

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: JANE ELIZABETH COLTRIN P. O. Box 450, Kilauea, Kauai, Hawaii 96754 DOROTHEA ANNE CHRISTIE 1830 Bird Avenue, San Jose, California 95126

Project Name(\*): Mele 'O Ke Kai Condominium Address: Lot 12, Kalihiwai Bay Estates, Kalihiwai, Hanalei, Kauai, Hawaii

Registration No. 4646

Effective date: September 10, 2001 Expiration date: October 10, 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.
X FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission. [X] 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: [ ] Final Public Report dated: [ ] Supplementary Public Report dated:
And [ ] 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:

**SPECIAL ATTENTION**

This is a CONDOMINIUM PROJECT, **not** a subdivision. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, **THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE.** The Purchaser should consult with the appropriate County agencies to determine whether the Purchaser may build a residential dwelling unit, or any other type of structure, on the property.

1. There are presently **NO RESIDENTIAL STRUCTURES ON THE PROPERTY.** The only buildings on the property are shade sheds, each of which may be defined as an "apartment" under the condominium property act.
2. This public report does **not** constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and is **not** a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.
4. Facilities and improvements normally associated with County-approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

**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: JANE ELIZABETH COLTRIN, Phone: (808) 828-6774  
P. O. Box 450, Kilauea, Kauai, Hawaii 96754

DOROTHEA ANNE CHRISTIE Phone:  
1830 Bird Avenue, San Jose, California 95125

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: Coldwell Banker Bali Hai Realty Phone: (808) 826-7244  
P. O. Box 930  
Hanalei, Kauai, Hawaii 96714

Escrow: First Hawaii Title Corporation Phone: (808) 826-6812  
P. O. Box 507  
Hanalei, Kauai, Hawaii 96714

General Contractor: Golden Rule Construction, Inc. Phone: (808) 639-2651  
P. O. Box 1210  
Kapaa, Kauai, Hawaii 96746

Condominium Managing Agent: Self-managed by Association of Unit Owners Phone: N/A

Attorney for Developer: Max W. J. Graham, Jr. 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. 2001-076347

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]:

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. 3262

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]:

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. 2001-076348

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>100%</u>
Bylaws	65%	<u>100%</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 M. of the Declaration, and further the Developer reserves the right to change the Bylaws as provided for in Section 13.6 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 12, Kalihiwai Bay Estates  
Kalihiwai, Hanalei, Kauai, Hawaii

Tax Map Key: (TMK): (4) 5-3-03:52

[ X ] Address [ X ] TMK is expected to change because addresses will be assigned by the County when houses are constructed; CPR numbers will be added to the current TMK number.

Land Area: 5.001 [ ] square feet [ X ] acre(s) Zoning: SLUC-Ag  
CZO – Open District/Ag District

Fee Owner: JANE ELIZABETH COLTRIN  
P. O. Box 450  
Kilauea, Kauai, Hawaii 96754

DOROTHEA ANNE CHRISTIE  
1830 Bird Avenue  
San Jose, California 95125

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: 2 Floors Per Building 0

Exhibit "A" contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other Steel posts and screen

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	_____	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: Shed	<u>2</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: Animals and pets are limited as provided in Section 13.1 of the Bylaws.
- Number of Occupants: \_\_\_\_\_
- Other: \_\_\_\_\_
- 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 A</u>	<u>1</u>	<u>0/0</u>	_____	<u>20 sq. ft.</u>	<u>Shade Shed</u>
<u>Unit B</u>	<u>1</u>	<u>0/0</u>	_____	<u>20 sq. ft.</u>	<u>Shade Shed</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total number of Apartments: 2

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

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

Boundaries of Each Apartment:

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.



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 "D".

as follows:

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 \_\_\_\_\_.

as follows:

Each unit shall have appurtenant thereto an undivided one-half (1/2) interest in all common elements of the property, and the same proportionate share in all common profits and common expenses of the property (except as may be otherwise provided in the Bylaws) and for all other purposes, including voting. The fractional common interest for each unit is determined by assigning a 1/2 fractional interest to both of the units irrespective of the actual land areas contained in the limited common elements appurtenant to each unit.

- 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 May 10, 2001 and issued by Commonwealth Land Title Insurance Company.

**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	Lender has priority over Buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. Should the lender terminate Buyer's sales contract, Buyer shall be entitled to a refund of all deposits, less escrow cancellation fee.

**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 Units A and B were completed January 2001.

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):

**IV. CONDOMINIUM MANAGEMENT**

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

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

The initial condominium managing agent for this project, named on page five (5) of this report is:

not affiliated with the Developer  the Developer or the Developer's affiliate.  
 self-managed by the Association of Apartment Owners  other \_\_\_\_\_

- B. **Estimate of Initial Maintenance Fees:**

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

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

Exhibit "F" contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

- C. **Utility Charges for Apartments:**

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

None  Electricity ( \_\_\_\_\_ Common Elements only \_\_\_\_\_ Common Elements & Apartments)

Gas ( \_\_\_\_\_ Common Elements only \_\_\_\_\_ Common Elements & Apartments)

Water  Sewer  Television Cable

Other \_\_\_\_\_

## 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 May 7, 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 for Kalihiwai Bay Estates Subdivision, attached hereto as Exhibit "I", 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. 4646 filed with the Real Estate Commission on June 4, 2001.

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. The use of hazardous material is restricted except as provided under Article H of the Declaration and all hazardous materials laws.
2. Purchasers should be aware that because the Project is located within the Open District of the CZO, land coverage within the Project shall be limited to ten percent (10%) of the total area of the property located in the CZO Open District. The remainder of the available land coverage, after deduction of any land coverage contained in the common element easement, shall be allocated to the Units as follows: Unit A – 50%; and Unit B – 50%.
3. Purchasers should be aware of the Restrictive Covenants attached hereto as Exhibit "I".
4. Unit A and Unit B shall be subject to Common Element Easement "AU-1" as described in Exhibit "C".

- 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.

JANE ELIZABETH COLTRIN  
DOROTHEA ANNE CHRISTIE  
 Owners/Developers

*Jane Elizabeth Coltrin*  
*Jane E. Coltrin*  
 \_\_\_\_\_  
 JANE ELIZABETH COLTRIN

05/03/01  
 Date

*Dorothea Anne Christie*  
 \_\_\_\_\_  
 DOROTHEA ANNE CHRISTIE

5/03/01  
 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 two (2) shade sheds constructed principally of steel posts and screen, without a basement or foundation.

Units A and B, located as shown on the Condominium Map, each contain a total area of 20 square feet.

The approximate net floor areas of each unit as set forth above is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls.

## EXHIBIT "B"

### ALTERATION OF PROJECT

Paragraph K of the Declaration provides that:

1. Provided that the unit owner satisfies the applicable terms and conditions of the Project Documents and obtains all of the necessary governmental permits, each unit owner shall have the right at his sole option at any time and from time to time, as hereinafter set forth, without the consent and/or approval of the owner of any other unit or any other persons or entity, to construct, reconstruct, repair, maintain, improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon or within the Yard Areas or other limited common elements or easements appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit owner who makes such alterations (hereinafter referred to as the "Altering Owner") shall have the right without the consent or joinder of any other person to amend this declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the Altering Owner shall duly record such amendment to this 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 Altering Owner 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 so that the Altering Owner shall hereafter have a power of attorney from all the other unit owners to execute such amendment to 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. If, despite the provisions of this paragraph, any governmental agency shall require some or all of the owners of units in the Project (other than the Altering Owner) to sign the necessary governmental permit application or related documents, then all of the other unit owners shall be required to sign any such permit applications or related documents (including authorizations allowing the Altering Owner to sign such governmental permits on behalf of such other owners) as may be necessary to allow the Altering Owner to obtain all such governmental permit necessary to make the alterations authorized by this paragraph. Any such unit owner who wrongfully refuses to sign such permits or provide the Altering Owner with the necessary authorizations: shall be liable to the Altering Owner for all such damages (including costs and attorneys' fees) incurred by the Altering Owner as a result of such refusal; and shall be subject to such other legal and/or equitable remedies as may be available to the Altering Owner.

2. Any alteration of a unit pursuant to this paragraph K shall be subject to the following conditions:

(a) All such alterations shall conform with all applicable governmental regulations, laws and ordinances.

(b) 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 Area appurtenant to such unit.

(c) 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 Area.

(d) The owner of the altered unit, at such owner's sole expense, shall have the right to utilize, relocate, construct, reconstruct, realign and/or develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services. When necessary, the owner of the altered unit may add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith. Provided, however, that no work done pursuant to this paragraph shall cause any unreasonable interruption in the service of such utilities to any other part of the Project, nor shall it unreasonably interfere with any other unit owner's use or enjoyment of his unit or Yard Area.

3. Under current laws, the Project is not entitled to construct a Guest House.

4. Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests, limited common elements, 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 or submitting Farm Dwelling Agreements, building permits, use permits, zoning permits or any other land use permits with governmental agencies, the governmental agency may require some or all of the owners of the Project to sign the permit forms. In such case, all unit owners shall be required to sign such permit applications and related documents as may be necessary for any unit owner to obtain such permits, so long as the requesting unit owner has complied with the Condominium Documents.

The issuance of an effective date for the Condominium Public Report should not be construed to mean that all governmental laws, ordinances and regulations have been complied with and all subsequent development and use shall comply with applicable governmental laws, ordinances and regulations.

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 included as part of this Project.

**EXHIBIT "C"**

**COMMON ELEMENTS**

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

1. The Property described in Exhibit "A", attached to the Declaration, in fee simple.
2. All central and appurtenant installations for common services, including utilities.
3. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, use, maintenance or safety, or normally in common use.
4. Common Element Easement "AU-1", as shown on the Condominium Map, being a non-exclusive easement on the limited common element appurtenant to Unit A and Unit B in favor of both Unit A and Unit B for access purposes (including vehicular and pedestrian access) and for underground utility purposes.

## **EXHIBIT "D"**

### **LIMITED COMMON ELEMENTS**

Certain units shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

Yard Area A: Yard Area A consists of the land area under and surrounding Unit A, contains approximately 2.500 acres as designated on the Condominium Map and as described in Exhibit "1", attached hereto and incorporated herein, and is reserved for the exclusive use of Unit A for the support of the building and other improvements comprising Unit A, and for the purposes described in the Project Documents.

Yard Area B: Yard Area B consists of the land area under and surrounding Unit B contains approximately 2.501 acres as designated on the Condominium Map and as described in Exhibit "2", attached hereto and incorporated herein, and is reserved for the exclusive use of Unit B for the support of the building and other improvements comprising Unit B, and for the purposes described in the Project Documents.

**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. The terms, provisions, covenants, easements and reservations as contained in the Declaration dated October 31, 1988, and recorded in said Bureau in Book 22626 at Page 434, 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.
4. Easement "W-1" (26,471 square feet) being a non-exclusive waterline easement over and across Lot 12, more particularly described in said Declaration in Book 22626 at Page 434.
5. Easement "W-3" (5,270 square feet) being a non-exclusive waterline easement, more particularly described in said Declaration in Book 22626 at Page 434.
6. Easement "I-1" (44 feet wide), being an undefined non-exclusive easement for the construction, installation, repair, maintenance and operation of water irrigation and waterline facilities.
7. A 7-foot wide road widening setback in favor of the County of Kauai, as shown on the final subdivision map, as contained in said Declaration in Book 22626 at Page 434.
8. A building setback line as shown on the final subdivision map as contained in Declaration in Book 22626 at Page 434.
9. Grant in favor of Citizens Utilities Company, a Delaware corporation, dated April 26, 1990, recorded in said Bureau as Document No. 90-140580, granting an easement for utility and incidental purposes.
10. Waiver and Release dated April 23, 1996, and recorded in said Bureau as Document No. 96-056332.
11. The terms, provisions, covenants, easements and reservations as contained in the Declaration of Easements "P-1" and "V-1" dated March 21, 2000, and recorded in said Bureau as Document No. 2000-040727, re: TMK: (4) 5-3-003-052 is subject to Easement

"P-1", for parking and landscaping and incidental purposes and Easement "V-1", for view and incidental purposes in favor of TMK (4) 5-3-003-046.

12. Mortgage dated July 22, 2000, in favor of Katherine S. Orr, unmarried, recorded in said Bureau as Document No 2000-103831.
13. Waiver and Release dated November 21, 2000, recorded in said Bureau as Document No. 2000-173351.
14. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

Declaration of Condominium Property Regime of Mele 'O Ke Kai Condominium dated May 3, 2001, and recorded in said Bureau as Document No. 2001-076347.

Condominium Map No. 3262 to which reference is hereby made.

15. Bylaws of the Association of Unit Owners of Mele 'O Ke Kai Condominium dated May 3, 2001, and recorded in said Bureau as Document No. 2001-067348.
16. Common Element Easement "AU-1", as shown on the Condominium Map, shall be a nonexclusive easement on the limited common element appurtenant to Unit A and Unit B in favor of Unit A and Unit B, for access purposes (including vehicular and pedestrian access) and for underground utility purposes.

EXHIBIT  "F"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
Unit A	\$10.00 x 12 = \$120.00
Unit B	\$10.00 x 12 = \$120.00

***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:**

Monthly Fee x 12 months = Yearly Total

Utilities and Services

- Air Conditioning
- Electricity
  - common elements only
  - common elements and apartments
- Elevator
- Gas
  - common elements only
  - common elements and apartments
- Refuse Collection
- Telephone
- Water and Sewer

Maintenance, Repairs and Supplies

- Building
- Grounds

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance \$20.00 x 12 = \$240.00

Reserves(\*)

Taxes and Government Assessments

Audit Fees

Other

TOTAL \$240.00

WE, JANE ELIZABETH COLTRIN and DOROTHEA ANNE CHRISTIE, the developers for the MELE 'O KE KAI CONDOMINIUM project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

*Jane Elizabeth Coltrin*  
*Jane E. Coltrin*  
 \_\_\_\_\_  
 JANE ELIZABETH COLTRIN

*05/03/01*  
 \_\_\_\_\_  
 Date

*Dorothea Anne Christie*  
 \_\_\_\_\_  
 DOROTHEA ANNE CHRISTIE

*5/03/01*  
 \_\_\_\_\_  
 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

88-174962

RECORDATION REQUESTED BY:

MAX W. J. GRAHAM, JR.

AFTER RECORDATION, RETURN TO:

LOWENTHAL, AUGUST & GRAHAM

MAX W. J. GRAHAM, JR.  
2959 Umi Street, Suite #202  
Lihue, Kauai, Hawaii 96766

RETURN BY: Mail (X) Pickup ( )  
c:2arr.kas

ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII  
OFFICE OF  
BUREAU OF CONVEYANCES  
DEC 21 1988  
Received for record this.....  
Day of....., A.D., 19....  
At..... 3:09.....  
Recorded at Lihue..... 22626  
..... 434

DECLARATION FOR KALIHIWAI BAY ESTATES SUBDIVISION

THIS DECLARATION is made by KALIHIWAI ASSOCIATES, a Virginia limited partnership authorized to do business in the State of Hawaii, whose principal place of business and mailing address is 1600 Spring Hill Road, Suite 200, Vienna, Virginia, 22180, hereinafter called the "Declarant".

W I T N E S S E T H :

WHEREAS, the Declarant is the owner in fee simple of that certain land situated at Kalihiwai, Halelea, Island and County of Kauai, State of Hawaii, (hereinafter "Kalihiwai Property") more particularly described in that certain Deed dated January 6, 1987, between Princeville Development Corporation, as Grantor, and Kalihiwai Associates, as Grantee, recorded in the Bureau of Conveyances of the State of Hawaii in Book 20260 at Page 743, incorporated herein by reference (hereinafter "Princeville Deed"); and

WHEREAS, the Declarant is developing the Kalihiwai Property into an agricultural subdivision to be known as the Kalihiwai Bay Estates Subdivision (hereinafter "Subdivision"); and

WHEREAS, the County of Kauai Planning Commission ("Planning Commission") has required, as a condition for final subdivision approval, that the lots in said Subdivision be subject to certain restrictive covenants and conditions as hereinafter contained and that such conditions and covenants be recorded in the Bureau of Conveyances of the State of Hawaii as conditions running with the land; and

WHEREAS, the Declarant intends to impose certain other recorded restrictive covenants and conditions on the lots in the Subdivision in order to preserve the peace, beauty, solitude and value of the Kalihiwai Property; and,

WHEREAS, the Declarant intends to impose certain Easements, Reserves, and other Restrictions upon certain lots in the Subdivision in order to provide for access, utilities, water facilities, setbacks, irrigation and other such uses;

NOW, THEREFORE, the Declarant does hereby declare that Lots 1 to 21, inclusive, resulting from the subdivision of the Kalihiwai Property, shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the following limitations, restrictions, covenants, conditions, reserves and easements, which shall run with the land and shall be binding upon all persons, entities or corporations having, or who may acquire, any right, title or interest in and to said lots and shall inure to the benefit of the Declarant, the County of Kauai,

the owners and beneficiaries of the easements and reserves granted herein, and each person who becomes an owner of any said lots:

SECTION I.

DECLARATION OF  
RESTRICTIVE COVENANTS AND CONDITIONS

1. DESIGN COMMITTEE. A Design Committee is hereby created to enforce the relevant provisions of this Declaration. The Design Committee shall consist of three members appointed by Declarant. At least one member shall be a representative of a community group from the North Shore Development Plan Area, as defined by relevant County ordinances and rules. Declarant shall have the right to appoint one or more alternates for each member of the Design Committee, and such alternates shall have the power as voting members of the Design Committee in the event the members for whom they are alternates are unavailable to act as members of the Design Committee. The members of the Design Committee, and their alternates, shall serve until the expiration of their term, their resignation, or their removal from the Design Committee by Declarant. The Design Committee shall adopt rules of procedure and organization consistent with these covenants.

2. DESIGN COMMITTEE APPROVAL; ENFORCEMENT. No person shall develop, use, modify, alter, construct, erect, place or maintain any building, structure, facility, utility, improvement, or other object on any lot except in strict accordance with the approved plans and specifications previously submitted to and approved by the Design Committee. The Design Committee shall either deny or

approve such plans within fifteen (15) working days of submittal, otherwise such plans shall be deemed to be approved. Such plans and specifications shall contain such information, diagrams, maps and drawings as may be required by the Design Committee including, but not limited to: floor, elevation, plot and grading plans; specifications of principal construction materials and color schemes; the location, character and method of utilization of all utilities; land-scape plans; all automobile parking provisions; and any outside lighting plan. The Design Committee may require that any or all of such plans and specifications be prepared by a registered architect or professional engineer licensed in the State of Hawaii. If any person shall fail to obtain or follow such approved plans or specifications, the Design Committee, the Declarant, the owners of other lots in the subdivision, and/or the County of Kauai may bring suit as provided in paragraph 12, herein, to enforce this provision.

3. DESIGN COMMITTEE GUIDELINES. In passing upon all such plans and specifications, the Design Committee shall take into consideration: the size, configuration, location, and natural features of the lot in question; the location of the proposed improvement on the lot; the effect the improvement will have on other existing or planned improvements on other lots in the subdivision; and the visual impact the proposed improvement will have when viewed from other lots in the subdivision or from other properties in the area, whether public or private. The Design Committee shall use reasonable judgement in passing upon all such

plans and specifications, but shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Design Committee acted with the actual intent to commit a wrongful act.

4. DWELLING VALUE AND QUALITY. No primary residence shall be constructed on any lot unless it has a building value of at least Fifty Thousand Dollars (\$50,000.00). Building value shall include the actual value of a dwelling and a garage accessory thereto, but shall not include the cost of landscaping, fences or other permissible structures, or the value of the lot. The Design Committee shall determine the value of all improvements covered by this paragraph. In the absence of any other information or assessments, the Design Committee may use the value assigned to the improvements by the County of Kauai's Department of Public Works (as part of said Department's determination of value for assessing building permit fees) as prima facie evidence of the value of such improvements.

It is the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced at the date these covenants are recorded at the stated minimum value.

5. DEVELOPMENT STANDARDS. The following Standards shall apply to any and all construction, use or development within the subdivision:

(a). No building shall be located on any lot nearer than 20 feet to the street lot line, nearer than 30 feet to the

rear lot line or nearer than 20 feet to side lot lines, with the exception of Lots 6 through 11, 19 and 20, which shall meet the applicable setback standards of the County of Kauai.

(b). All vertical exterior surfaces of structures shall be of natural material.

(c). The roofs of structures shall be covered with such materials as are from time to time established by the Committee and shall not exceed a maximum pitch of 12:12 or 45 degrees.

(d). All accessory structures, buildings or other improvements constructed on a lot must conform in architectural style and use of external construction materials to the residential structure on such lot to which it is accessory. Provided, however, that this requirement shall not apply to accessory buildings, structures or other improvements located on Lots 15, 16, 17 and 18 which are used for ranching, livestock, agricultural or aquacultural purposes.

(e). Each lot, when improved, must have a gravelled or hard-surfaced driveway and not less than two gravelled or hard-surfaced parking spaces. Provided, however, that this requirement shall not apply to accessory roads used for ranching, livestock, agricultural or aquacultural purposes.

(f). Exterior antennae or aerials for communication and television purposes shall be screened from view on all sides. All on-site utilities shall be placed underground.

(g). Laundry facilities and any service or utility area, including any area for hanging clothes, must be completely screened from view on all sides.

(h). The owner of any improvement constructed or located on any lot shall maintain said improvement in good repair at all times and shall cause all external surfaces that are stained or painted to be restained or repainted at sufficient intervals as to prevent the structure from detracting from the beauty of the community.

(i). All buildings and structures on Lots 1 through 14 must be screened from the Kalihiwai Valley Lookout on Kuhio Highway or placed out of the view plane from said Lookout as determined by the Design Committee. Prior to the completion of any improvements on Lots 6 through 14 and 19, the owners thereof shall plant a hedge along their frontage on Kalihiwai Road, that when mature shall not be less than five (5) feet in height.

(j). Each owner shall cause his land to be maintained in neat appearance at all times, shall follow prudent pasture maintenance and shall prevent noxious weeds from increasing on his property or spreading to adjoining properties. No noxious or offensive use or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any lot in the subdivision.

(k). Due to the visual sensitivity of the site in relation to its scenic location on the North Shore and to

prevent adverse building intrusions into the view corridor of the Kalihiwai Valley Lookout:

(1) Building setback lines are established for Lots 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15 and 16 as shown on the Final Subdivision Map as approved by the Planning Commission, a copy of which is attached hereto and incorporated herein as Exhibit "A". No construction of any buildings shall be allowed within the setback area. Building siting and design review by the County of Kauai Planning Department ("Planning Department") shall be required for Lots 1, 2, 3, 4, 5, 12, 13, 14, 15, and 19. Building locations shall be staked out and approved by the Planning Department prior to issuance of any building permit. The Planning Department shall be allowed to modify or vary the setback lines on any lot prior to issuance of building permits, as may be necessary, to provide reasonable building sites while at the same time preserving the intent of these restrictions.

(2). The removal of vegetation along the Kalihiwai Valley hillside of the setback area shall be prohibited unless done to accommodate agricultural purposes.

(3). The roof lines for Lots 13 and 14 shall not extend above the horizon line when viewed from the Kalihiwai Valley Lookout.

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(4). Lots 4, 5, and 12 shall have residences oriented towards Anini. The roof lines for the residences of Lots 3, 4, 5, and 12 shall not be visible when viewed from the Kalihiwai Valley Lookout.

(5). Building heights for all buildings within Lots 1, 2 and 7 to 14 shall not exceed 20 feet in total height, measured from finish grade to peak of roof from all points around the building. Building heights for all buildings within Lots 3, 4, 5, 6 and 19 shall not exceed 20 feet in height as measured from the finished elevation at main entry to the peak of the roof.

(6). Landscaping plans shall be provided to the Planning Department for Lots 1-14 and 19 prior to building permit approval.

(7). For Lots 1-14 and 19, all buildings and roofs shall be painted non-reflective earth-tone colors. Color samples shall be provided to the Planning Department prior to building permit approval. The use of mirrored glass, reflective sunscreens or other highly reflective materials shall be prohibited.

(1). No "guest house" (as that term is defined by the Comprehensive Zoning Ordinance of the County of Kauai ("CZO")) shall be allowed on Lots 1-12 and 19.

The standards contained in subparagraphs (a) through (j), above, may be modified, for good cause shown, by the Design Committee. The standards contained in subparagraphs (k) and (1) may be modified, for good cause shown, by the Design Committee,

provided prior approval therefor is first obtained from the Planning Department and/or Planning Commission.

The standards contained in paragraphs (a), (b), (c), (d), (e), (j) and (k) shall not apply to any structures, improvements, roads, or parking areas located on the Kalihiwai Property that were in actual existence and use prior to the date of final approval by the County of Kauai of this subdivision.

6. GARBAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and container. Storage facilities not enclosed shall be constructed below ground level so as to allow for full recession of containers into the ground.

7. STATE LAND USE RESTRICTIONS. As long as a lot in the Subdivision shall remain in the State Land Use Agriculture District, then such lot shall be subject to the following conditions:

(a) Only those uses listed as permissible uses within the Agriculture District in Hawaii Revised Statutes Section 205-4.5, as amended from time to time, and in the State Land Use District Regulations, as amended from time to time, applicable to Agriculture Districts shall be allowed on such Lot.

(b) Dwellings on such lot shall be limited to farm dwellings, defined in the State Land Use District Regulations as single-family dwellings located on and used

in connection with a farm where agricultural activity provides income to the family occupying the dwelling.

8. TEMPORARY STRUCTURES. Except for the temporary construction camp of Declarant, no temporary buildings, tents or trailers of any kind shall be erected, altered, placed or permitted to remain on any lot, except as expressly otherwise provided herein. Temporary structures or trailers may be erected or placed on any lot during a reasonable period of construction, in no case to exceed one (1) year, 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 construction of permanent improvements thereon and must be removed within thirty (30) days after completion of such construction. Any surplus material from construction must be removed within said thirty (30) day period.

9. HEALTH REQUIREMENTS. In the development and use of the lot, the owner shall at all times meet County of Kauai requirements and State of Hawaii, Department of Health, requirements as regards to: the availability of potable water; the raising of livestock, domestic fowl and other animals; and nuisances related to odor, noise, rodents and insects. Not more than five (5) dogs and five (5) cats, and no pigs, or chickens, or any other wild or domestic fowl or animals, shall be raised, kept or bred on any lot situated within the CZO Open District, and no more than five (5) pigs may be raised, kept or bred on any lot within the CZO Agriculture District or the State Land Use Commission Conservation District.

10. RESTRICTIONS ON AIRCRAFT. There shall be no landing of any helicopter or aircraft on any portion(s) of the Kalihiwai Property for any purpose whatsoever, including recreational, commercial or business purposes, except in the case of emergencies.

11. PERIOD OF RESTRICTIVE COVENANTS. The restrictive covenants and conditions contained in paragraph 7 shall continue and be in full force and effect as to any particular lot until such time as the subject lot is reclassified to a State Land Use District classification other than the "Agricultural" district classification. The restrictive covenants and conditions contained in paragraphs 1-4, 5(a) - (j), 6, and 8-10, shall be in full force and effect for a fifty five (55) year period beginning upon the date of execution of this Declaration. The restrictive covenants and conditions contained in paragraph 5(k) and 5(l) shall remain in full force and effect until revoked or revised by the County of Kauai, the Planning Commission, and/or the Planning Department.

12. BREACH. Any breach of any of the provisions of this Declaration may be enforced by injunctive or other legal remedies by the Declarant, the Design Committee, the owner of any lot within the subdivision, or the County of Kauai. If any of such person or entities shall be successful in preventing or enforcing against such breach, then such person or entity shall be entitled to recover its attorney's fees and costs of enforcement from the offending party.

13. ARBITRATION. The Design Committee may, in its sole discretion, require any dispute, matter or question that arises out of, or relates to, any provision of this Declaration to be settled by binding arbitration in accordance with the provisions of Chapter 658 of the Hawaii Revised Statutes. The Design Committee's decision to require arbitration shall be specifically enforceable. Any award or decision rendered by the arbitrator(s) shall be final, and judgment may be entered thereon in accordance with Hawaii law in the Fifth Circuit Court, State of Hawaii. The Design Committee shall adopt rules governing the selection of the arbitrator or arbitrators and the procedures to be followed in such arbitration.

## SECTION II

### DECLARATION OF EASEMENTS, RESERVATIONS AND RESTRICTIONS

Lots 1 through 21 of the Subdivision shall be subject to the following described easements, reservations and restrictions:

1. Subdivision Lots 1 through 20 shall be subject to an easement in favor of the owners, assigns and transferees of the Princeville Airport, located on Kauai Tax Map Key No. 5-3-01:2, to generate noise from the operation of said airport to the same degree, extent, volume, intensity, and duration as exists as of the date of the execution of this Declaration.

2. Subdivision Lots 1 through 9, 18 and 19 shall be subject to a thirteen (13) foot wide road widening setback in favor of the County of Kauai, as shown on the Final Subdivision Map approved by the Planning commission, a copy of which is

attached hereto and incorporated herein as Exhibit "A" (hereinafter, the "Final Subdivision Map").

3. Subdivision Lots 9 through 14 shall be subject to a seven (7) foot wide road widening setback in favor of the County of Kauai, as shown on the Final Subdivision Map.

4. Domestic water service for Subdivision Lots 1-20 will be available only through Princeville Utilities Company, Inc. and water service from the Department of Water, County of Kauai, shall not be available to these lots.

5. Subdivision Lots 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15 and 16 shall be subject to building setback lines as shown on the Final Subdivision Map, and shall be subject to the restrictions contained in Section I. Paragraph 5. (k), above.

6. No "guest house", (as that term is defined by the CZO of the County of Kauai) shall be allowed on Subdivision Lots 1-12 and 19.

7. Subdivision Lots 12, 13, 15, 16, 17, 18 and 20, or portions thereof, are within the Flood and/or Tsunami Zone as defined by the County of Kauai and as shown on the Final Subdivision Map, and shall be subject to all County of Kauai restrictions concerning construction, development and uses within such zones.

8. Subdivision Lot 18 is subject to an Agreement for Rock Quarrying purposes in favor of Grove Farm Company, Limited, recorded in the Bureau of Conveyances of the State of Hawaii in Book 4228, at Page 139, covering the Makai East side of Kalihiwai Valley, terminable upon sixty days written notice.

9. Subdivision Lots 15, 16, 17 and 18 are subject to an exception of title to that portion of said lots lying below the high water mark as presently or hereafter established by law or ruling of the Courts.

10. Subdivision Lots 1 through 20 are subject to a reservation of title to all mineral and metallic mines in the State of Hawaii.

11. Subdivision Lots 15, 16, 17 and 18 are subject to the condition that the owners thereof allow for free flowage of Kalihiwai River and all other streams and stream beds located on or adjacent to such lots.

12. Subdivision Lots 14, 15 and 18 shall be subject to the restriction of access along portions of Kuhio Highway and/or Kalihiwai Road as shown on the Final Subdivision Map and/or the survey map of Wesley M. Thomas and Associates, Inc., dated February 25, 1986.

13. Subdivision Lot 17 is subject to that certain Grant of Easement dated July 3, 1985, in favor of Citizens Utilities Company and Hawaiian Telephone Company, recorded in the Bureau of Conveyances of the State of Hawaii in Book 18833, at Page 125, granting an easement for utility purposes, affecting a portion of said lot, the said area being as shown on the map attached hereto and incorporated herein as Exhibit "B".

14. Subdivision Lots 3, 4, 5, 12 and 16 are subject to Easement "W-1", as described in Exhibit "C", attached hereto and incorporated herein, Easement "W-1" being a non-exclusive waterline easement for the construction, installation, repair,

maintenance and operation of water transmission facilities, together with a right of access for the construction, installation, maintenance and repair of the waterline facilities therein, in favor of Declarant and Subdivision Lots 12, 15, 16, 17 and 20. Provided that nothing herein shall affect the right of the owner of Subdivision Lot 12 to use the easement area for access purposes from Kalihiwai Road to Subdivision Lot 12, or to construct, install, maintain and repair access facilities within the easement area.

15. Subdivision Lots 16 and 17 are subject to Easement "W-2", as described in Exhibit "D", attached hereto and incorporated herein, Easement "W-2" being a non-exclusive waterline easement for the construction, installation, repair, maintenance, and operation of water transmission facilities, together with a right of access for the construction, installation, maintenance and repair of the waterline facilities therein, in favor of Declarant and Subdivision Lots 15, 16, 17 and 20.

16. Subdivision Lot 12 is subject to Easement "W-3", as described in Exhibit "E", attached hereto and incorporated herein, Easement "W-3" being a non-exclusive waterline easement for the construction, installation, repair, maintenance and operation of water transmission facilities, together with a right of access for the construction, installation, maintenance and repair of the waterline facilities therein, in favor of Declarant, Subdivision Lot 15, 16, 17 and 20, and Princeville Utilities Co., Inc. Provided that nothing herein shall affect the right of the owner of Subdivision Lot 12 to use the easement

area for access purposes from Kalihiwai Road to Subdivision Lot 12, or to construct, install, maintain and repair access facilities within the easement area.

17. Subdivision Lots 3, 4, 12, 13, 14, 15, 16 and 21 are subject to Easement "I-1", as shown in approximate location on the Final Subdivision Map, being an undefined, non-exclusive easement for the construction, installation, repair, maintenance, and operation of water irrigation and waterline facilities, forty-four (44) feet in width, together with a right of access for the construction, installation, maintenance and repair of the irrigation and waterline facilities therein, in favor of the Declarant and Subdivision Lots 15, 16, 17 and 20. Provided that nothing herein shall affect the rights of the owner of Subdivision Lots 3, 4, 12, 13, 14, 15 and 16 from using the easement area for agricultural or ranching purposes.

18. Subdivision Lot 15 is subject to an undefined, non-exclusive easement for the construction, installation, repair, maintenance and operation of water irrigation and waterline facilities, forty-four (44) feet in width, together with a right of access for the construction, installation, maintenance and repair of the irrigation and waterline facilities therein, in favor of the Declarant and Subdivision Lots 15, 16, 17 and 20. This easement shall be in addition to Easement "I-1" for irrigation and waterline purposes, and is intended to connect to, and distribute water from, a water source located on the western boundary of Subdivision Lot 15 adjacent to Kuhio Highway, across said Subdivision Lot 15 to Easement "AU-4" (described in Exhibit

"F" herein) located on Subdivision Lot 16. Provided that nothing herein shall affect the right of the owner of Subdivision Lot 15 from using the easement area for agricultural or ranching purposes.

19. Subdivision Lot 16 is subject to Easement "AU-4", as described in Exhibit "F", attached hereto and incorporated herein, being a non-exclusive easement for the construction, installation, repair, maintenance and operation of irrigation and waterline facilities, together with a right of access for the construction, installation, maintenance and repair of the irrigation and waterline facilities therein, in favor of the Declarant and Subdivision Lots 16, 17 and 20.

20. Subdivision Lots 16 and 17 are subject to a non-exclusive easement for the purpose of the construction, installation, repair, maintenance and operation of the County of Kauai's existing two (2) inch waterline, located along Kalihiwai Valley Road, together with a right of access for the construction, installation, maintenance and repair of the waterline facilities therein, in favor of the Board of Water of the County of Kauai and the parcels of real property identified by Kauai Tax Map Key Nos. 5-3-03: Parcels 4, 5, 6, 7, 8, 9, 10, 11, 21, 28, 32, and 36.

21. Subdivision Lot 2 is subject to Easement "AU-6", as shown in approximate location on the Final Subdivision Map, being an undefined, non-exclusive easement for vehicular and pedestrian access and underground utility purposes, thirty (30) feet in width, together with the right to construct, install, repair and

maintain said access and utility facilities, in favor of Subdivision Lots 1 and 2.

22. Subdivision Lot 2 is subject to Easement "AU-2", as described in Exhibit "G", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and underground utility purposes, together with the right to construct, install, repair and maintain said access and utility facilities, in favor of Princeville Utilities Co., Inc. and Subdivision Lots 1, 2, 3, and 19.

23. Subdivision Lot 3 is subject to Easement "AU-1", as described in Exhibit "H", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and underground utility purposes, together with the right to construct, install, repair and maintain said access and utility facilities, in favor of Princeville Utilities Co., Inc. and Subdivision Lots 1, 2, 3 and 19.

24. Subdivision Lot 3 is subject to Easement "AU-5", as shown in approximate location on the Final Subdivision Map, being an undefined, non-exclusive easement for vehicular and pedestrian access an underground utility purposes, thirty (30) feet in width, together with the right to construct, install, repair and maintain said access and utility facilities, in favor of Subdivision Lots 3 and 19.

25. Subdivision Lot 3 is subject to Easement "I", as described in Exhibit "I", attached hereto and incorporated herein, being a non-exclusive graveyard site Easement for graveyard preservation purposes, together with the right to

repair and maintain said graveyard (but without the right to use said easement for further burial use), in favor of the descendants of any persons buried therein.

26. Subdivision Lots 3 and 4 are subject to Easement "TR-1", as described in Exhibit "J", attached hereto and incorporated herein, being a non-exclusive Graveyard Trail Access for pedestrian access purposes only (and not vehicular access) to the Graveyard Site Easement (Easement "1", described herein in Exhibit "I"), together with the right to construct, repair and maintain said access, in favor of the descendants of any persons buried in said Graveyard Site Easement.

27. Subdivision Lots 15, 16 and 17 are subject to an undefined easement for vehicular and pedestrian access and utility purposes, fifty (50) feet in width, together with the right to construct, install, maintain and repair such access and utility facilities, in favor of the Declarant. The purpose of this easement is to provide access and utilities from Kalihiwai Road on the North (Hanalei) side of the Kalihiwai River to Easement "A", described in Exhibit "O", attached hereto and incorporated herein, and thence to that portion of the parcel of real property identified by Kauai Tax Map Key No. 5-3-01:15 located on the North (Hanalei) side of the Kalihiwai River.

Subdivision Lots 15, 15 and 17 are also subject to an exception and reservation in favor of Princeville Development Corporation, and its successors and assigns, of a perpetual nonexclusive easement (50 feet wide) for roadway and utility purposes as an appurtenance to that certain parcel of land

bearing Fourth Division Tax Map Key 5-3-1-10, to be used in common with all others entitled thereto, from Easement "A" as shown on Exhibit "O" attached hereto and made a part hereof to Old Kuhio Highway, as set forth in Deed dated January 6, 1987, recorded in the Bureau of Conveyances in Book 20260, Page 743.

Both of the above easements shall be in the same location, which shall be determined by the mutual agreement of the owners of Lots 15, 16 and 17, the Declarant, and Princeville Development Corporation; provided that the easement shall follow the center line of Easement "AU-4" (described in Exhibit "F" herein) over Lot 16. In addition, the Easements must be located a minimum of thirty (30) feet from the front, and forty (40) feet from the rear, of any existing buildings. To the extent the easement disrupts or forces the relocation of any existing improvements, the Declarant or Princeville Development Corporation, as the case may be, will be responsible for the costs and damages associated therewith.

28. Subdivision Lot 16 is subject to Easement "AU-4", as described in Exhibit "F", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and utility purposes, together with the right to construct, install, repair, and maintain said access and utility facilities, in favor of the Declarant, Princeville Development Corporation, Subdivision Lots 15, 16, 17 and 20, and the parcels of real property identified by Kauai Tax Map Key Nos. 5-3-03: Parcels 4, 5, 28, 32 and 36. This easement is intended to replace the existing easement set forth in Deed dated January

25, 1972, recorded in the Bureau of Conveyances of the State of Hawaii in Book 8079 at Page 256.

29. Subdivision Lot 16 is subject to an unidentified easement for vehicular and pedestrian access and utility purposes, thirty (30) feet in width, together with the right to construct, install, maintain and repair such access and utility facilities, in favor of the parcel of real property identified by Kauai Tax Map Key No. 5-3-03:32. The purpose of this easement is to provide access and utilities from Easement "AU-4" (Exhibit "K", herein) to said parcel 32. This easement is intended to replace the existing easement set forth in Deed dated January 25, 1972, recorded in the Bureau of Conveyances of the State of Hawaii in Book 8079 at Page 256.

30. Subdivision Lot 17 is subject to Easement "AU-3", as described in Exhibit "K", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and utility purposes, together with the right to construct, install, repair and maintain such access and utility facilities, in favor of the Declarant, Princeville Development Corporation, Subdivision Lots 15, 16, 17 and 20, and the parcels of real property identified by Kauai Tax Map Key Nos. 5-3-03: Parcels 4, 5, 7, 9, 10, 11, 21, 28, 32 and 36.

31. Subdivision Lot 18 is subject to Easement "A-1", as described in Exhibit "L", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and utility purposes, together with the right to construct, install, repair and maintain such access and

utility facilities, in favor of the Declarant, Princeville Development Corporation, and the parcels of real property identified by Kauai Tax Map Key No. 5-3-01:15 and 5-3-02: Parcels 3, 4, 6, 7, 8, 9, 10 and 19.

32. Subdivision Lot 18 is subject to an undefined easement for vehicular and pedestrian access and utility purposes, forty-four (44) feet in width, in the approximate location of Easement "A-1" (Exhibit "L", herein) and following the centerline thereof wherever possible, together with the right to construct, install, maintain and repair such access and utility facilities, in favor of the Declarant. The purpose of this easement is to provide access and utilities from Kalihiwai Road on the South (Kilauea) side of the Kalihiwai River to that portion of the parcel of real property identified by Kauai Tax Map Key No. 5-3-01:15 located on the South (Kilauea) side of the Kalihiwai River.

33. Subdivision Lot 18 is subject to a non-exclusive easement for the purpose of the construction, repair, maintenance and operation of the County of Kauai's existing water tank, designated and shown as the "Tank Site" on the Final Subdivision Map, and described in Exhibit "M", attached hereto and incorporated herein, and existing waterlines, designated and shown as Easements "A", "B" and "C" on the Final Subdivision Map, and described in said Exhibit "M", together with a right of access for the construction, installation, repair and maintenance of the watertank and waterline facilities therein, in favor of the Board of Water of the County of Kauai, being the same Easement recorded in the Bureau of Conveyances of the State of Hawaii in Book 6713 at Page 446.

34. Subdivision Lot 17 shall be subject to a roadway easement in favor of that certain parcel of land identified by Kauai Tax Map Key Number 5-3-03:10, being further described as Royal Patent 5342 Land Commission Award 9260, Apana 3 to Kea (within Exclusion 39), being a portion of Land Patent 8173, Land Commission Award 8559-B Apana 39 to William C. Lunalilo, more fully described in Exhibit "N", attached hereto and incorporated herein, as set forth in Judgment dated November 30, 1970, recorded in the Bureau of Conveyances of the State of Hawaii in Book 7293, Page 225.

35. The Declarant reserves for itself and Princeville Development Corporation, Easement "A", being a 50 foot wide perpetual, non-exclusive easement to be used as a roadway underpass, as shown on Exhibit "O", attached hereto and incorporated herein, and reserves certain abutters rights of vehicle access, all as set forth in that Deed to the State of Hawaii recorded in the Bureau of Conveyances of the State of Hawaii in Book 4858 at Page 516, and as further set forth in the Princeville Deed (described herein on page 1).

36. The Declarant reserves for itself a perpetual, non-exclusive easement over the existing roadway within Royal Patent 4318, Land Commission Award 10958, Apana 2, within Exclusion 37 and within Royal Patent 4935, Land Commission Award 10090 Apana 2, within Exclusion 39, as provided in the Princeville Deed (described herein on page 1).

37. The easements, reserves, rights, duties, restrictions and obligations conferred or imposed pursuant to paragraphs 1 through 36 above shall inure to the benefit of, and/or be binding upon, the owners or beneficiaries of such easements or reserves, the owners of Subdivision Lots 1 through 20, the Declarant, Princeville Utilities Co., Inc., and/or the County of Kauai, as the case may be, together with their respective estates, heirs, personal representatives, successors, assigns, successors in interest, or any person or entity claiming through them.

### SECTION III

#### GRANT OF EASEMENTS TO LOTOWNERS AND OTHERS

The Declarant, having reserved certain easement in the Subdivision as previously described in Section II, above, hereby declares, gives, grants and conveys to the following described persons in perpetuity the following easements:

1. To the owners of Subdivision Lots 12, 15, 16, 17 and 20, and to Declarant, Easement "W-1", as described in Exhibit "C", attached hereto and incorporated herein, being a non-exclusive waterline easement for the construction, installation, repair, maintenance and operation of water transmission facilities, together with a right of access for the construction, installation, maintenance and repair of the waterline facilities therein; provided that the owner of Lot 12 shall retain the right to use said easement area for vehicular and pedestrian access to his lot, and to construct, install, repair, and maintain said access facilities.

2. To the owners of Subdivision Lots 15, 16, 17 and 20, and to Declarant, Easement "W-2", as described in Exhibit "D", attached hereto and incorporated herein, being a non-exclusive waterline easement for the construction, installation, repair, maintenance and operation of water transmission facilities, together with a right of access for the construction, installation, maintenance and repair of the waterline facilities therein.

3. To the owners of Subdivision Lots 12, 15, 16, 17 and 20, and to Declarant, Easement "W-3", as described in Exhibit "E", attached hereto and incorporated herein, being a non-exclusive waterline easement for the construction, installation, repair, maintenance and operation of water transmission facilities, together with a right of access for the construction, installation, maintenance and repair of the waterline facilities therein; provided that the owner of Lot 12 shall retain the right to use said easement area for vehicular and pedestrian access to his lot, and to construct, install, repair, and maintain said access facilities.

4. To the owners of Subdivision Lots 15, 16, 17 and 20, and to Declarant, Easement "I-1", located on Subdivision Lots 3, 4, 12, 13, 14, 15, 16 and 21 as shown in the approximate location on the Final Subdivision Map, attached hereto and incorporated herein as Exhibit "A" (hereinafter "Final Subdivision Map"), being an undefined non-exclusive easement for the construction, installation, repair, maintenance and operation of water irrigation and waterline facilities, forty-four (44) feet in

width, together with a right of access for the construction, installation, maintenance and repair of the irrigation and waterline facilities therein. Provided that nothing herein shall affect the rights of the owners of Lots 3, 4, 12, 13, 14, 15 and 16 from using the easement area for agricultural or ranching purposes.

5. To the owners of Subdivision Lots 15, 16, 17, and 20, and to Declarant, an undefined, non-exclusive easement located on Subdivision Lot 15 for the construction, installation, repair, maintenance and operation of water irrigation and waterline facilities, forty-four (44) feet in width, together with a right of access for the construction, installation, maintenance and repair of the irrigation and waterline facilities therein. Said easement is to be in addition to Easement "I-1" (as shown on Exhibit "A" herein) and is intended to connect to, and distribute water from, a water source located on the western boundary of Subdivision Lot 15 adjacent to Kuhio Highway, thence running across Subdivision Lots 15 to Easement "AU-4" (Exhibit "F" herein) on Subdivision Lot 16 for the purpose of supplying irrigation water to the above-identified lots. Provided that nothing herein shall prevent the owner of Lot 15 from using the easement area for agricultural or ranching purposes.

6. To the owners of Subdivision Lots 16, 17 and 20, and to Declarant, Easement "AU-4", as described in Exhibit "F", attached hereto and incorporated herein, being a non-exclusive easement for the construction, installation, repair, maintenance and operation of irrigation and waterline facilities, together with a

right of access for the construction, installation, maintenance and repair of the irrigation and waterline facilities therein.

7. To the owners of Subdivision Lots 1 and 2, Easement "AU-6", located on Subdivision Lot 2, as shown in approximate location on the Final Subdivision Map, being an undefined, non-exclusive easement for vehicular and pedestrian access and underground utility purposes, thirty (30) feet in width, together with the right to construct, install, repair and maintain said access and utility facilities.

8. To the owners of Subdivision Lots 1, 2, 3 and 19, Easement "AU-2", as described in Exhibit "G", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and underground utility purposes, together with the right to construct, install, repair and maintain said access and utility facilities.

9. To the owners of Subdivision Lots 1, 2, 3 and 19, Easement "AU-1", as described in Exhibit "H", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and underground utility purposes, together with the right to construct, install, repair and maintain said access and utility facilities.

10. To the owners of Subdivision Lots 3 and 19, Easement "AU-5", located on Subdivision Lot 3 as shown in approximate location on the Final Subdivision Map, being an undefined, non-exclusive easement for vehicular and pedestrian access and

underground utility purposes, thirty (30) feet in width, together with the right to construct, install, repair and maintain said access and utility facilities.

11. To the Declarant, an undefined easement for vehicular and pedestrian access and utility purposes on Lots 15, 16 and 17, fifty (50) feet in width, together with the right to construct, install, maintain and repair such access and utility facilities, running across Lots 15, 16 and 17 for the purpose of providing access and utilities from Kalihiwai Road on the North (Hanalei) side of the Kalihiwai River to Easement "A", described in Exhibit "O", attached hereto and incorporated herein, and thence to that portion of the parcel of real property identified by Kauai Tax Map Key No. 5-3-01:15 located on the North (Hanalei) side of the Kalihiwai River.

12. To the owners of Subdivision Lots 15, 16, 17 and 20, to the Declarant, and to the owners of those parcels of real property identified by Kauai Tax Map Key Nos. 5-3-03: Parcels 4, 5, 28, 32 and 36, Easement "AU-4" as described in Exhibit "F", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and utility purposes together with the right to construct, install, repair, and maintain said access and utility facilities.

13. To the owner of the parcel of real property identified by Kauai Tax Map Key No. 5-3-03:32, an undefined, non-exclusive easement on Subdivision Lot 16 for vehicular and pedestrian access and utility purposes, thirty (30) feet in width, together

with the right to construct, install, maintain and repair such access and utility facilities, for the purpose of providing access and utilities from Easement "AU-4", as described in Exhibit "F", attached hereto and incorporated herein, to said Parcel 32.

14. To the owners of Subdivision Lots 15, 16, 17 and 20, to the Declarant, and to the owners of the parcels of real property identified by Kauai Tax Map Key Nos. 5-3-03: Parcels 4, 5, 7, 9, 10, 11, 19, 21, 28, 32 and 36, Easement "AU-3", as described in Exhibit "K", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and utility purposes, together with the right to construct, install, repair and maintain such access and utility facilities.

15. To the Declarant, and to the owners of those parcels of real property identified by Kauai Tax Map Key Nos. 5-3-01:15 and 5-3-02: Parcels 3, 4, 6, 7, 8, 9, 10 and 19, Easement "A-1", as described in Exhibit "L", attached hereto and incorporated herein, being a non-exclusive easement for vehicular and pedestrian access and utility purposes, together with the right to construct, install, repair and maintain such access and utility facilities.

16. To the Declarant, an undefined, non-exclusive easement on Subdivision Lot 18 for vehicular and pedestrian access and utility purposes, forty-four (44) feet in width, in the approximate location of Easement "A-1", as described in Exhibit "L", attached hereto and incorporated herein, and following the

centerline thereof whenever possible, together with the right to construct, install, repair and maintain said access and utility facilities, for the purpose of providing access and utilities from Kalihiwai Road on the South (Kilauea) side of the Kalihiwai River to that portion of the parcel of real property identified by Kauai Tax Map Key No. 5-3-01:15 located on the South (Kilauea) side of the Kalihiwai River.

17. To the Descendants of any persons therein, Easement "1", as described in Exhibit "I", attached hereto and incorporated herein, being a non-exclusive Graveyard Site Easement for graveyard preservation purposes, together with the right to repair and maintain said graveyard (but without the right to use said Graveyard Site Easement for further burial use), together with Easement "TR-1", as described in Exhibit "J", attached hereto and incorporated herein, being a non-exclusive Graveyard Trail Access for pedestrian access purposes only (but not for vehicular access) to the Graveyard Site Easement, together with the right to construct, repair and maintain said access.

TO HAVE AND TO HOLD the same unto the respective persons above-named for so long as the Easement shall be used for the purposes stated herein.

PROVIDED, THAT, these grants of easements are made on and subject to the following conditions:

(1) Neither the owner of any Subdivision Lot subject to an easement (hereinafter "Lot Owner"), nor the owner or beneficiary

of the above-described easements, or any of them, (hereinafter "Easement Owners"), shall at any time during the term of this indenture erect any building, structure or improvement of any kind, above or on the surface of any of the lands subject to the above described easements (hereinafter "Easement Areas"), except as provided in this Declaration.

(2) Any utility structures or equipment constructed, reconstructed or installed by any Easement Owner within the Easement Area shall be and remain the property of the person constructing same.

(3) If at any time an Easement Area, or any part thereof, shall be condemned or taken for any public project by any governmental authority, the Easement Owner shall have the right to claim or recover from the condemning authority, but not from the Declarant, such compensation as is payable for the said Easement and the rights granted herein.

(4) Any Easement Owner that installs, repairs or removes any structures or equipment on or in an Easement Area will restore the surface of the ground to its original condition to the extent that such restoration is reasonably possible.

(5) After the original installation of any structure or equipment on or in an Easement Area, the expense of any move or relocation thereof shall be the responsibility of any person requesting or desiring same.

(6) Each Easement Owner shall have the right, as reasonably necessary, to install, repair, maintain or remove any structures

or equipment on or in an Easement Area and to repair and maintain the Easement Area as may be necessary to exercise his rights as granted herein.

(7) Each Easement Owner will exercise his rights hereunder in such manner as to occasion as little interference as reasonably necessary with the use of said Easement Area by the Lot Owner or any other Easement Owner.

(8) Each Easement Owner agrees to indemnify and hold harmless the Declarant and the Lot Owner against all claims, suits and actions by whomsoever brought on account of injuries or damages to persons or property resulting from either the Easement Owner's exercise of his rights as granted herein or from any other person's use of the Easement Area pursuant to the rights granted to the Easement Owner.

(9) Each individual Easement Owner agrees to use due care in exercising his rights hereunder so as to avoid any damage to the Lot Owner's real property, and improvements and personal property located thereon, and to be absolutely liable to the Lot Owner for the full extent of any damages which the Easement Owner may cause to the Lot Owner's real property or improvements or personal property located thereon, resulting from the Easement Owner's exercise of his rights as granted herein.

(10) Each Easement Owner shall give the other Easement Owners and the Lot Owner at least forty-eight (48) hours prior notice of his intent to enter onto the Easement Area in

accordance with the provisions of paragraph (6), which entry shall be restricted to reasonable daylight hours. However, the restrictions of this paragraph shall not be required for the making of emergency repairs necessary to protect the Easements or any of the Easement Owner's personal and real property or improvements located thereon.

(11) These easements and the rights granted hereunder shall run solely in favor of the Easement Owners described above and may not be assigned, granted or otherwise given for the purpose of benefitting any other person, entity, or real property, except to a successor in ownership; provided, however, that this restriction shall not apply to Declarant, who reserves the right and power as an Easement Owner to grant or assign such further easements or easement rights as Declarant in its sole judgment deems appropriate.

(12) The Easement Owners' rights shall be strictly limited to those necessary to allow them to utilize the Easement Area for the purposes intended and described above. The Easement Owners shall have no right to utilize an Easement Area for purposes unrelated to the exercise of their rights hereunder.

(13) For the purposes of this document, the term "utility" shall include services for water, telephone, gas, electric, cable television and other services employing electrical or electronic means of transmission.

(14) The Easement Owner's rights hereunder shall be limited to those uses legally permitted on their lots and for no other purposes.

(15) The Easement Owners shall be responsible for (a) maintaining the Easement Area in which they have easement rights in a good, clean, safe, sanitary and well-kept condition, and (b) maintaining and repairing any facilities or improvements which they own, in whole or in part, in any Easement Area in which they have easement rights in good and safe repair and condition. The Easement Owners shall share the cost of constructing, installing, maintaining, repairing and operating any facilities or improvements in any Easement Area (including, but not limited to, road, access, driveway, waterline, utilities, irrigation, and drainage facilities) in proportion to their individual use thereof. Any dispute, matter or question which arises out of, or relates to, the duties, responsibilities, requirements or provisions of this paragraph shall be settled by binding arbitration in accordance with the provisions of Section I, Paragraph 13 of this Declaration.

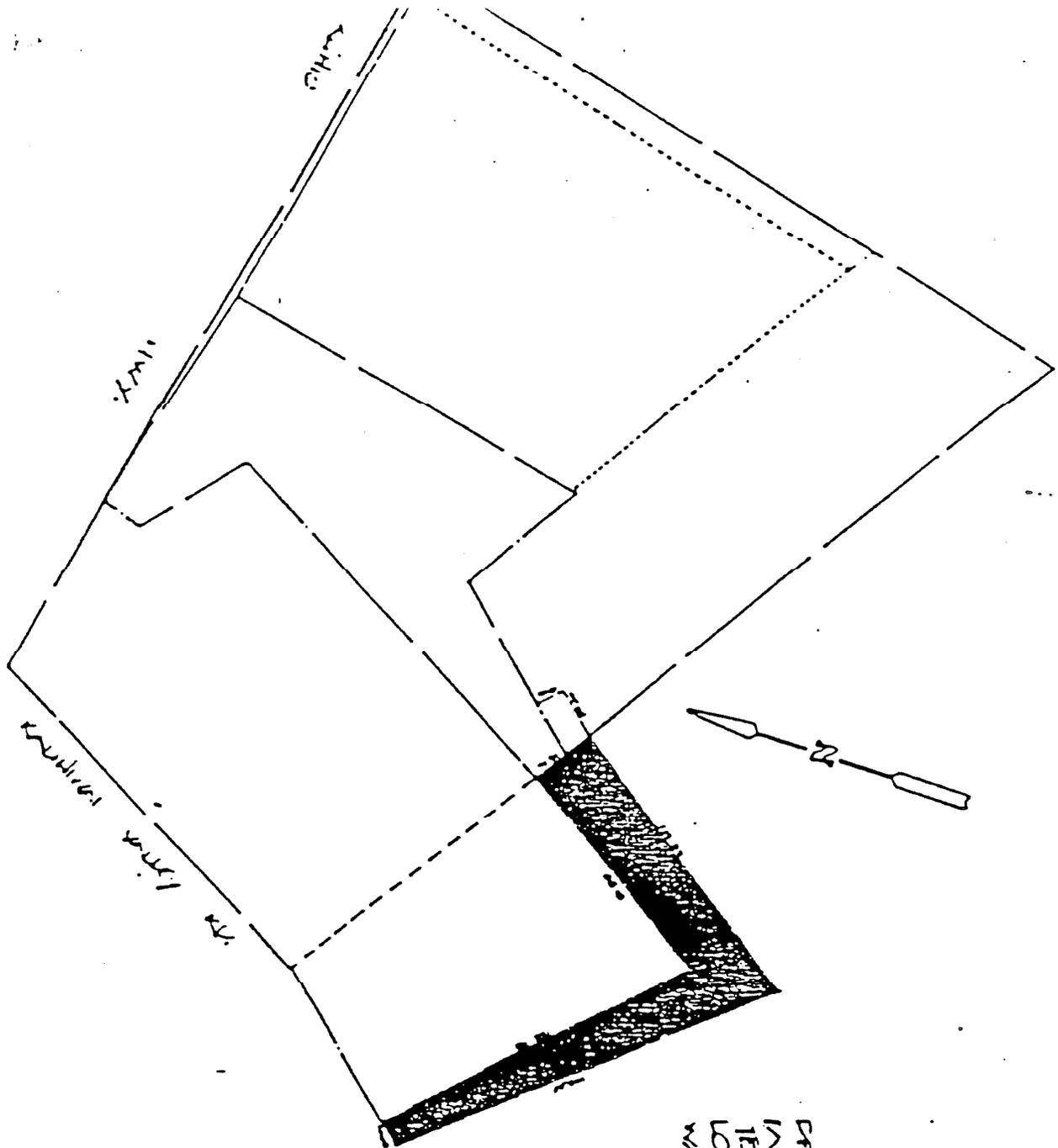
IT IS AGREED AND UNDERSTOOD that the rights and obligations set forth herein shall be binding upon, and inure to the benefit of, the Easement Owners and the Lot Owners and their respective estates, heirs, personal representatives, successors, successors in trust and assigns.

IT IS FURTHER AGREED AND UNDERSTOOD that the terms "Declarant", "Easement Owner", "Lot Owner", and "Owner", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporation and their and each of





RECEIVED AT THE OFFICE OF THE ATTORNEY GENERAL, HONOLULU, HAWAII, ON 10/10/1961



Enclosed is a utility easement in  
 favor of Kaimuku Electric Hawaiian  
 Telephone Association a portion of  
 LOT 1, Parcel 3, Kaimuki-Kauniliala,  
 Wai, Kaimuki, Kaimuki, Hawaii.  
 TRK 5-8-61  
 owners: Kaimuki, Kaimuki

EXHIBIT "B"

Kaimuki

KAIMUKU ELECTRIC HAWAIIAN TELEPHONE ASSOCIATION, COMPANY	
N.Y.	
V. U.S.A.	
A. T. S. I.	
A. I. S.	
UTILITY EASEMENT TRK	
MARCEL 10	202

D E S C R I P T I O N

KALIIHAI BAY ESTATES

EASEMENT "W-1"

Being within LOTS 12, 5, 4, 3 and 16, Kalihiwai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-B, Apana 39 to William C. Lunāilo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Aw. 8127, Apana 1 to Keau, and R. P. 5272, L. C. Aw. 10434, Apana 1 to Naehu, situated in Kalihiwai, Kauai, Hawaii, and being more fully described as follows:

Beginning at the westernmost corner of this parcel of land, from which a direct azimuth and distance to the southeast corner of Lot 11, Kalihiwai Bay Estates being: 136°05' 24.29 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 3,100.97 feet North and 10,394.33 feet East, thence running by azimuths measured clockwise from True South:

1. 226°05'00" 21.58 feet along the remainder of Lot 12, Kalihiwai Bay Estates;
2. 316°05'00" 123.05 feet along same;
3. 304°47'09" 118.03 feet along same;
4. 259°50'00" 112.28 feet along same;
5. 271°05'00" 102.98 feet along same and along the remainder of Lot 5, Kalihiwai Bay Estates;
6. 282°20'00" 54.98 feet along the remainder of Lot 5, Kalihiwai Bay Estates;
7. 293°35'00" 180.00 feet along same, the remainder of Lot 12, and the remainder of Lot 4, Kalihiwai Bay Estates;
8. 282°20'00" 29.37 feet along the remainder of Lot 4, Kalihiwai Bay Estates;
9. 279°54'30" 93.83 feet along same;
10. 272°20' 78.42 feet along same and along the remainder of Lot 3, Kalihiwai Bay Estates;
11. 306°52'30" 151.60 feet along the remainder of Lot 3, Kalihiwai Bay Estates;
12. 284°37'50" 52.54 feet along same and along the remainder of Lot 16, Kalihiwai Bay Estates;

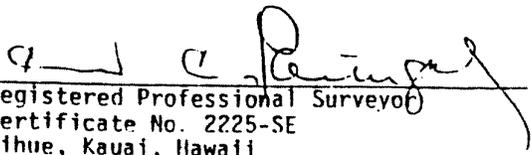
D E S C R I P T I O N

KALIHIWAI BAY ESTATES

EASEMENT "W-1"

- |     |            |  |
|-----|------------|--|
| 13. | 273°22'50" | 18.51 feet along the remainder of Lot 16,<br>Kalihiwai Bay Estates;                                  |
| 14. | 250°52'50" | 107.47 feet along same;  |
| 15. | 51°50'00"  | 67.41 feet along same;   |
| 16. | 70°52'50"  | 48.13 feet along same;   |
| 17. | 93°22'50"  | 25.06 feet along same;   |
| 18. | 104°37'50" | 59.03 feet along same and along the remainder<br>of Lot 3, Kalihiwai Bay Estates;                    |
| 19. | 126°52'30" | 149.08 feet along Parcel 32, TMK: 5-3-03;  |
| 20. | 92°20'00"  | 73.04 feet along same;   |
| 21. | 99°54'30"  | 95.75 feet along the remainder of Lot 4,<br>Kalihiwai Bay Estates;                                   |
| 22. | 102°20'00" | 32.00 feet along same;   |
| 23. | 113°35'00" | 180.00 feet along same and along the remainder<br>of Lot 12, Kalihiwai Bay Estates;                  |
| 24. | 102°20'00" | 50.65 feet along the remainder of Lot 12,<br>Kalihiwai Bay Estates;                                  |
| 25. | 91°05'00"  | 98.65 feet along same;   |
| 26. | 79°50'00"  | 119.84 feet along same;  |
| 27. | 124°59'02" | 126.71 feet along same;  |
| 28. | 136°05'00" | 127.34 feet along same to the point of beginning<br>and containing an area of 26.471 SQUARE<br>FEET. |



  
Registered Professional Surveyor  
Certificate No. 2225-SE  
Lihue, Kauai, Hawaii  
October 14, 1988  
PORTUGAL & ASSOCIATES, INC.

D E S C R I P T I O N

KALIHIWAI BAY ESTATE

EASEMENT "W-2"

Being within LOTS 16 and 17, Kalihiwai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-B, Apana 39 to William C. Lunailo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Awa. 8127, Apana 1 to Keau, and R. P. 5272, L. C. Aw. 10434, Apana 1 to Naehu, situated in Kalihiwai, Kauai, Hawaii, and being more fully described as follows:

Beginning at the east corner of this parcel of land and on the north corner of R. P. 4935, L. C. Aw. 10090, Apana 2 to Makuakane, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 3,114.81 feet North and 11,932.71 feet East, thence running by azimuths measured clockwise from True South:

1. 29°55' 148.10 feet along R. P. 4935, L. C. Aw. 10090, Apana 2 to Makuakane;
2. 41°49' 90.95 feet along the remainder of Lot 17, Kalihiwai Bay Estates;
3. 56°00' 103.70 feet along same;
4. 127°52' 6.39 feet along Exclusion 37;
5. 56°10' 14.45 feet along same;
6. 157°52' 14.00 feet along R. P. 4318, L. C. Aw. 10958, Apana 2 to Wahahua;
7. 48°52' 99.00 feet along same;
8. 62°25' 31.16 feet along the remainder of L. P. 8173, L. C. Aw. 8559-B, Apana 39 to William C. Lunailo;
9. 143°20' 7.00 feet along same;
10. 51°50' 118.93 feet along same and along the remainder of Lot 17, Kalihiwai Bay Estates;
11. 141°50' 44.00 feet along the remainder of Lot 16, Kalihiwai Bay Estates;
12. 231°50' 118.94 feet along same;
13. 239°22'14" 178.48 feet along same and along Lot 20, Kalihiwai Bay Estates;

D E S C R I P T I O N

KALIHIWAI BAY ESTATES

EASEMENT "W-2"

- |     |            |   |
|-----|------------|---|
| 14. | 316°01'30" | 20.03 feet along the remainder of L. P. 8173,<br>L. C. Aw. 8559-B, Apana 39 to William<br>C. Lunaliilo;       |
| 15. | 229°22'30" | 95.65 feet along same;  |
| 16. | 221°50'    | 187.70 feet along same;   |
| 17. | 109°51'    | 32.21 feet along same;  |
| 18. | 208°00'    | 3.63 feet along R. P. 5318, L. C. Aw. 8127,<br>Apana 1 to Keau;   |
| 19. | 281°37'    | 40.49 feet along Kalihiwai Road to the point<br>of beginning and containing an area of<br>22,176 SQUARE FEET. |



*Cesar C. Portugal*  
Registered Professional Surveyor  
Certificate No. 2225-SE  
Lihue, Kauai, Hawaii  
October 14, 1988  
PORTUGAL & ASSOCIATES, INC.

D E S C R I P T I O N

KALIHIWAI BAY ESTATES

EASEMENT "W-3"

Being within LOT 12, Kaliihawai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-B, Apana 39 to William C. Lunaliilo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Aw. 8127, Apana 1 to Keau, and R. P. 5272, L. C. Aw. 10434, Apana 1 to Naehu, situated in Kaliihawai, Kauai, Hawaii and being more fully described as follows:

Beginning at the westernmost corner of this parcel of land and on the north corner of Lot 11, Kaliihawai Bay Estates, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 3,301.82 feet North and 10,259.84 feet East, thence running by azimuths measured clockwise from True South:

1. 237°20'00" 22.00 feet along Kaliihawai Road;
2. 327°20'00" 217.80 feet along Lot 10, Kaliihawai Bay Estates;
3. 316°05'00" 20.00 feet along the remainder of Lot 12, Kaliihawai Bay Estates;
4. 46°05'00" 21.58 feet along same;
5. 136°05'00" 24.29 feet along same;
6. 147°20'00" 217.80 feet along Lot 11, Kaliihawai Bay Estates, to the point of beginning and containing an area of 5,270 SQUARE FEET.



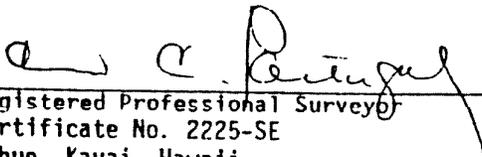
  
Registered Professional Surveyor  
Certificate No. 2225-SE  
Lihue, Kauai, Hawaii  
October 14, 1988  
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EXHIBIT "E"

D E S C R I P T I O N

KALIHIWAI BAY ESTATES

EASEMENT "AU-4"

Being within LOT 16, Kalihiwai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-B, Apana 39 to William C. Lunaliilo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Aw. 8127, Apana 1 to Keau, and R. P. 5272, L. C. Aw. 10434, Apana 1 to Naehu, situated in Kalihiwai, Kauai, Hawaii and being more fully described as follows:

Beginning at the eastern side of this parcel of land and on the north corner of R. P. 4318, L. C. Aw. 10958, Apana 2 to Wahahua, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 2,869.52 feet North and 11,689.91 feet East, thence running by azimuths measured clockwise from True South:

1. 48°52' 99.00 feet along R. P. 4318, L. C. Aw. 10958, Apana 2 to Wahahua;
2. 62°25' 31.16 feet along the remainder of L. P. 8173, L. C. Aw. 8559-B, Apana 39 to William C. Lunaliilo;
3. 143°20' 7.00 feet along same;
4. 51°50' 313.82 feet along same, Lot 17 and the remainder of Lot 16, Kalihiwai Bay Estates;
5. 60°29'35" 179.64 feet along the remainder of Lot 16, Kalihiwai Bay Estates;
6. 41°24'31" 177.39 feet along same;
7. 48°07'39" 9.31 feet along same;
8. 137°30' 44.00 feet along Lot 15, Kalihiwai Bay Estates;
9. 228°07'39" 7.21 451.17 feet along the remainder of Lot 16, Kalihiwai Bay Estates;
10. 221°24'31" 182.21 feet along same;
11. 240°29'35" 183.71 feet along same;
13. 231°50' 310.49 feet along same;
14. 239°22'14" 178.48 feet along same and Lot 20, Kalihiwai Bay Estates;

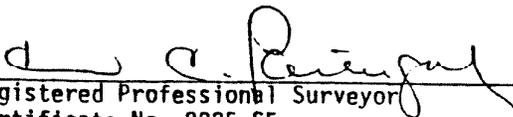
D E S C R I P T I O N

KALIHAIWAI BAY ESTATES

EASEMENT "AU-4"

15. 316°01'30" 20.03 feet along the remainder of L. P. 8173,  
L. C. Aw. 8559-B, Apana 39 to William C.  
Lunalilo;
16. 42°23'43" 50.34 feet along Lot 17, Kalihawai Bay Estates,  
to the point of beginning and containing  
an area of 37,217 SQUARE FEET.



  
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Lihue, Kauai, Hawaii  
October 14, 1988  
PORTUGAL & ASSOCIATES, INC.

D E S C R I P T I O N

KALIHIWAI BAY ESTATES

EASEMENT "AU-2"

Being within LOT 2, Kalihiwai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-B, Apana 39 to William C. Lunailo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Aw. 8127, Apana 1 to Keau, and R. P. 5272, L. C. Aw. 10434, Apana 1 to Naehu, situated in Kalihiwai, Kauai, Hawaii and being more fully described as follows:

Beginning at the west corner of this parcel of land and on the north corner of Lot 3, Kalihiwai Bay Estates, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 3,493.84 feet North and 11,242.92 feet East, thence running by azimuths measured clockwise from True South:

Along Kalihiwai Road on a curve to the left having a radius of 249.00 feet, the chord azimuth and distance being:

1. 212°57'00"          61.12 feet;
2. 313°26'30"          101.13 feet along the remainder of Lot 2, Kalihiwai Bay Estates;
3. 43°26'30"          60.10 feet along same;
4. 133°26'30"          90.00 feet along Lot 3, Kalihiwai Bay Estates, to the point of beginning and containing an area of 5,667 SQUARE FEET.



*Cesar C. Portugal*  
Registered Professional Surveyor  
Certificate No. 2225-SE  
Lihue, Kauai, Hawaii  
October 14, 1988  
PORTUGAL & ASSOCIATES, INC.

D E S C R I P T I O N

KALIHIWAI BAY ESTATES

EASEMENT "AU-1"

Being within LOT 3, Kalihiwai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-R, Apana 39 to William C. Lunailo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Aw. 8127, Apana 1 to Keau, and R. P. 5272, L. C. Aw. 10434, Apana 1 to Maehu, situated in Kalihiwai, Kauai, Hawaii and being more fully described as follows:

Beginning at the north corner of this parcel of land and on the west corner of Lot 2. Kalihiwai Bay Estates, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 3,493.84 feet North and 11,242.92 feet East, thence running by azimuths measured clockwise from True South:

1. 313°26'30" 90.00 feet along Lot 2, Kalihiwai Bay Estates;
2. 43°26'30" 74.17 feet along the remainder of Lot 3, Kalihiwai Bay Estates;
3. 133°26'30" 96.70 feet along same;

Thence along Kalihiwai Road on a curve to the left having a radius of 249.00 feet, the chord azimuth and distance being:

4. 228°36'00" 74.47 feet to the point of beginning and containing an area of 6,785 SQUARE FEET.



*Cesar C. Portugal*  
Registered Professional Surveyor  
Certificate No. 2225-SE  
Lihue, Kauai, Hawaii  
October 14, 1988  
PORTUGAL & ASSOCIATES, INC.

EXHIBIT "H"

EASEMENT "1"

For Graveyard Site Purposes  
Over and Across Lot 3, Kalihiwai Bay Estates,  
being a portion of Lot 1  
Of Postponement Area 2

In favor of descendants of any person buried within the  
graveyard site.

Land situated approximately 900 feet East of the  
intersection of Anini Beach Road and Old Kuhio Highway.

Being a portion of L.P. 8173, L.C. Aw. 8559-B, Ap. 39 to Wm.  
C. Lunalilo.

Beginning at the North corner of this parcel of land, the  
coordinates of the said point of beginning referred to Government  
Survey Triangulation Station "POOKU" being 3,239.57 feet North  
and 11,270.37 feet East and running by aximuth measured clockwise  
from True South:

1. 317° 32' 69.00 feet along the remainder of L.P.  
8173, L.C. Aw. 8559-B, Ap. 39 to  
Wm. C. Lunalilo;
2. 29° 35' 66.00 feet along the remainder of L.P.  
8173, L.C. Aw. 8559-B, Ap. 39 to  
Wm. C. Lunalilo;
3. 85° 47' 109.00 feet along the remainder of L.P.  
8173, L.C. Aw. 8559-B, Ap. 39 to  
Wm.C. Lunalilo;
4. 164° 21' 40.83 feet along the remainder of L.P.  
8173, L.C. Aw. 8559-B, Ap. 39 to  
Wm. C. Lunalilo;
5. 233° 56' 130.78 feet along the remainder of L.P.  
8173, L.C. Aw. 8559-B, Ap. 39 to  
Wm. C. Lunalilo to the point of  
beginning and containing an Area of  
10,611 SQUARE FEET.

EXHIBIT "I"

DESCRIPTION

KALIIHWAI BAY ESTATES

EASEMENT "TR-1"

Being within LOTS 3 and 4, Kalihiwai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-B, Apana 39 to William C. Lunalilo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Aw. 8127, Apana 1 to Keau, and R. P. 5272, L. C. Aw. 10434, Apana 1 to Naehu, situated in Kalihiwai, Kauai, Hawaii and being more fully described as follows:

Beginning at the northeast corner of this parcel of land and on the northwest corner of Lot 19, Kalihiwai Bay Estates, the coordinate of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 3,401.25 feet North and 11,083.35 feet East, thence running by azimuths measured clockwise from True South:

1. 347°25'50" 244.95 feet along Lots 19 and 3, Kalihiwai Bay Estates;
2. 269°09'57" 28.00 feet along the remainder of Lot 3, Kalihiwai Bay Estates;
3. 344°21' 5.17 feet along same;
4. 89°09'57" 33.39 feet along same and the remainder of Lot 4, Kalihiwai Bay Estates;
5. 167°25'50" 249.06 feet along the remainder of Lot 4, Kalihiwai Bay Estates;

Thence along Kalihiwai Road on a curve to the left having a radius of 320.00 feet, the chord azimuth and distance being:

6. 257°52'42" 5.00 feet to the point of beginning and containing an area of 1,388 SQUARE FEET.



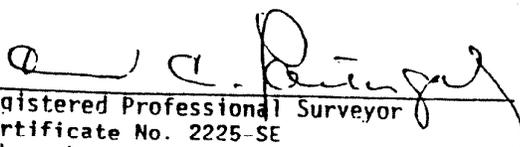
  
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Certificate No. 2225-SE  
Lihue, Kauai, Hawaii  
October 14, 1988  
PORTUGAL & ASSOCIATES, INC.

EXHIBIT "J"

DESCRIPTION

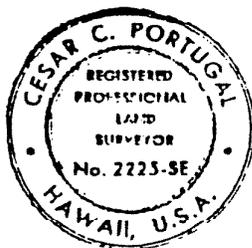
KALIIHWAI BAY ESTATES

EASEMENT "AU-3"

Being within LOT 17, Kaliihawai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-B, Apana 39 to William C. Lunaililo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Aw. 8127, Apana 1 to Keau, and R. P. 5272, L. C. Aw. 10434, Apana 1 to Naehu, situated in Kaliihawai, Kauai, Hawaii and being more fully described as follows:

Beginning at the northeast corner of this parcel of land and on the north corner of R. P. 4935, L. C. Aw. 10090:2 to Makuakane, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 3,114.81 feet North and 11,932.71 feet East, thence running by azimuths measured clockwise from True South:

1. 29°55' 148.10 feet along R. P. 4935, L. C. Aw. 10090:2 to Makuakane;
2. 41°49' 90.95 feet along the remainder of Lot 17, Kaliihawai Bay Estates;
3. 56°00' 103.70 feet along same;
4. 127°52' 6.39 feet along Exclusion 37;
5. 56°10' 14.45 feet along same;
6. 157°52' 14.00 feet along R. P. 4318, L. C. Aw. 10958:2 to Wahahua;
7. 222°23'43" 50.34 feet along Lot 16, Kaliihawai Bay Estates;
8. 229°22'30" 95.65 feet along the remainder of L. P. 8173, L. C. Aw. 8559-B, Apana 39 to William C. Lunaililo;
9. 221°50' 187.70 feet along same;
10. 109°51' 32.21 feet along same;
11. 208°00' 3.63 feet along R. P. 5318, L. C. Aw. 8127, Apana 1 to Keau;
12. 281°37' 40.49 feet along Old Kuhio Highway (Kaliihawai Road), to the point of beginning and containing an area of 9,729 SQUARE FEET.



*Cesar C. Portugal*  
Registered Professional Surveyor  
Certificate No. 2225-SE  
Lihue, Kauai, Hawaii  
October 14, 1988  
PORTUGAL & ASSOCIATES, INC.

EXHIBIT "K"

DESCRIPTION

KALIHIWAI BAY ESTATES

EASEMENT "A-1"

Being within LOT 18, Kalihiwai Bay Estates, a portion of LOT 1 of Postponement Area 2, being a portion of Land Patent 8173, Land Comm. Award 8559-B, Apana 39 to William C. Lunaliilo, being also the whole of Royal Patent 7806, Land Comm. Award 10596 to Pepeiaonui, Royal Patent 5318, L. C. Aw. 8127, Apana 1 to Keau, R. P. 5272, L. C. Aw. 10434, Apana 1 to Naehu, and L. P. 8125, L. C. Aw. 10072 to Mainui, situated in Kalihiwai, Kauai, Hawaii, and being more fully described as follows:

Beginning at the southwest corner of this parcel of land and on the north side of Kuhio Highway from which a direct azimuth to the southwest corner of Lot 15, Kalihiwai Bay Estates, also being on the north side of Kuhio Highway the direct azimuth and distance being:  $139^{\circ}06'10''$  461.58 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 1,002.90 feet North and 10,728.62 feet East, thence running by azimuths measured clockwise from True South:

1.  $234^{\circ}09'$  317.15 feet along the remainder of Lot 18, Kalihiwai Bay Estates;
2.  $269^{\circ}08'$  172.20 feet along same;
3.  $263^{\circ}43'$  131.00 feet along same;
4.  $229^{\circ}00'$  98.03 feet along same;
5.  $216^{\circ}09'$  149.08 feet along same;
6.  $218^{\circ}34'$  93.38 feet along same;
7.  $209^{\circ}04'$  69.72 feet along same;
8.  $215^{\circ}21'$  294.86 feet along same;
9.  $218^{\circ}56'$  101.80 feet along same;
10.  $213^{\circ}02'$  220.20 feet along same;
11.  $221^{\circ}16'$  169.41 feet along same;
12.  $229^{\circ}13'$  71.53 feet along same;
13.  $215^{\circ}54'$  108.96 feet along same;
14.  $205^{\circ}56'$  65.99 feet along same;

D E S C R I P T I O N

KALIHIWAI BAY ESTATES

EASEMENT "A-1"

- |     |         |                         |
|-----|---------|-------------------------|
| 15. | 226°59' | 99.92 feet along same;  |
| 16. | 205°00' | 249.01 feet along same; |
| 17. | 193°00' | 116.20 feet along same; |
| 18. | 184°28' | 121.38 feet along same; |
| 19. | 208°30' | 158.49 feet along same; |
| 20. | 178°25' | 14.87 feet along same;  |

Thence along Kalihiwai Road on a curve to the left having  
a radius of 60.00 feet, the chord  
azimuth and distance being:

- |     |            |   |
|-----|------------|---|
| 21. | 213°47'05" | 34.55 feet;   |
| 22. | 358°25'    | 48.24 feet along the remainder of Lot 18,<br>Kalihiwai Bay Estates; |
| 23. | 28°30'     | 159.60 feet along same;   |
| 24. | 4°28'      | 118.62 feet along same;   |
| 25. | 13°00'     | 119.80 feet along same;   |
| 26. | 25°00'     | 254.99 feet along same;   |
| 27. | 46°59'     | 100.08 feet along same;   |
| 28. | 25°56'     | 64.01 feet along same;  |
| 29. | 35°54'     | 113.04 feet along same;   |
| 30. | 49°13'     | 72.47 feet along same;  |
| 31. | 41°16'     | 166.59 feet along same;   |
| 32. | 33°02'     | 219.80 feet along same;   |
| 33. | 38°56'     | 102.20 feet along same;   |
| 34. | 35°21'     | 293.14 feet along same;   |
| 35. | 29°04'     | 70.28 feet along same;  |
| 36. | 38°34'     | 94.62 feet along same;  |
| 37. | 36°09'     | 150.92 feet along same;   |
| 38. | 49°00'     | 106.53 feet along same;   |

D E S C R I P T I O N

KALIHIWAI BAY ESTATES

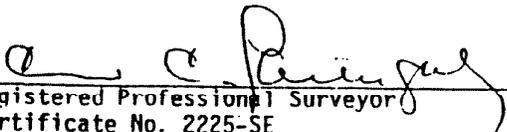
EASEMENT "A-1"

- 39. 83°43' 138.20 feet along same;
- 40. 89°08' 166.84 feet along same;
- 41. 54°09' 298.93 feet along same;

Thence along Kuhio Highway on a curve to the right having a radius of 840.00 feet, the chord azimuth and distance being:

- 42. 113°21'41.5" 23.28 feet to the point of beginning and containing an area of 56,765 SQUARE FEET.



  
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TANK SITE:

Beginning at the East corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Pooku" being 3,123.74 feet North and 12,658.07 feet East, thence running by azimuths measured clockwise from true South:

1. 34° 28' 50.00 feet along R. P. 8173, L. C. Av. 8559-B, Apana 39;
2. 124° 28' 50.00 feet along same;
3. 214° 28' 50.00 feet along same;
4. 304° 28' 50.00 feet along same to the point of beginning and containing an area of 2,500 square feet, or 0.057 acre.

PIPELINE EASEMENT "A":

Being a strip of land ten (10) feet wide and extending five (5) feet on each side of the following described centerline:

Beginning at the East end of this centerline, the same being on the boundary of lands of Lihue Plantation Co., Ltd., and Kilauea Sugar Co., Ltd., the coordinates of said point of beginning referred to Government Survey Triangulation Station "Pooku" being 3,120.99 feet North and 12,836.07 feet East, thence running by azimuths measured clockwise from true South:

1. 101° 30' 135.50 feet;
2. 91° 27' 34.30 feet;
3. 63° 16' 30.70 feet to a point on the northeast boundary of the above described Tank Site (the true azimuth and distance of this point to the east corner of said Tank Site being 304° 28' 20.00 feet), and containing an area of 2,005 square feet, or 0.046 acre.

EXHIBIT "M"

PIPELINE EASEMENT "B":

Being a strip of land ten (10) feet wide and extending five (5) feet on each side of the following described centerline:

Beginning at the North end of this centerline and on the Southeast boundary of the above described Tank Site, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Pooku" being 3,110.14 feet North and 12,648.73 feet East, thence running by azimuths measured clockwise from true South:

1. 307° 10' 61.50 feet;
2. 333° 30' 78.00 feet;
3. 342° 10' 35.00 feet to the land boundary of Lihue Plantation Co., Ltd., and Kilauea Sugar Co., Ltd., and containing an area of 1,745 square feet, or 0.040 acre.

PIPELINE EASEMENT "C":

Being a strip of land ten (10) feet wide and extending five (5) feet on each side of the following described centerline:

Beginning at the East end of this centerline, and on the West corner of the above described Tank Site, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Pooku" being 3,110.82 feet North and 12,588.55 feet East, thence running by azimuths measured clockwise from true South:

1. 80° 53' 23.40 feet;
2. 100° 41' 96.36 feet to the right of way boundary on mauka side of County road and containing an area of 1,222 square feet, or 0.028 acre.

Roadway Easement in favor of owner of  
Royal Patent 5342, Land Commission Award 9260, Apana 3 to  
Kea (within Exclusion 39)

Being a portion of Land Patent 8173, Land Commission Award 8559-B,  
Apana 39 to William C. Lunalilo

Situated at Kalihiwai, Hanalei, Island and County of Kauai, State of Hawaii

Beginning at a pipe at the Northeast corner of this piece of land, the  
coordinates of said point of beginning referred to Government Survey  
Triangulation Station "Pooku" being 2,938.39 feet North and 11,815.81 feet  
East, and running by true azimuths measured clockwise from South:

- |    |      |         |        |  |
|----|------|---------|--------|--|
| 1. | 314° | 58'     | 122.03 | feet to a pipe;  |
| 2. | 213° | 29' 30" | 88.15  | feet to a pipe;  |
| 3. | 302° | 24'     | 24.00  | feet;  |
| 4. | 36°  | 04'     | 114.66 | feet;  |
| 5. | 139° | 34'     | 145.57 | feet;  |
| 6. | 221° | 49'     | 10.02  | feet to the point of beginning and<br>containing an area of 4,248 square feet. |

EXHIBIT "N"

01

NORTH  
line 50 ft

To Home

Access permitted  
under bridge

Easement "A"  
(50' wide)  
Rdwy. Underpass

KUHIO

HIGH

Edward Y. W.

1.693 Ac

L. C. A.

A

EXHIBIT "O"