control dust during the grading or grubbing process to minimize damage, annoyance or inconvenience to other Owners or occupants of Lots.

Section 12. Flooding and Erosion. No Owner shall permit or cause to be constructed on his Lot any improvements which create a problem of flooding, erosion or interference with the natural flow of water, or which will damage his Lot or other properties, nor shall any Owner fail to act to minimize runoff damage or interference with the natural flow of storm waters and surface runoff. Owners shall maintain existing drainage patterns to the extent reasonably possible and shall be solely responsible for resolving any offsite drainage or flooding problems caused by the Owner's development or use of his Lot.

Section 13. Landscape Maintenance and Repair. Each Owner shall, at his sole cost and expense, landscape his Lot and mow the areas of the Lot which have not been landscaped at least once each three months in order to control the growth of the natural vegetation. All landscaping and other crops or vegetation planted by any Owner on his Lot shall be subject to Design Committee review and approval. In the event any Owner fails to maintain his landscaping or to mow the areas of his Lot which have not been landscaped, the Board and its authorized agents shall have the right to enter such Lot and perform such mowing and landscape work upon the Lot, and the Owner shall reimburse the Association for the cost thereof promptly upon demand together with interest thereon at the rate of twelve percent (12%) per annum. In the event of the Owner's default in the payment of same, the amount thereof shall be and become a lien upon the Lot in the manner described in Article VI.

Section 14. Signs. No signs or advertising devices of any nature or kind shall be erected, placed, installed, constructed or maintained on any Lot, except:

(a) such signs as may be required to be posted by order of any court of competent jurisdiction;

(b) signs which have a combined total face area of not more than 1½ square feet, necessary to identify the Owner or occupant of any Lot and his address;

(c) a maximum of one (1) sign not exceeding 1 foot by 2 feet in size, indicating or advising that the Lot on which it has been installed, placed or situated is for sale or for rent;

(d) signs which are necessary or desirable to give direction, advise of rules or regulations, or caution or warn of hazard or danger;

(e) a maximum of one (1) job identification sign per contractor or subcontractor having a maximum face area of six (6) square feet, during the period of actual construction on a Lot; and

(f) not more than one (1) commercial sign having a maximum face area of six (6) square feet, and which can only refer to the sale of agricultural or related products produced on the Lot on which the said sign is installed, placed or situated.

Section 15. Lot Access. Vehicular access to all Lots, with the exception of Lots 1, 4 and 9C-1, shall be only off of Road Lot 13 (Aliomanu Estates Drive). Lot 1 may access off of both

Papaa Road and Aliomanu Estates Drive, Lot 4 may access off of both Aliomanu Road and Aliomanu Estates Drive, and Lot 9C-1 may access only off of Aliomanu Road.

Section 16. Vehicles, Garages and Parking.

(a) Vehicles

(1) Boats, trailers or trucks of more than one ton capacity shall not be permitted to be kept, placed or maintained upon or within any Lot other than in a garage.

(2) Trailers, truck campers, vehicles or boats shall not be constructed, reconstructed or repaired upon or within any Lot in such a manner that such construction, reconstruction or repair is visible from neighboring properties, nor shall any vehicle not licensed and in good operating condition be maintained upon or within any Lot so as to be visible from any neighboring property.

(3) Vehicle repairs in the Common Areas other than for reasons of emergency are prohibited. Vehicle owners are responsible for leakage of gas and oil in Common Areas. Spills and leakage will be cleaned up as soon as possible by the owner to avoid damage to the road surface.

(b) Garages. Garages will be used only for the parking of vehicles, boats, trailer or truck campers and for workshops and storage of lawn and garden maintenance equipment, laundry drying, etc. No hazardous materials may be stored in garages or anywhere within the Property.

(c) - Parking. Owners, occupants and their guests shall not park their vehicles on any portion of their Lot visible from any adjacent property, except in a garage or on a paved driveway area. All guest parking shall be accommodated on the Owner's or occupant's driveway or established parking areas. Motorcycles shall be subject to these provisions. Vehicles parked in another Owner's or occupant's driveway will be towed away at the Owner's or occupant's request. The Board has the authority to have a vehicle parked in unauthorized areas towed away at the vehicle owner's expense. Cars may not be parked on the street more than 24 hours. Vehicles may not park on the street during garbage collection hours.

Section 17. No Commercial Activity. No commercial activity or business shall be conducted upon or within any Lot, except (a) authorized agricultural activities, and (b) home offices which do not involve client or customer visits to the Property or the office and which do not involve pick-up or delivery of either manufactured goods or materials to be incorporated into such goods.

Section 18. Religious and Spiritual Activities. There shall not be allowed any church, monastery, temple or similar facility or meeting place at which regular gatherings or retreats are held for religious or spiritual purposes.

Section 19. No Hazardous Activities. No activities shall be conducted on any Lot and no improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot, and no open fires shall be lighted or permitted on any Lot except: (a) in a contained barbecue unit while attended and in use for cooking purposes; (b) for agricultural burning under conditions approved by the District Fire Marshall; or (c) within a safe and well-designed interior fireplace. Whenever any flammable or combustible materials of any type are stored upon any Lot, the Owner thereof shall keep and maintain in working order, adequate fire extinguishing equipment.

Section 20. Chemicals. The Board shall have the power, in its sole discretion and from time to time, to prohibit the use and storage of chemicals which it shall determine, in its sole discretion, to be toxic or hazardous. No chemical so prohibited shall be used on, in, above or under any Lot, nor shall any such chemical be allowed to seep, drain, flow, drift or migrate into any natural or artificial waterway, drainage channel, or above ground or underground body of water within, on or under the Property, or into, onto or above any Lot. Neither the Board or its members, nor the Declarant, nor any officer, agent or employee of any of the same shall be responsible, liable or accountable for any such prohibition of the use or storage of such chemicals or for the failure to prohibit the use or storage of such chemicals.

Section 21. Timesharing. No Lot shall be sold, transferred, conveyed, leased, occupied, rented or use for or in connection with any timesharing purpose or under any timesharing plan, arrangement or program, including without limitation any so-called "vacation license," "travel club membership" or "time-interval ownership" arrangement. The term "timesharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess any Lot or any interest therein rotates

among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise.

Section 22. Laws, Ordinances, Regulations, etc. Without limiting the generality of the provisions of this Article VII, all Lots shall be used in accordance with any applicable laws, ordinances, regulations, rules and requirements of any governmental body having jurisdiction over the Owner, the Lot or the Property, or any part thereof, including, but not limited to, the requirements of the State of Hawaii Health Department and Kauai County Building Code relating to potable water, sewage disposal, odors, flies and animals.

Section 23. Enforcement of Use Restrictions. In the event of any failure by a Lot Owner or occupant to observe and perform all of the terms and conditions of this Article VII, Declarant, the Design Committee or the Association may, upon thirty (30) days prior written notice to such Lot Owner or occupant (the "Defaulting Lot Owner"), maintain, restore or repair such Lot and related improvements, or take such other reasonable action as may be necessary to cure or remove the default, the cost of which shall be reimbursed (together with interest thereon at the rate of one percent [1%] per month) by the Defaulting Lot Owner. The Declarant, the Design Committee or the Association who maintains, restores or repairs such Lot or improvements for the Defaulting Lot Owner, or who otherwise acts as described herein, shall have a lien against the Defaulting Lot Owner's Lot to secure such reimbursement and payment of interest, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in the manner provided for foreclosure of mortgages in the State of Hawaii. The foregoing remedy shall be in addition to any other remedies provided herein or at law or in equity for the enforcement of such obligations. Neither Declarant nor the Design Committee, nor the Association, nor any of their officers, directors, members, agents, employees or contractors shall be liable for any claim for damage which may result from any maintenance, restoration or repair work performed hereunder, provided that the person against whom the claim is made has, upon the basis of such information as may be actually possessed by him, acted in good faith and without willful or intentional misconduct.

Section 24. Condominium Property Regimes. Any Owner who wishes to submit his or her Lot to a Hawaii Condominium Property Regime ("CPR") shall first obtain approval from the Design Committee of the proposed CPR Map (which shall show apartment boundaries, common and limited common elements of the proposed CPR, easements and other items required under applicable state laws, rules and regulations), the proposed CPR Declaration and

all proposed documents, declarations or rules which relate to land use rights and restrictions and improvements within the CPR property. No proposed CPR shall be approved which is inconsistent with this Declaration, the Design Committee Rules or the Articles of Incorporation or Bylaws of the Association, or which in any way attempts to limit, or has the effect of limiting, the terms, conditions, covenants and restrictions contained herein or in the Design Committee Rules or the Articles of Incorporation or Bylaws of the Association.

ARTICLE VIII

EASEMENTS, RESERVATIONS AND RESTRICTIONS

The Property and the various Lots which are covered by this Declaration shall be subject to the following easements, reservations and restrictions, in addition to any others detailed elsewhere herein:

1. Lots 2, 3, 4, 9, 10, 11 and 12 are subject to drainageways and building setback lines as shown on File Plan 2023 and shall therefore be subject to all applicable County of Kauai restrictions concerning construction, development and use within such areas.

2. Lots 1, 5, 11 and 9C-1, and road remnant R-1 described in Article II of this Declaration, are subject to vehicular access restrictions as shown on File Plan 2023.

3. As is stated on the final subdivision map for Aliomanu Estates approved by the County of Kauai Planning Commission on December 13, 1990:

(1) Due to the high elevation of Lots 1 and 2, a dependable supply of water cannot be assured. The 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.

(2) Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water.

4. Lot 1 is subject to Easement 10 containing 8,457 square feet for well, tank and pump purposes, as shown on File Plan 2023.

5. Lot 2 is subject to Easement 5 containing 1,000 square feet for drainage purposes, as shown on File Plan 2023.

6. Lot 4 is subject to Easement 7 containing 1,892 square feet for drainage purposes and Easement 9 containing 12,596 square feet in favor of Lot 9C-1 and road remnant R-1, for pedestrian access purposes, both as shown on File Plan 2023.

7. Lot 5 is subject to Easement 12 containing 42,786 square feet for grading purposes, as shown on File Plan 2023.

8. Lot 9 is subject to Easement 2 containing 50,450 square feet for public vehicular access purposes, Easement 3 containing 5,383 square feet, in favor of Lot 12, for access purposes, Easement 4 containing 10,854 square feet for public parking purposes, Easement 6 containing 2,400 square feet for drainage purposes, and Easement 8 containing 6,438 square feet for public pedestrian access purposes, all as shown on File Plan 2023.

9. Lot 11 is subject to Easement 1 containing 1,700 square feet for public parking purposes and Easement 11 containing 14,825 square feet for grading purposes, both as shown on File Plan 2023.

10. Lot 12 is subject to Easement 8 containing 6,438 square feet for public pedestrian access purposes, as shown on File Plan 2023.

11. Lot 13 (Aliomanu Estates Drive) is reserved for roadway and utility purposes only.

12. Lots 1-12 are each subject to an easement in favor of the Association and/or Declarant for landscaping and landscape maintenance purposes within an area which is not more than 25 feet (measured perpendicularly) into each of said Lots from the Lot's boundaries with Aliomanu Road, Papaa Road and/or Aliomanu Estates Drive (as the case may be with reference to each Lot). Within said landscape easement areas, the Owners shall not be permitted to place, construct or install any improvement or structure whatsoever (except driveways or other roads or vehicular access ways pursuant to the terms and conditions of Article IV) without the written approval of the Design Committee pursuant to the procedures detailed in Article IV.

13. Lots 1-12 are each subject to future easements related to the non-potable irrigation water system as stated in Article V, Section 3.

14. Lots 1-12 are each subject to the Declarant's rights as stated in Article X, Section 1.

ARTICLE IX

AMENDMENT AND DURATION

Section 1. Amendment by Declarant. This Declaration may be amended by Declarant at any time prior to the transfer of any Lot by Declarant by the recording of a written amendment by the Declarant in the Bureau of Conveyances of the State of Hawaii.

Section 2. Amendment by Association. After the first Lot is transferred by Declarant to any Owner, this Declaration may only be amended by the affirmative vote of not less than seventy-five percent (75%) of the Owners (including Declarant, if he owns any Lots at that time) at a regular or special meeting of the Association duly called for the purpose of considering the amendment; PROVIDED, HOWEVER, that no amendment shall be effective without the written consent of Declarant unless and until (a) all subdivision improvements covered by Declarant's subdivision bond are completed and accepted by the appropriate government agencies, and (b) Declarant has sold not less than 75 % of the Lots comprising Aliomanu Estates. Notice of any Association meeting to consider an amendment shall state with sufficient clarity and detail the substance of the proposed amendment.

Section 3. Recordation of Amendment. No amendment approved pursuant to Section 2 above shall be effective unless and until a written certificate signed by two officers of the Association is recorded in the Bureau of Conveyances of the State of Hawaii which sets forth in full the amendment(s) to this Declaration approved as stated above, and which certifies that said amendment(s) have been approved by the required Owners' vote, as stated in Section 2 above, and that the Declarant has also recorded his written consent thereto, if required.

Section 4. Duration. Except as otherwise stated herein as to specific restrictions, covenants or easements, all of the limitations, restrictions, covenants and conditions of this Declaration are to run with all of the land described in Exhibit "A" or annexed hereto as stated in Article II herein, and shall be binding upon and shall inure to the benefit of the Declarant and all persons who become Owners of any Lot, and all other persons claiming under them and their respective heirs, successors and assigns, for a period of twenty-five (25) years from the date of recordation of this Declaration, at which time the same shall be automatically extended for successive periods of five years, unless the record Owners of Lots then within Aliomanu Estates having not less than three-fourths (3/4ths) of

the total Association votes record an instrument terminating this Declaration not less than one year prior to the commencement of any such period. Any such termination shall take effect upon expiration of the period during which it is given.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 1. Reservations by Declarant. For a period of five (5) years from the date of recordation of this Declaration, or such longer period of time as is required by Declarant to complete all subdivision improvements required by the County of Kauai, the Declarant reserves the right:

(a) To grant easements, licenses, permits and rights of way for public or private utility purposes, drainage, gas distribution systems, pedestrian walkways, telephone and television cables and other similar uses, in, over, through and under the Property.

(b) To enter on any Lot for the purposes of constructing any improvements or changes in or appurtenant to the Common Areas and perform other proper functions in connection with the care and maintenance thereof.

(c) To assign and transfer all or any of the rights, privileges, powers, interest and obligations hereunder to the Association or any successor designated by the Declarant to administer the Common Areas.

(d) To dedicate any portion of the Common Areas to public use where such use will have the effect of transferring the responsibility and maintenance of the dedicated use to the governmental authority or private utility.

Section 2. Construction. All of the limitations, restrictions, covenants and conditions contained herein shall be liberally construed together to promote and effectuate the fundamental concepts as set forth in the introductory paragraphs of this Declaration.

Section 3. Compliance with Laws. No provision of this Declaration shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over the Property or any part thereof.

Section 4. Remedy for Violation. In addition to the other remedies provided herein, if the Owner of any Lot in Aliomanu Estates or any part thereof or interest therein violates any provisions hereof, Declarant, the Association or the Owner of any Lot or part thereof or interest therein may bring an appropriate civil action against the defaulting party to enforce specific compliance with this Declaration, or to recover damages for such violation, plus costs and a reasonable attorney's fee as may be incurred by said prosecuting party in such proceedings or action; provided, however, that Declarant or the Association shall have no duty under any circumstances to enforce compliance with this Declaration. Failure by Declarant, the Association or any property Owner or Owners or their representatives, heirs, successors or assigns to enforce any of the limitations, covenants, restrictions, reservations, easements or charges herein contained, shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. Delegation of Declarant's Rights or Powers. Any and all of the rights (other than those imposed upon all Lot Owners hereunder), powers and obligations vested in the Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by the Declarant to the Association (or, as relates to Design Committee Rules, to the Board) and the Association (or the Board, if applicable) shall accept the same effective upon the recording by the Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

Section 6. Common Area Condemnation. If at any time or from time to time all or any portion of the Common Area is taken by the right of eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation, such right to participation being herein reserved exclusively to the Association which shall in its name alone represent the interest of all Owners.

Section 7. No Avoidance. No Owner through his or her non-use of any Common Area, or by abandonment of his or her Lot, may avoid the burdens or obligations imposed on him or her by this Declaration by virtue of his or her being an Owner.

Section 8. Notices. Any notice or other document permitted or required by this Declaration to be delivered may be delivered either personally or by mail. If delivery is to be made by mail, it shall be deemed to have been delivered to the Association seventy-two (72) hours after having been deposited in the United States mail, postage prepaid, addressed to the Association at the address designated by the Association from time to time.

Delivery by mail shall be deemed complete to an Owner seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Owner at his address filed with the Association or the Declarant. Where there is more than one Owner of a Lot, the delivery personally or by mail to any one Owner of the Lot shall be effective delivery to all Owners of such Lot.

Section 9. Severability. Notwithstanding the provisions of Section 2 of this Article X, the limitations, restrictions, covenants and conditions of this Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision of this Declaration.

Section 10. Singular and Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include all genders unless the context requires the contrary.

Section 11. Obligations Joint and Several. Whenever in this Declaration the term "Owner" refers to more than one person, each such person shall be jointly and severally bound and liable with respect to all covenants and conditions to be observed and/or performed.

Section 12. Headings. The headings of Articles and Sections herein are inserted solely for the convenience of reference and shall in no way define, limit or describe the scope or intent of any provision of this Declaration.

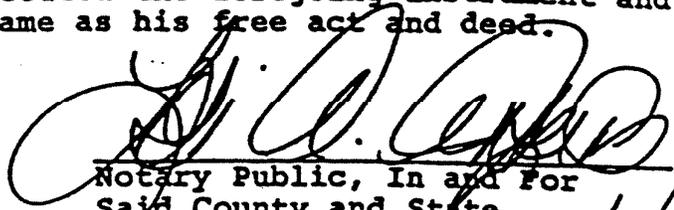
Section 12. Repeal. The Declaration of Covenants, Conditions and Restrictions of Alimomanu Estates dated August 16, 1990, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-137874 is hereby repealed and substituted by this Declaration.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand on the date first above written.


RONALD C. YANKE

STATE OF Idaho)
COUNTY OF Ada) ss.

On this 13th day of January, 1997, before me appeared RONALD C. YANKE, who satisfactorily proved to be the person described in and who executed the foregoing instrument and acknowledged he executed the same as his free act and deed.


Notary Public, In and For
Said County and State

My commission expires: 7/12/95

EXHIBIT "A"

PARCEL FIRST:

Land situated on the Northeasterly side of Kuhio Highway
and on the Southeasterly side of Papaa Road

At Papaa and Aliomanu, Kawaiahou (Koolaula, Kaula, Hawaii)

Being portions of the Lands of Papaa and Aliomanu conveyed
by Richard Armstrong, President of the Board of Education
to the Trustees of Oahu College by deed dated January 30, 1860
and recorded in Liber 12, Page 400 and a portion of
Grant 10095 to Lyric A. Dickey, et al.

SUBDIVIDED INTO LOTS 1 TO 17, INCLUSIVE,
DESIGNATION OF EASEMENTS 1 TO 12, INCLUSIVE,
AND DESIGNATION OF RESTRICTION OF
VEHICULAR ACCESS RIGHTS AFFECTING LOTS 1, 5 AND 11

OWNER: Ronald C. Yanke
ADDRESS: 10425 Estate Drive
Boise, Idaho 83709

Beginning at a pipe at the West corner of this parcel of land, at the Southeast corner of the intersection of Kuhio Highway (F.A.P. F-056-1(2)) and Papaa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA" being 7,412.05 feet South and 876.90 feet West, thence running by azimuths measured clockwise from True South:

1. 235° 04' 671.77 feet along the Southeasterly side of Papaa Road:
2. Thence along the Southeasterly side of Papaa Road, on a curve to the left with a radius of 415.00 feet, the chord azimuth and distance being:
227° 13' 30" 113.24 feet
3. 219° 23' 190.03 feet along the Southeasterly side of Papaa Road:
4. Thence along the Southeasterly side of Papaa Road, on a curve to the right with a radius of 185.00 feet, the chord azimuth and distance being:
227° 41' 30" 53.47 feet

5. 236° 00' 148.42 feet along the Southeastern side of Papaa Road;
6. Thence along the Southeastern side of Papaa Road, on a curve to the right with a radius of 185.00 feet, the chord azimuth and distance being:
244° 42' 30" 56.02 feet;
7. 253° 25' 100.74 feet along the Southeastern side of Papaa Road;
8. Thence along the Southeastern side of Papaa Road, on a curve to the left with a radius of 215.00 feet, the chord azimuth and distance being:
242° 50' 78.98 feet;
9. 232° 15' 92.80 feet along the Southeastern side of Papaa Road;
10. Thence along the Southeastern side of Papaa Road, on a curve to the left with a radius of 215.00 feet, the chord azimuth and distance being:
226° 30' 43.08 feet;
11. 220° 45' 131.50 feet along the Southeastern side of Papaa Road;
12. Thence along the Southeastern side of Papaa Road, on a curve to the left with a radius of 215.00 feet, the chord azimuth and distance being:
215° 00' 43.08 feet;
13. 209° 15' 68.00 feet along the Southeastern side of Papaa Road;
14. Thence along the Southeastern side of Papaa Road, on a curve to the right with a radius of 85.00 feet, the chord azimuth and distance being:
228° 37' 30" 57.33 feet;
15. 248° 40' 108.02 feet along the Southeastern side of Papaa Road;
16. 248° 40' 11.18 feet along the Southeastern side of Papaa Road;
17. Thence along the Southeastern side of Papaa Road, on a curve to the left with a radius of 90.00 feet, the chord azimuth and distance being:
216° 29' 30" 95.85 feet;
18. 184° 19' 14.73 feet along the Southeastern side of Papaa Road;
19. 154° 19' 176.77 feet along the Southeastern side of Papaa Road;

20. Thence along the Southeastery side of Papaa Road, on a curve to the right with a radius of 35.0 feet, the chord azimuth and distance being,
215° 13' 30" 35.96 feet;
21. 246° 08' 291.77 feet along the Southeastery side of Papaa Road;
22. 240° 16' 453.22 feet along the Southeastery side of Papaa Road and the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
23. 267° 06' 190.10 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
24. 285° 41' 16.00 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
25. 334° 16' 286.70 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
26. 303° 58' 30" 114.00 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
27. 272° 59' 379.91 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
28. 259° 58' 30" 223.90 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
29. 238° 59' 78.00 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;

30. 289° 59' 162.00 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
31. 273° 52' 118.17 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
32. 257° 45' 209.66 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400 to shoreline boundary (edge of vegetation);
- Thence along shoreline boundary (edge of vegetation) as of January 4, 1990 for the next seven (7) courses, the direct azimuths and distances between points being:
33. 348° 25' 30' 269.00 feet;
34. 325° 42' 310.00 feet;
35. 351° 32' 131.30 feet;
36. 326° 50' 362.85 feet;
37. 336° 28' 378.00 feet;
38. 341° 56' 62.80 feet;
39. 353° 08' 10.40 feet;
40. 63° 00' 53.36 feet along the remainder of Grant 10095 to Lyle A. Dickey, et al.;
41. 48° 50' 126.70 feet along the remainder of Grant 10095 to Lyle A. Dickey, et al.;
42. 85° 30' 68.00 feet along the remainder of Grant 10095 to Lyle A. Dickey, et al.;
43. 349° 38' 502.65 feet along the remainder of Grant 10095 to Lyle A. Dickey, et al.;
44. 18° 56' 421.75 feet along the remainder of Grant 10095 to Lyle A. Dickey, et al.;

45. 126° 16' 106.65 feet along the remainders of Grant 10099 to Lyle A. Dickey, et al. and Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
46. 11° 30' 244.97 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
47. 24° 45' 145.80 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
48. 34° 34' 39" 848.113 feet along the remainder of Deed: Richard Armstrong, President of the Board of Education to the Trustees of Oahu College dated January 30, 1860 and recorded in Liber 12, Page 400;
49. 107° 50' 232.47 feet along the Northerly side of Aliomanu Road;
50. Thence along the Northerly side of Aliomanu Road, on a curve to the left with a radius of 215.00 feet, the chord azimuth and distance being:
78° 45' 209.01 feet;
51. 49° 40' 97.65 feet along the Northerly side of Aliomanu Road;
52. Thence along the Northerly side of Aliomanu Road, on a curve to the right with a radius of 185.00 feet, the chord azimuth and distance being:
80° 20' 188.72 feet;
53. 111° 00' 55.96 feet along the Northerly side of Aliomanu Road;
54. Thence along the Northerly side of Aliomanu Road, on a curve to the left with a radius of 215.00 feet, the chord azimuth and distance being:
84° 40' 190.75 feet;
55. 58° 20' 103.42 feet along the Northerly side of Aliomanu Road;
56. Thence along the Northerly side of Aliomanu Road, on a curve to the right with a radius of 85.00 feet, the chord azimuth and distance being:
88° 33' 85.56 feet;

57. 118° 46' 85.82 feet along the Northernly side of Allomaru Road;
58. 110° 44' 171.05 feet along the Northernly side of Allomaru Road;
59. Thence along the Northernly side of Allomaru Road on a curve to the left with a radius of 415.00 feet, the chord azimuth and distance being:
102° 51' 113.84 feet;
60. 94° 58' 274.28 feet along the Northernly side of Allomaru Road;
61. 161° 37' 320.45 feet along the Easterly end of New Allomaru Road and the Northeasterly side of Remnant R-1 of Kuhio Highway (F.A.P. F-056-1(2));
62. Thence along the Northeasterly side of Remnant R-1 of Kuhio Highway (F.A.P. F-056-1(2)), on a curve to the left with a radius of 625.00 feet, the chord azimuth and distance being:
141° 04' 438.78 feet;
63. 120° 31' 922.00 feet along the Northeasterly side of Remnant R-1 of Kuhio Highway (F.A.P. F-056-1(2));
64. Thence along the Northeasterly side of Remnant R-1 of Kuhio Highway (F.A.P. F-056-1(2)), on a curve to the right with a radius of 975.00 feet, the chord azimuth and distance being:
126° 40' 208.91 feet;
65. 132° 49' 207.12 feet along the Northeasterly side of Remnant R-1 of Kuhio Highway (F.A.P. F-056-1(2));
66. 132° 49' 50.26 feet along the Northeasterly side of Kuhio Highway (F.A.P. F-056-1(2));
67. 142° 42' 405.71 feet along the Northeasterly side of Kuhio Highway (F.A.P. F-056-1(2));
68. 52° 42' 10.00 feet along the Northeasterly side of Kuhio Highway (F.A.P. F-056-1(2));
69. 142° 42' 72.74 feet along the Northeasterly side of Kuhio Highway (F.A.P. F-056-1(2)) to the point of beginning and containing an Area of 245.532 Acres.

PARCEL SECOND:

All of that certain parcel of land (being a portion of the Ahupuaa of Aliomanu conveyed by Richard Armstrong, President of the Board of Education, to the Trustees of Oahu College, by Deed dated January 30, 1860, recorded in Book 12 Page 400) being LOT 9C-1, being also a portion of Moloaa Hui Land, situated on the Northeast side of Kuhio Highway (F.A.P. No. F 056-1(2) and on the Southwest side of the Old Government Main Road at Aliomanu, Koolau (Kawaihau), Island and County of Kauai, State of Hawaii, and more particularly described as follows:

Beginning at the Southwest corner of this parcel of land, at the North corner of the intersection of Kuhio Highway (F.A.P. No. F 05601(2) and Government Road to Aliomanu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOLOAA", being 9,178.10 feet South and 481.05 feet East, and running by azimuths measured clockwise from True South:

1. 142° 42' 555.00 feet along the Northeast side of Kuhio Highway (F.A.P. No. F 056-1[2]);
2. 232° 42' 10.00 feet along the Northeast side of Kuhio Highway (F.A.P. No. F 056-1[2]);
3. 142° 42' 857.45 feet along the Northeast side of Kuhio Highway (F.A.P. No. F 056-1[2]);

Thence along the Southerly side of Old Government Main Road, on a curve to the left with a radius of 1,025.0 feet, the chord azimuth and distance being:

4. 304° 47' 14" 152.66 feet;
5. 300° 31' 922.00 feet along the Southerly side of the Old Government Main Road;

Thence along the side of the Old Government Main Road, on a curve to the right with a radius of 575.00 feet, the chord azimuth and distance being:

- | | | | |
|----|------|-----|---|
| 6. | 321° | 04' | 403.68 feet; |
| 7. | 341° | 37' | 270.84 feet along the Southerly
side of the Old
Government Main Road; |
| 8. | 93° | 42' | 339.87 feet on the Northerly
side of the Government
Road to Aliomanu; |

Thence along the Northerly side of the Government Road to Aliomanu, on a curve to the left with a radius of 95.00 feet, the chord azimuth and distance being:

- | | | | |
|-----|-----|-----|---|
| 9. | 73° | 12' | 66.54 feet; |
| 10. | 52° | 42' | 9.96 feet along the Northerly
side of the Government
Road to Aliomanu, to the
point of beginning and
containing an area of
9.607 acres, more or
less. |

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and its effect, if any, upon the area of the land herein described.
 - a. "Excepting and reserving therefrom a trail over and across this land along near highwater mark, which said highwater mark is that part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest, the location of said trail to be designated by the Commissioner of Public Lands.", as reserved in Land Patent (Grant) No. 10,095, dated August 22, 1932.
 - b. An easement for ingress to and egress from the triangulation station "PAFAA" over and across Allotment 24-D, as designated in Deed dated September 24, 1932, recorded in the Bureau of Conveyances of the State of

3. Restricted access to Kuhio Highway, affecting portions of Parcels 1 and 2, at the intersection of Kuhio Highway and old Government Road, as set forth in that certain Deed dated August 7, 1959, recorded in said Bureau in Book 3949 Page 199.

4. RIGHT-OF-ENTRY

In Favor Of: Citizens Utilities Company, a Delaware corporation
Dated: October 22, 1990
Document No. 91-002273
Purpose: Right-of-entry and easement for utility purposes over, under, across and through the land herein described (also affects other property)

5. RIGHT-OF-ENTRY AND GRANT OF EASEMENTS

In Favor Of: County of Kauai, a political subdivision of the State of Hawaii
Dated: November 30, 1990
Document No. 91-045318
Purpose: Right-of-entry and easement on, over and under those certain parcels of land being Easement 11, area 14,828 square feet on Lot 11, and Easement 12, area 42,786 square feet on Lot 5, located on land situated on the Northeastly side of Kuhio Highway and in the Southeastly side of Papaa Road

6. RIGHT-OF-ENTRY AND GRANT OF EASEMENTS

In Favor Of: County of Kauai, a political subdivision of the State of Hawaii
Dated: December 3, 1990
Document No. 91-167449
Purpose: Right-of-entry and easement on, over and under those certain parcels of land being Lot 13, area 4.836 acres, Easement 2, area 50,460 square feet and Easement 4, area 10,854 square feet, both on Lot 9, and Easement 8, area 6,438 square feet, on Lot 12, those certain parcels of land located at Papaa and Aliomanu

R-440

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

DEC 30. 1993 08:01 AM

Doc No(s) 93-218267

S. FURUKAWA
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION RETURN BY MAIL () PICK-UP (X)

SECURITY TITLE CORPORATION

STC 93-1418

SECURITY TITLE CORPORATION HAS RECORDED THIS INSTRUMENT AS AN
ACCOMMODATION FOR CREDITING INFORMATION HAS BEEN MADE AS TO
ITS EXECUTION AND EFFECT ON TITLE

FIRST AMENDMENT OF DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR ALIOMANU ESTATES

WHEREAS, by Declaration of Covenants, Conditions and Restrictions for Aliomanu Estates dated January 13, 1992 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-040191 (the "Declaration"), RONALD C. YANKE, husband of Linda L. Yanke, as owner and developer (hereinafter referred to as "Declarant"), did declare that the property described in the Declaration and known as "Aliomanu Estates" was to be held, leased, encumbered, conveyed, sold, used, occupied and improved subject to the covenants and conditions stated in the Declaration; and

WHEREAS, the Aliomanu Estates Community Association, a Hawaii non-profit corporation comprised of all lot Owners in the Aliomanu Estates project, was incorporated on June 4, 1993; and

WHEREAS, pursuant to Article IX, Section 2 of the Declaration, the Association is authorized to amend the Declaration by the affirmative vote of not less than 75% of the lot Owners, provided that in order for the amendment(s) to be effective the Declarant must give his written consent to any such amendment(s) until such time as (a) all subdivision improvements covered by the Declarant's subdivision bond for Aliomanu Estates are completed and accepted by the appropriate government agencies, and (b) the Declarant has sold not less than 75% of the lots comprising Aliomanu Estates; and

WHEREAS, the two aforesaid conditions for dispensing with the Declarant's written consent to amendment(s) of the Declaration by the Association have not yet occurred; and

WHEREAS, at a meeting of the Association duly called and held in Lihue, Kauai, Hawaii on November 13, 1993, for the purpose, among other things, of amending the Declaration, Owners representing 91.67% of the total voting power of the Association agreed to amend the Declaration as is stated hereinbelow; and

WHEREAS, the Declarant approves of the amendments contained hereinbelow and is willing to give his written consent thereto, as required under the Declaration; and

WHEREAS, the Declaration further provides, in Article IX, Section 3, that no amendment(s) approved pursuant to Article IX, Section 2 of the Declaration shall be effective unless and until a written certificate of such amendment(s) is recorded with

the Bureau of Conveyances of the State of Hawaii, as detailed in said Article IX, Section 3.

NOW, THEREFORE, the Association, by and through its duly authorized officers, hereby certify that the Declaration is amended as follows:

AMENDMENT NO. 1. Article IV, Section 3 of the Declaration is amended to read as follows:

Section 3. Building Setbacks. In addition to any applicable County building setback requirements, there shall be 100 foot building setbacks for all residences, other buildings and structures (other than fencing, walls and landscaping) along the entire lengths of Papaa Road and Aliomanu Road (except for the portion of Lot 9C-1 which abuts Aliomanu Road and except for the Lot 5 boundary along Aliomanu Road and the Lot 11 boundary along Papaa Road), on both sides of the entire length of Roadway Lot 13 (Aliomanu Estates Drive), and along the entire length of the mauka (i.e., southwest) boundaries of Lots 2, 3 and 4. Every residential structure (except for any residences constructed on Lot 9C-1 or any lot created from a subdivision of Lot 9C-1, and except for the ocean ends of Lots 6-12, inclusive, all of which shall be governed by applicable County setback requirements) shall also have a minimum distance of 50 feet from all other Lot boundaries which are not described in the preceding sentence.

AMENDMENT NO. 2. Article VII, Section 7 of the Declaration is amended to read as follows:

Section 13. Landscape Maintenance and Repair. Except for any landscape, landscape maintenance, sprinkler and fencing easement area reserved to the Declarant or the Association pursuant to Article VIII below, each Owner shall, at his sole cost and expense, landscape his Lot and mow the areas of the Lot which have not been landscaped at least once each three months in order to control the growth of the natural vegetation. All landscaping and other crops or vegetation planted by any Owner on his Lot shall be subject to Design Committee review and approval. In the event any Owner fails to maintain his landscaping or to mow the areas of his Lot which have not been landscaped, the Board and its authorized agents shall have the right to enter such Lot and perform such

mowing and landscape work upon the Lot, and the Owner shall reimburse the Association for the cost thereof promptly upon demand together with interest thereon at the rate of twelve percent (12%) per annum. In the event of the Owner's default in the payment of same, the amount thereof shall be and become a lien upon the Lot in the manner described in Article VI.

AMENDMENT NO 3. Article VIII, Paragraphs 4,6 and 8-14, inclusive, of the Declaration are amended to read as follows:

4. Lot 1 is subject to Easement 10 containing 8,457 square feet for well, tank and pump purposes, as shown on File Plan 2023. Lot 1 is also subject to an easement in favor of the Association and/or the Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within an area which is not more than 50 feet (measured perpendicularly) into Lot 1 from its boundary with Papaa Road.

6. Lot 4 is subject to Easement 7 containing 1,892 square feet for drainage purposes and Easement 9 containing 12,596 square feet in favor of Lot 9C-1 and road remnant R-1, for pedestrian access purposes, both as shown on File Plan 2023. Lot 4 is also subject to an easement in favor of the Association and/or the Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within the portion of Lot 4 comprising the entire slope area along Aliomanu Road.

8. Lot 9 is subject to Easement 2 containing 50,450 square feet for public vehicular access purposes, Easement 3 containing 5,383 square feet, in favor of Lot 12, for access purposes, Easement 4 containing 10,854 square feet for public parking purposes, Easement 6 containing 2,400 square feet for drainage purposes, and Easement 8 containing 6,438 square feet for public pedestrian access purposes, all as shown on File Plan 2023. Lot 9 is also subject to easements in favor of the Association and/or the Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within an area which is not more than 30 feet (measured perpendicularly) into Lot 9 along the boundaries of the aforesaid Easements 2 and 4.

9. Lot 10 is subject to an easement in favor of the Association and/or the Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within an area which is not more than 30 feet (measured

perpendicularly) into Lot 10 along that portion of its boundary with Lot 9 which is also the boundary of Easement 2 as shown on File Plan 2023. Lot 10 is also subject to Pedestrian Easement P-1 in favor of the Association and containing a total of 3,961 square feet for pedestrian purposes, which easement is more fully described in Grant of Easement dated August 16, 1993 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-137301.

10. Lot 11 is subject to Easement 1 containing 1,700 square feet for public parking purposes and Easement 11 containing 14,825 square feet for grading purposes, both as shown on File Plan 2023.

11. Lot 12 is subject to Easement 8 containing 6,438 square feet for public pedestrian access purposes, as shown on File Plan 2023. Lot 12 is also subject to Pedestrian Easement P-1 in favor of the Association and containing a total of 3,961 square feet for pedestrian purposes, which easement is more fully described in Grant of Easement dated August 16, 1993 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-137301.

12. Lot 13 (Aliomanu Estates Drive) is reserved for roadway and utility purposes only.

13. Lots 1-12 are each subject to an easement in favor of the Association and/or Declarant for landscaping, landscape maintenance, sprinkler and fencing purposes within an area which is not more than 25 feet (measured perpendicularly) into each of said Lots from the Lot's boundaries with Kuhio Highway, Aliomanu Road, Papaa Road and/or Aliomanu Estates Drive (as the case may be with reference to each Lot). Within said landscape easement areas, the Owners shall not be permitted to place, construct or install any improvement or structure whatsoever (except driveways or other roads or vehicular access ways pursuant to the terms and conditions of Article IV) without the written approval of the Design Committee pursuant to the procedures detailed in Article IV. The designation of easements in this Paragraph 13 shall not be deemed to limit or amend any additional or broader easement areas for similar purposes which affect any Lot under any other provision of this Declaration.

14. Lots 1-12 are each subject to future easements related to the non-potable irrigation water system as stated in Article V, Section 3.

15. Lots 1-12 are each subject to the Declarant's rights as stated in Article X, Section 1.

AND, the Declarant, pursuant to Article IX, Section 2 of the Declaration, hereby gives his written consent to the foregoing amendments.

In all other respects the Declaration is hereby ratified and confirmed.

IN WITNESS WHEREOF, the Association and the Declarant have hereunto set their hands this 17th day of December, 1993.

ALIOMANU ESTATES COMMUNITY
ASSOCIATION

By Ronald C. Yanke
RONALD C. YANKE
Its President

By Frank Supon
FRANK SUPON
Its Secretary/Treasurer

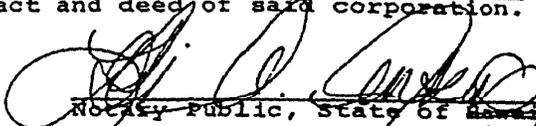
ASSOCIATION

Ronald C. Yanke
RONALD C. YANKE

DECLARANT

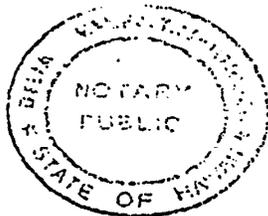
STATE OF ~~HAWAII~~ IDAHO)
) ss.
COUNTY OF ~~KAUAI~~)

On this 17th day of December, 1993, before me appeared Ronald C. Donke, to me personally known, who being by me duly sworn, did say that he is the President of ALIOMANU ESTATES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged he executed the same as the free act and deed of said corporation.


Notary Public, State of ~~HAWAII~~ IDAHO
My commission expires: 7/12/95

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this 20th day of December, 1993, before me appeared Frank Aupou, to me personally known, who being by me duly sworn, did say that he is the Secretary/Treasurer of ALIOMANU ESTATES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged he executed the same as the free act and deed of said corporation.

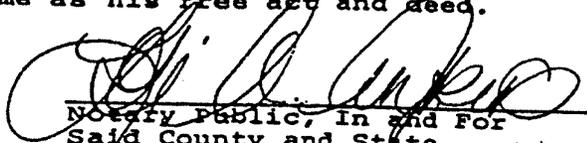


Delia Valentin-Herrick
Notary Public, State of Hawaii
My commission expires: 2-7-96

DELIA VALENTIN-HERRICK
NOTARY PUBLIC-STATE OF HAWAII
My commission expires: 2-7-96

STATE OF IOAND)
COUNTY OF ADA) ss.

On this 17th day of December, 1993, before me appeared RONALD C. YANKE, who satisfactorily proved to be the person described in and who executed the foregoing instrument and acknowledged he executed the same as his free act and deed.


Notary Public, in and For
Said County and State

My commission expires: 7/12/95

