

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: Andrew Fitts
Business Address: P.O. Box 74
Kilauea, Kauai, Hawaii 96754

Project Name(*): PUKA KA MUA
Address: LOT H, Koolau Road
Moloaa, Kauai, Hawaii

Registration No. 4772 Effective date: June 10, 2010
Expiration date: July 10, 2011

Preparation of this Report:

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

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

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

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

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

Type of Report:

PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A final Public Report will be issued by the developer when complete information is filed.

FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[] No prior reports have been issued.
[] This report supersedes all prior public reports.
[] This report must be read together with

X SUPPLEMENTARY: (pink) 1st increment only This report updates information contained in the:
[] Preliminary Public Report dated:
[X] Final Public Report dated: February 14, 2002
[] Supplementary Public Report dated:

And [X] Supersedes all prior public reports
[] Must be read together with
[] This report reactivates the public report(s) which expired on

(*) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

- Required and attached to this report As Exhibit "G" 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

THE DEVELOPER'S FINAL REPORT EXPIRED ON MARCH 14, 2003. PURSUANT TO SECTION 16-107-19, HAWAII ADMINISTRATIVE RULES, SALES CONTRACTS EXECUTED DURING THE PERIOD THAT THE PUBLIC REPORT WAS NOT IN EFFECT MAY BE RESCINDED AT THE OPTION OF THE PURCHASER AND ALL MONIES REFUNDED TO THE PURCHASER. THE PURCHASER'S RIGHT TO RESCIND UNDER THIS RULE SHALL BE VOID THIRTY (30) DAYS AFTER RECEIPT OF WRITTEN NOTIFICATION OF THESE RIGHTS FROM THE DEVELOPER OR HIS REAL ESTATE AGENT.

The Developer hereby amends the Final Public Report to reflect the construction of residential structures that replaced the shade structures on Units A and B, construction of additional non residential structures and to show the redistribution of the limited common elements to create an additional three units for a total of five units for the Project.

This Project is being developed in two increments. The first increment includes this Supplementary Report, and although it describes the entire Project of five (5) units and all common and limited elements constructed or to be constructed as a part of the Project, ONLY UNITS A AND B ARE COVERED BY THIS SUPPLEMENTAL PUBLIC REPORT AND MAY BE SOLD UNDER A PURCHASE CONTRACT BINDING ON THE BUYER. The additional units created (Units C, D and E) will be covered by a separate Final Public Report as the second increment before said additional units may be marketed and sold under a binding contract. SEE ADDITIONAL DISCLOSURE ON PAGE 20.

THIS PROJECT IS PART OF A SUBDIVISION ENTITLED MOLOAA VALLEY GARDENS PROJECT AND IS SUBJECT TO BYLAWS OF THE MOLOAA VALLEY GARDENS HOMEOWNERS ASSOCIATION AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (See Exhibit "G" attached hereto for a summary of said restrictions and obligations).

This Project is located on land zoned for Agricultural use as defined by the County of Kauai Comprehensive Zoning Ordinances and is limited to specific uses as defined thereby. See Agricultural Restrictions Disclosure on page 20 for a complete list of the permissible uses.

The Public Report dated February 14, 2002, is hereby amended as follows:

1. Page 1 has been amended to delete reference to James B. Edmonds and Harvest Edmonds as being a Developer for the project;
2. Page 5, Section I, has been amended to also delete James B. Edmonds and Harvest Edmonds as being Developers for the Project, reflect the current Real Estate Broker for the Project; and to disclose that Phil Williams, Esq. is no longer associated with the Project and that Kuleana Development LLC is preparing the report pro se for the Developer;
3. Page 6, Section II, has been amended to reflect the Restatement of the Declaration and the date the Condominium Map was amended;
4. Page 9, Section III B, has been amended to delete reference to James B. Edmonds and Harvest Edmonds as Fee Owners of the project;
5. Page 10, Section III C, has been amended to reflect that there are additional buildings on the project;
6. Page 11 has been amended to reflect the construction of improvements on the project and to reference the special use restrictions for agricultural activities.
7. Page 14, Section III E, has been amended to reflect the issuance of a current title report for the Project;
8. Page 16, Section III G, has been amended to reflect the dates of construction for the improvements constructed on the Project;
9. Page 18, Section V A, has been amended to reflect the execution of a current Escrow Agreement;
10. Page 19, Section V 2 H, has been amended to include a reference to the submission of Declaration of Covenants, Conditions, and Restrictions for Moloaa Valley Gardens Project;
11. Page 20 has been amended to include additional disclosures; and,
12. Exhibits A through I have been deleted in their entirety and replaced with revised Exhibits.

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: Andrew Fitts Phone: (808) 651-6693
(Business)

Name*

P.O. Box 74
Kilauea, Kauai Hawaii 96754
Business Address

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*: Kauai All Islands Real Estate Services, LLC Phone: (808) 826-8675
dba RE/MAX Kauai (Business)

Name
P.O. Box 22-3609
Princeville, HI 96722
Business Address

Escrow: Title Guaranty of Hawaii, Inc. Phone: (808) 245-6975
Name (Business)

4370 Kukui Grove St., Suite 203
Lihue, HI 96766
Business Address

General Contractor*: N/A Phone: _____
Name (Business)

Business Address

Condominium Managing Agent*: Self managed by the Association of Phone: _____
Unit Owners (Business)

Name
Business Address

Attorney for Developer: This Report was prepared Pro Se by Phone: (808) 245-7212
Developer and his agent (Business)

Name
Kuleana Development, LLC
Business Address
4365 Kukui Grove St., Suite 103
Lihue, Kauai, Hawaii 96766

*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:

<input type="checkbox"/> Proposed			
<input checked="" type="checkbox"/> Recorded - Bureau of Conveyances:	Document No.	<u>2001-091600</u>	
	Book	Page	
<input type="checkbox"/> 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]:

Restated Declaration of Puka Ka Mua and Condominium Map No. 3282, dated May 5, 2009, recorded in the Bureau of Conveyances as Document No. 2009-16054

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:

<input type="checkbox"/> Proposed			
<input checked="" type="checkbox"/> Recorded - Bureau of Conveyances Condo Map No. <u>3282</u>	(see Exhibit "A" Site Plan only)		
<input type="checkbox"/> 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]:

Restated Declaration of Puka Ka Mua and Condominium Map No. 3282, dated May 5, 2009, recorded in the Bureau of Conveyances as Document No. 2009-16054

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:

<input type="checkbox"/> Proposed			
<input checked="" type="checkbox"/> Recorded - Bureau of Conveyances:	Document No.	<u>2001-091601</u>	
	Book	Page	
<input type="checkbox"/> Filed - Land Court:	Document No.	_____	

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%*	75%
Bylaws	65%	67%**
House Rules	---	NA

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

**Pursuant to Hawaii Revised Statutes Section 514B-22 this project must comply with the revised voting requirements as mandated in HRS 514-B Part IV. Accordingly, this project requires the vote of at least 67% of the common interests in the project to amend the Bylaws

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:

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

[X] 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 H Koolau Road Tax Map Key: (TMK): (4) 4-9-011-034:0001 (Unit A)
Moloaa, Kauai, Hawaii (4) 4-9-011-034:0002 (Unit B)
Princeville, HI 96722

Address TMK are expected to change because: each unit is entitled to a separate address and tax map key number

Land Area: 3.380 [] square feet acre(s) Zoning: AG

Fee Owner: Andrew Fitts
Name

Lessor: N/A
Name

Business 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: Units A, C,D,E:1 floor, Unit B: 2 floors*
* Units C, D and E are not offered for sale under this Report
 Exhibit "B" contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other: shade structures constructed principally of metal and shade cloth

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted by Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>2</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: sheds*	<u>3</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

* Limited to uses and structures prescribed by Section 8-7.2 of the County of Kauai Comprehensive Zoning Ordinances. (See also the disclosure on page 20 of this report.)

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: Household pets may be kept consistent with any applicable law and restrictive covenants applicable to the Project. Animals shall not include those defined as pests under §150-A-2 H.R.S. and prohibited from importation under §141-2, §150-5, or §150-6 H.R.S.
- Number of Occupants: _____
- Other: No hotel or timeshare use; House rules dated November 20, 1998.
- There are no special use restrictions. (See Agricultural Restrictions Disclosure on page 20).

Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 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>
Unit A	1	1 / 2 ½	892	180 1,418	Storage loft Garage
Unit B	1	2 / 2 ½ ½	2,680	850 432 588 616	Storage Lanai Courtyard Carport
Unit C*	1	0/0	0	44 7	Prayer Wall Stupa
Unit D*	1	0/0	0	77 41	Pavillion Utility Shed
Unit E*	1	0/0	0	120	Pump House

*Units C, D and E are not offered for sale under this report.

Total number of Apartments: 5

***Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls. Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.**

Boundaries of Each Apartment: Per the Declaration of Condominium Property Regime, the boundaries of each apartment shall be the outer surface of the entire building. Wires or conduits, pipes or any utility lines running over, under or through any apartment which are utilized for or serve more than one unit shall not be deemed a part of the apartment, the same being deemed common elements.

Permitted Alterations to Apartments: Permitted alterations to apartments are as allowed by County of Kauai zoning ordinances and recorded restrictions on the project, if any. Upon construction of each permanent improvement, an amendment to the Declaration of Condominium Property Regime will be required to disclose actual improvements as a matter of public record.

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.

Parking Stalls:

Total Parking Stalls: 10

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit) Guest	2 (Unit B)	8					10
Unassigned							
Extra for Purchase							
Other:							
Total Covered & Open:							10*

* Unit B has 2 covered stalls and Unit A has 2 open stalls

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

Commercial parking garage permitted in condominium project.

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

* There is ample space for parking of two or more vehicles on each Unit's Limited Common Elements

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool Storage Area Recreation Area

Laundry Area Tennis court Trash Chute/Enclosure(s)

Other: _____

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

There are no violations. Violations will not be cured.

Violations and cost to cure are listed below. Violations will be cured by _____
(Date)

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

N/A

11. Conformance to Present Zoning Code

- a. No variances to zoning code have been granted.
 Variance(s) to zoning code was/were granted as follows:

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

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

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

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

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

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

D. Common Elements, Limited Common Elements, Common 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 "C".

as follows:

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 "B"

as follows:

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

Exhibit "D" describes the encumbrances against the title contained in the title reports dated November 24, 2009 and issued by Title Guaranty of Hawaii, Inc.

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 A BUYER'S RIGHTS UNDER A SALES CONTRACT, AND HAS A RIGHT TO TERMINATE SALES CONTRACT UPON FORECLOSURE OF ITS MORTGAGE BEFORE AN APARTMENT SALE IS CLOSED. IN SUCH EVENT BUYER SHALL BE ENTITLED TO A REFUND OF ALL DEPOSITS, LESS ESCROW CANCELLATION FEES.

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

2. Appliances:

NONE

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

The residence on Unit A was constructed in 2005
The residence on Unit B was constructed in 2006
The structures on Unit C were constructed in 2008*;
The Utility Shed on Unit D and the Pump House on Unit E were constructed in 2006*

* Units C, D and E are not offered for sale under this Report.

H. **Project Phases:**

The developer [] has [X] 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):

Pursuant to Section VIII and XX of the Declaration, the Developer has restated and amended the Declaration to modify the limited common element area for Units A and B to create an three additional limited common elements for the non-residential units, Units C, D and E. These units are not covered by this report and will be disclosed and registered with the Real Estate Commission under a separate Public Report filing.

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

*There are no monthly maintenance fees for this Project.

- 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 _____

*The units receive water from a private water source (see disclosure on page 18) and do not have access to public sewer services and must utilize a individual septic system for waste water disposal.

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 "E" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated August 3, 2009.
Exhibit "F" contains a summary of the pertinent provisions of the escrow agreement.
- Other: Specimen Apartment Deed

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all the documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
 - B) Declaration of Condominium Property Regime, as amended.
 - C) Bylaws of the Association of Apartment Owners, as amended.
 - D) House Rules, if any.
 - E) Condominium Map, as amended.
 - F) Escrow Agreement.
 - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
 - H) Other: Declaration of Covenants, Conditions and restrictions for Moloaa Valley Gardens Project (a summary of which is attached to as Exhibit "G"); Bylaws of the Moloaa Valley Gardens Homeowners Association and Farm Dwelling Agreement, and Conservation and Landscape Easement.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: www.capitol.hawaii.gov

Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs

Website to access rules: www.hawaii.gov/dcca/har

This Public Report is a part of Registration No. 4772 filed with the Real Estate Commission on February 14, 2002.

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:**

Development in Increments The five (5) units in the Project are being developed in increments. THIS SUPPLEMENTARY PUBLIC REPORT COVERS THE FIRST INCREMENT OF TWO (2) UNITS, DESIGNATED AS UNITS A AND B. AT THIS TIME, ONLY THOSE TWO (2) UNITS CAN BE SOLD UNDER A PURCHASE CONTRACT BINDING UPON THE BUYER. The Developer will issue a subsequent Public Report for the remaining three (3) units, identified as Units C, D and E. These units shall not be marketed for sale until a Final Public Report is issued for the second increment covering these units.

This is a condominium project, not a subdivision. Units purchased are not subdivided lots. To determine whether your expectations can be realized, you should carefully review the contents of this Report, especially the recorded restrictive covenants for the subdivision within which this project is located. Among other things, the restrictive covenants govern land use, building type and materials, possession of animals, and cultivation of crops. You should also conduct your own investigations and ascertain the validity of information provided. Except as limited specifically by the condominium documents and subdivision restrictive covenants, all uses permitted in the agricultural zoned district are permitted. Uses in one zone are not the same as in the other, and the prospective purchaser should consult the appropriate county agency for information on uses and construction in the respective zones.

A buyer should understand that all development and use of the property shall be in compliance with County codes and ordinances, that owners in this condominium project will not necessarily receive the same County benefits as owners of approved subdivided lots and that owners who develop their limited common element later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations.

Disclosure Re: Agricultural Restrictions

Pursuant to Section 8-7.2 of the County of Kauai Comprehensive Zoning Ordinances, properties located in an agriculturally zoned district are limited to the following uses and structures: farm accessory structures; aquaculture; diversified agriculture; forestry; grazing; historic sites; intensive agriculture; livestock, poultry, minor food processing related to agricultural products; orchards and nurseries; outdoor recreation; pet keeping and raising, except as provided in Section 8-7.3; public parks and monuments; single family detached dwellings, specialized agricultural; undeveloped campgrounds; warehousing, storage and packing of plant products; and wildlife management. Units A and B contain single family detached dwellings that are considered Farm Dwellings as the same are defined by Hawaii Revised Statutes, Chapter 205. Construction of the Farm Dwellings required the execution of a Farm Dwelling Agreement with the County of Kauai, as contemplated by Chapter 205 regarding use of agricultural lands for residential purposes, and requires that the family occupying a residence on agricultural land derive income from farming activities conducted on the land. (See Sample Farm Dwelling Agreement attached hereto as Exhibit "I"). UNITS C, D, AND E ARE NOT ENTITLED TO RESIDENTIAL USE and therefore limited to the remaining agricultural structures and uses as listed above.

THIS PROJECT UTILIZES A PRIVATE WATER SOURCE FROM A WELL LOCATED ON UNIT E (PUMP HOUSE) THAT PROVIDES WATER TO THIS PROJECT AS WELL AS NEIGHBORING PARCELS. THE BUYER SHOULD CAREFULLY REVIEW THE PROPOSED WATER USE AGREEMENT ATTACHED HERE TO AS EXHIBIT "H" TO BE ADVISED OF THE PARTICULARS OF THIS AGREEMENT BEFORE PURCHASING A UNIT.

Portions of Units A and C are affected by a Conservation and Landscape Easement (dated May 26, 2005, and recorded in the Bureau of Conveyances as Document No. 2005-233001), a copy of which is on file with the Real Estate Commission in conjunction with the filing of this report. Pursuant to this Easement, an abutting parcel (Grantee) has the right to exclusive use of this area for the cultivation of non-noxious plants, shrubs and trees and for no other use. Additionally said Grantee is entitled to any fruit or other product of the horticulture and is required to maintain the easement area in a clean, safe and hazard free condition.

The Developer has elected not to require monthly maintenance fees at this time; however Unit owners may be required to contribute to the cost of maintaining the common element driveway and/or improvements to the surrounding landscaping in an amount not to exceed \$200 per year for each Unit.

Broker's Listing Agreement As of the effective date of this Developer's Public report, the Developer has not executed a listing agreement for the sale of Units A, C, D or E. Thus the Developer cannot offer to sell or sell these units in this registered condominium project unit: 1) the developer executes a listing agreement for the sale of the condominium project, 2) amends this developer's public report to reflect the new information, and 3) delivers the public report and amendment to the prospective purchaser. The conditions for a binding sales contract are listed on page 18, paragraph B for this Report.

- 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-1 .6] (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.

Andrew Fitts

Printed Name of Developer

By: *Andrew Fitts*

Duly Authorized Signatory*

8/3/09

Date

Andrew Fitts

Printed Name & Title of Person Signing Above

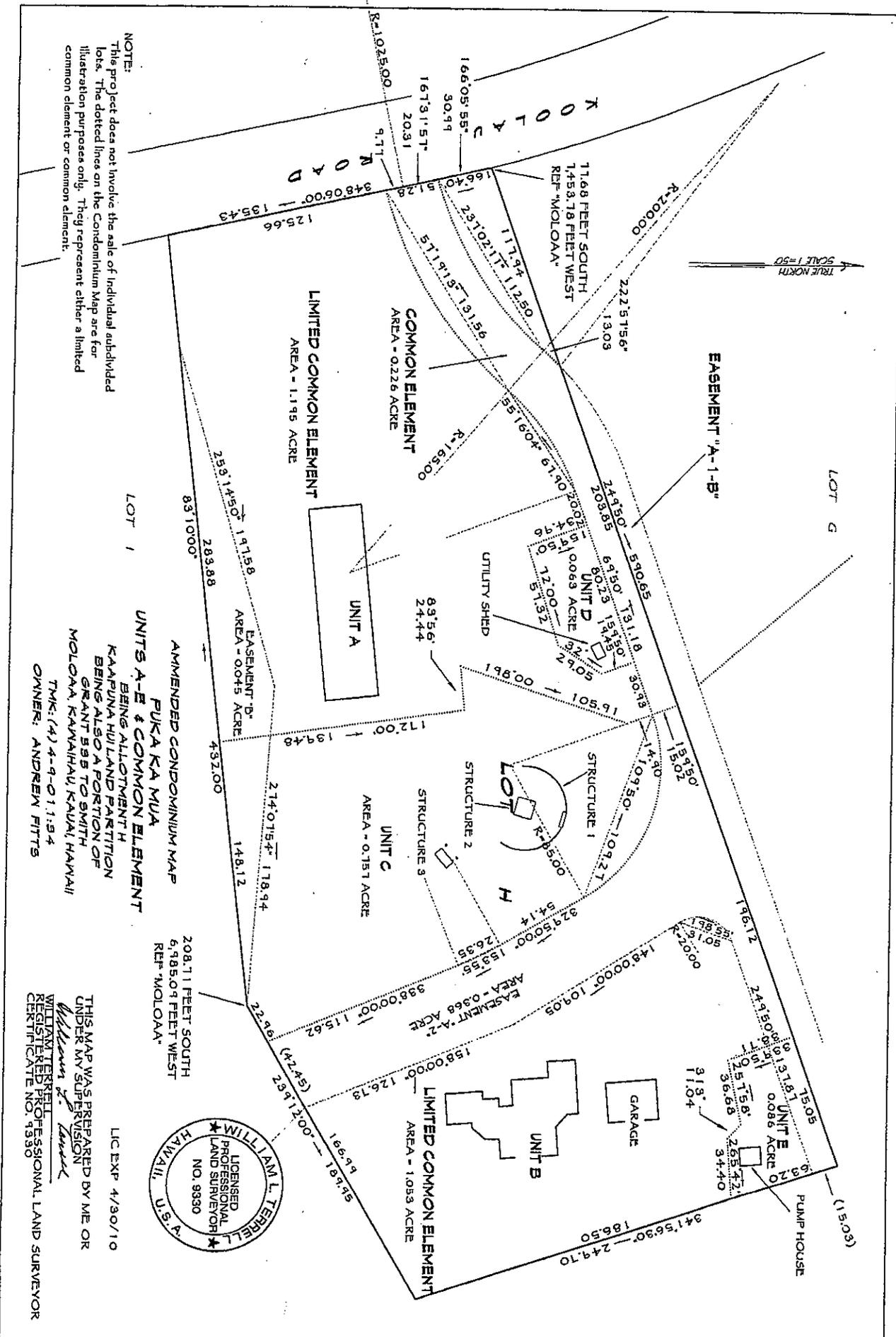
Distribution:

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"



NOTE:
 This project does not involve the sale of individual subdivided lots. The dotted lines on the Condominium Map are for illustration purposes only. They represent either a limited common element or common element.

AMENDED CONDOMINIUM MAP
PUKA KAMUA
 UNITS A-E & COMMON ELEMENT
 BEING ALLOTMENT H
 KAAPUNA HILLAND PAKITION
 BEING ALSO A PORTION OF
 GRANT 595 TO SMITH
 MOLOAA, KAWAIIHAWAII, KAUAI HAWAII
 T.M.K. (4) 4-9-01:1:94
 OWNER: ANDREW FITTS

LIC EXP 4/90/10
 THIS MAP WAS PREPARED BY ME OR
 UNDER MY SUPERVISION
 WILLIAM TERRELL
 REGISTERED PROFESSIONAL LAND SURVEYOR
 CERTIFICATE NO. 9330



EXHIBIT "B"

DESCRIPTION OF UNITS AND COMMON INTERESTS

Unit A consists of a single story residence (Farm Dwelling) constructed primarily of wood that was constructed in 2005 and consists of a one bedroom studio, kitchen and bathroom with a net interior living area of 892 square feet, together with a 180 square foot storage loft, a 1,418 square foot garage and half bathroom, a 850 square foot storage/workshop area with a full bathroom and a 264 square foot lanai. The residence is located in the north east portion of a 1.195 acre limited common element.

Unit B consists of a two story residence (Farm Dwelling) and a single story 616 square foot detached carport that were constructed in 2006. The residence has three bedrooms, 2 full bathrooms and 2 half bathrooms, a kitchen, living room, dining room, and office with a net interior living area of 2,680 square feet together with a 432 square foot lanai and a 588 square foot courtyard. The residence and garage are centrally located in a 1.053 acre limited common element.

Unit C consists of three structures. Structure 1 is a semi circular walk way (Stupa) approximately 7 feet tall with a diameter of 44 feet constructed primarily of wood. This walk way contains cylindrical canisters that rotate manually and is referred to a Prayer Wall. Structure 2 is a stone sculpture approximately 13 feet tall and 7 feet wide, referred to as a Stupa. Structure 3 is a Shade Pavilion constructed primarily of wood with an approximate area of 77 square feet. These structures are centrally located in a 0.151 acre limited common element. Unit C is not entitled to construct a residence and is restricted to accessory and/or recreational structures.

Unit D consists of a Utility Shed constructed primarily of wood with an approximate area of 41 square feet located in the eastern portion of a 0.0063 acre limited common element. Unit D is not entitled to construct a residence and is limited to utility accessory structures.

Unit E consists of a Pump House constructed primarily of wood with an approximate area of 120 square feet and located in the southern portion of a 0.086 acre limited common element. Unit E is not entitled to construct a residence and is limited to utility accessory structures.

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. Unit A and Unit B will each burden the common elements as shown above. Therefore, the assessment of undivided interest both for common expense and for voting is as follows: Unit A: 40%; Unit B: 40%; Unit C: 10%; Unit D: 5%; and Unit E: 5%.

The common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration of Condominium Property Regime, each unit owner may use the unit, alter or add to it in any manner deemed desirable, so long as it is permitted by law and the Declaration of Protective Covenants and House Rules, if any. If adjoining unit owners desire to alter and/or transfer portions of their respective units, they can do so by the filing of an amendment to the Condominium Map and the Declaration of Condominium Property Regime together with their respective signatures.

*Note: Land areas referenced herein are not legally subdivided lots.

EXHIBIT "C"

COMMON ELEMENTS OF THE PROJECT

The common elements of the project are:

- (a) the land in fee simple;
- (b) a 0.226 acre common element roadway as shown on the Condominium Map;
- (c) all commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; and
- (d) any and all other future elements and facilities in common use or necessary to the Project.

LIMITED COMMON ELEMENTS OF THE PROJECT

Certain parts of the common elements, referred to as the "limited common elements," have been designated and set aside for the exclusive use of one or more units, and such unit(s) have appurtenant exclusive easements for the use of such limited common elements. The limited common elements set aside, reserved and deemed a limited common element appurtenant to and for the exclusive use of each respective unit is that certain land area upon and around which Units A and B located, shown and designated on the Condominium Map and the table below.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
Unit A	1.195 acre
Unit B	1.053 acres
Unit C	0.757 acre
Unit D	0.063 acre
Unit E	0.086 acre

*Land areas referenced herein are not legally subdivided lots.

EXHIBIT "D"

ENCUMBRANCES AGAINST TITLE

The following documents are listed in this Exhibit "D" as encumbrances against title:

1. For Real Property Taxes, if any, that may be due and owing, reference is hereby made to the Director of Finance for the State of Hawaii, County of Kauai for the following.

Unit A (now Units A and E) is covered by Tax Key: (4) 4-9-011-034, HPR No. 0001.
Apt. B (now Units B, C and D) is covered by Tax Key: (4) 4-9-011-034, HPR No. 0002.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
4. Portion of Easement "2" (10 feet wide), for right-of-way purposes, in favor of the owners of Lots J and K, as shown on survey map prepared by Dennis M. Esaki, Licensed Professional Land Surveyor, Certificate No. 4383, dated December 1999.

Said above Easement "2" was cancelled by instrument dated March 16, 2007, recorded as Document No. 2007-058325.

5. WAIVER AND RELEASE

DATED : November 7, 2000
RECORDED : Document No. 2000-162048
BY : ANDREW W. FITTS & MOLOAA VALLEY ONE, LLC
WITH : COUNTY OF KAUAI
RE : no County-supplied water service exists or may ever exist

6. GRANT

TO : MOLOAA VALLEY ONE LLC, a Hawaiian limited liability company, and ANDREW FITTS

DATED : April 27, 2001

RECORDED : Document No. 2001-064443

GRANTING : a perpetual, non-exclusive easement for pedestrian and motor vehicle access purposes

7. The terms and provisions contained in the following:

INSTRUMENT : WARRANTY DEED

DATED : March 26, 2001

RECORDED : Document No. 2001-064445

8. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY
REGIME FOR
"PUKA KA MUA" CONDOMINIUM PROJECT

DATED : May 30, 2001

RECORDED : Document No. 2001-091600

MAP : 3283 and any amendments thereto

Said Declaration was amended by instrument dated May 6, 2009,
recorded as Document No. 2009-16074

9. The terms and provisions contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF OWNERS

DATED : --- (acknowledged May 30, 2005)

RECORDED : Document No. 2001-091601

10. The terms and provisions contained in the following:

INSTRUMENT : FARM DWELLING AGREEMENT

DATED : October 26, 2004

RECORDED : Document No. 2004-241482

PARTIES : ANDREW W. FITTS, "Applicants", and the COUNTY OF KAUAI PLANNING DEPARTMENT, "Department"

11. The terms and provisions contained in the following:

INSTRUMENT : ROAD WIDENING RESERVE AGREEMENT

DATED : January 3, 2005

RECORDED : Document No. 2005-045611

PARTIES : COUNTY OF KAUAI and ANDREW W. FITTS, "Applicants", and the COUNTY OF KAUAI PLANNING DEPARTMENT, "Department"

12. INSTRUMENT : CONSERVATION AND LANDSCAPE EASEMENT

DATED : September 29, 2005

RECORDED : Document No. 2005-233001

PARTIES : ANDREW FITTS, "Grantor" and MARK BOISER and EVELYN LOUISE BOISER, "Grantee"

GRANTING : an exclusive conservation/landscaping easement

13. Any unrecorded leases and matters arising from or affecting the same.

14. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

15. GRANT

TO : TOM LIEBER and AIMEE L. FLOETER-LIEBER,
husband and wife, and MARK VAN-WAGNER,
unmarried, BRIAN DAVID LANSING, unmarried, and
ANDREW FITTS, unmarried

DATED : February 14, 2006

RECORDED : Document No. 2006-078058

GRANTING : a non-exclusive perpetual roadway easement for pedestrian
and vehicular ingress and egress over and across those
easements, more particularly described therein and shown
on the map attached thereto

16. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR MOLOAA VALLEY
GARDENS PROJECT

DATED : May 30, 2006

RECORDED : Document No. 2006-150167

Said Declaration was amended by instrument dated May 6,
2009, recorded as Document No. 2009-16074

17. The terms and provisions contained in the following:

INSTRUMENT : BYLAWS OF THE MOLOAA VALLEY GARDENS
HOMEOWNERS ASSOCIATION

DATED : May 30, 2006

RECORDED : Document No. 2006-150168

18. -AS TO ITEM I (UNIT A):-

MORTGAGE

MORTGAGOR : ANDREW W. FITTS, UNMARRIED

MORTGAGEE : MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., as nominee for COUNTRYWIDE
HOME LOANS, INC., a New York corporation

DATED : February 7, 2006

RECORDED : Document No. 2006-029371

19. -AS TO ITEM II (UNIT B):-

MORTGAGE

MORTGAGOR : ANDREW W. FITTS, unmarried

MORTGAGEE : MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., solely as a nominee for INDYMAC
BANK, F.S.B., a federally chartered savings bank
organized and existing under the laws of the United States
of America

DATED : January 16, 2008

RECORDED : Document No. 2008-010512

EXHIBIT "E"

SUMMARY OF PORTIONS OF THE PURCHASE CONTRACT AND ADDENDUM

This Project includes an Addendum to the Purchase Contract (the "Addendum") to be utilized in conjunction with a standard printed form Purchase Contract provided by the Hawaii Association of Realtors. The Purchase Contract contains the price and other terms and conditions which a purchaser will agree to buy a unit in the Project. The Addendum protects the rights of the Purchasers and the handling of the funds under the Condominium Property Act (the "Act"), as well as the insuring compliance with the Act by all parties. Relevant portions of the Purchase Contract and Addendum are summarized as follows:

1. The fact that the Act controls over any portion of a contract to sell a condominium unit.
2. That an effective date for a Developer's Public Report must be in place and a receipt for the same signed by the buyer.
3. That all purchaser funds must be held in escrow until the law allows closing and disbursement of the funds.
The conditions precedent to release of the funds are enumerated, including in part:
 - (a) That Purchaser will receive a copy of the Developer's Public Report for the project.
 - (b) Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow agreement, and Purchaser is subject to all of the terms of the Escrow Agreement.
 - (c) If there is a dual agency by a single broker, it will be disclosed in the contract.
4. That interest on Buyer's deposits shall accrue to the Developer and not the Buyer.
5. In the event the Project includes the new construction or substantial remodeling of a premise, Hawaii law mandates that the Seller provide a specific notice to the Buyer in respect to filing lawsuits or other actions for defective construction against the contractor.

SPECIAL NOTICE: THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL THE TERMS AND PROVISIONS CONTAINED IN THE CONTRACT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE PURCHASER'S RIGHTS AND OBLIGATIONS, THE PURCHASER MUST REFER TO THE PURCHASER'S CONTRACT TO DETERMINE THE BUYER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONTRACT, THE CONTRACT WILL CONTROL AND NOT THIS SUMMARY.

EXHIBIT "F"

SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between FIRST HAWAII TITLE COMPANY (the "Escrow"), and Reynold B. Ben, Trustee of the Reynold B. Ben Trust, dated April 6, 1999 (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an unit, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.
2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.
3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) the Real Estate Commission has not issued a Public Report on the project or the requirements of the sales contract have not been met; or (b) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met.
4. Escrow will return deposited sums to the Buyer without interest, if Seller and Buyer give Escrow written notice to return the funds to Buyer, or if there is a right of cancellation under the sales contract. In the event of a cancellation as a matter of agreement or right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, up to a maximum of \$250.00, except in the case of a rescission, where there is no cancellation fee.
5. Escrow will arrange for and supervise the signing of all documents, which are to be signed subsequent to and contemplated by the sales contract.
6. As Escrow's compensation for its performance under this Agreement, Escrow will receive its schedule rate for each unit for which an unit deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon schedule rate.
7. In the event of default by the Buyer, Buyer may forfeit his or her deposit, which will be paid to the Seller, less any cancellation fees charged by Escrow.

SPECIAL NOTICE: THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE AGREEMENT, ONE MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

EXHIBIT "G"

SUMMARY OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOLOAA VALLEY GARDENS PROJECT AND BYLAWS OF THE MOLOAA VALLEY GARDENS HOMEOWNERS ASSOCIATION

The PUKA KA MUA condominium (herein "Project") is and party to the Moloaa Valley Gardens Project (hereinafter "MVG") and is affected by the "Declaration of Covenants, Conditions and Restrictions for Moloaa Valley Gardens Project" (hereinafter "DCCR") dated May 30, 2009, and recorded as Document No. 2006-150167 in the Bureau of Conveyances of the State of Hawaii and the Bylaws of the Moloaa Valley Gardens Homeowners Association (herein after "Bylaws") dated May 30, 2009 and filed in said Bureau as Document No. 2006-150168.

The DCCR created the MVG Project and set forth requirements for all units and lots that area part of the MVG Project. Among other things, the DCCR state the following:

- (a) The Developer (who currently holds 50% interest in the Master Association) has the right, but not the duty, to add additional properties to the Master Association.
- (b) Each unit/lot owner In the Master Association has one vote. An owner's voting rights can be suspended if the owner defaults in observing any provision of the DCCR. The owner's Voting rights are automatically restored upon curing of such default.
- (c) The DCCR cover all personal or real property held or conveyed to the Master Association, including at creation of the subdivision, roadway easements, utility easements, and landscape easements between lot owners (the Common Areas). [Developer's Note: No condominium property from any of the condominiums that are a part of the MVG Project has been or will be conveyed to the Master Association. Roadway easements were executed between all appropriate parties for the interior roadway
- (d) It might be possible under the DCCR to consolidate, subdivide, or rezone common areas. Including roadways, Utility systems, and water and irrigation systems. [Developer's Note: There are no common areas that are real property held by the Master Association. Even if there were such common area real property, the property could not be consolidated, subdivided, or rezoned without the approval of each and every party to the DCCR.]
- (e) The Master Association is responsible for maintaining, planting, replanting common areas, including roadways, utility systems, and Water and irrigation systems of the MVG Project.
- (f) The DCCR cover "Designated Areas". These include shoulders of all roads, right of way areas, and curbs of all roads.

(g) The DCCR also cover "Improvements and Facilities" (DCCR Section 5.3): These include roadways, pavement curbs gutters, sidewalks, storm and systems drainage systems, trash enclosures, walls, signs, equipment, street lighting systems (other than those owned by a utility company), landscape irrigation systems (including the cost of electricity and water to operate the landscape irrigation systems) and other similar systems, facilities and improvements including the water transmission system, improvements and Facilities do not include improvements or systems which have been dedicated to or are owned by the County of Kauai (or any department thereof) or a private or public utility such as Kauai Electric Company or is a private cablevision company. [Developer's Note: DCCR Section 5.3 simply states that the Master Association must "maintain, repair, and replace... Improvements and Facilities which are transferred to or owned by the Master Association." (Emphasis added) At this point, there are only roadway easements held by the Master Association, and the Master Association maintains the interior roads and associated curbs and gutters.)

(h) The Developer may install a gate in the roadway leading to the Makai Valley portion of the subdivision. Only residents of this area and their guests have a right to enter this gate. Others may contract with Owner of Unit I of the Moloaa Gateway condominium to use the greenwaste dump located on Unit 1. Beneficiaries of the gate pay for it.

(i) There will be assessments for the cost of operating and maintaining the common areas, designated areas, and improvements and facilities of the MVG Project. These assessments are determined by the Board as it sees fit and are paid by unit and lot owners on a pro rata basis. (See, Article IV, Section 4 of the Master Association Bylaws in conjunction with DCCR Section 4.2)

(j) There may be supplemental or special assessments and user fees.

(k) Pursuant to DCCR Section 5.4, there is to be a water system/water company that will provide water for five lots (or more at the sole discretion of the Developer). Fees are to be determined by the Developer. [Developer's Note: Water from the system is to be provided for all of the ten lots and condominium units making up the MVG Project. The Developer has no intention or desire to add any more lots capable of receiving water from the water system]

(l) The Developer may at some point convey the water company to a non-profit water Company. All pipelines and transmission and storage facilities within the subdivision shall be deemed improvements and facilities paid for by the Master Association.

(m) To the extent obtainable at reasonable cost, insurance for the Master Association will be one of the expenses to be covered by its members.

(n) The Master Association Board of Directors has right to adopt rules and regulations for maintenance and operation of the common areas, designated areas, and improvements and facilities.

(o) The DCCR provides construction, design, and use of lots restrictions over and above those set out in condominium documents: e.g.:

(i) all units/lots must submit building plans to the Board; also for additions, changes, and alterations;

(ii) exempts the Developer and certain specified units/lots (as those units/lots were already built or substantially designed at the time of the execution of the DCCR);

(iii) provides requirements for materials, parking, grading, outside lighting, color schemes, landscaping principal exterior materials;

(iv) provides requirements for location and method of certain utilities; and,

(v) owners must meet certain architectural and design standards. [Developer's Note: Please review DCCR. Section 62(b) - particularly the language describing how the natural conditions will be enhanced by various design solutions (with examples given). Then review the subsections of DCCR Section 6.2(b).]

(p) The DCCR govern use and maintenance of property.

(q) The DCCR control animals to be allowed on the units/lots.

(r) The DCCR prohibit certain uses, as follows:

(i) animal hospitals;

(ii) cemeteries;

(iii) commercial recreation;

(iv) construction and worker temporary housing;

(v) mineral extraction and quarries;

(vi) private and public utility facilities;

(vii) transportation terminals;

(viii) communications facilities; and,

(ix) slaughterhouses.

Please note that the prohibited uses above may be permitted if at least 75% of the owners of lots approve and all necessary government permits are secured.

(s) The Developer has reserved certain rights for as long as the Developer remains the owner of at least two units/lots, as follows:

(i) Easements, licenses, Etc. To designate and grant to any person, and/or reserve unto the Developer, easements, licenses, permits and rights-of-way for public or private access and/or utility purposes water distribution system, drainage, gas distribution systems, walkways, roadways, electrical, telephone and television cables and other or similar purposes and uses in, over, across, through and under any Common Areas, Designated Areas, and improvements and facilities as Developer deem appropriate or necessary. In connection with these specific reservations, each Owner shall be deemed, upon acceptance of a deed conveying any Lot or interest in any Lot, subject to the terms of DCCR Section 7.1 (a), to irrevocably appoint Developer as such Owner's attorney-in-fact to execute such documents, to file maps designating such

easements, to grant such easements and rights, and to do all things necessary or convenient in connection therewith without further notice to or action by such Owner, and upon Developer's request, each Owner promptly and for no additional consideration shall execute all documents which may be requested by Developer to designate or reconfirm such easements on any map and/or to grant or reconfirm such easements and rights.

(ii) Entry and Use . To enter on and use any Common Areas, Designated Areas, and Improvements and Facilities for the purpose of selling Lots, or of constructing any improvements or changes in or appurtenant to the Common Areas, Designated Areas, and Improvements and Facilities as it may deem appropriate or necessary, provided that work is performed in a good and workmanlike manner and free and clear of all liens.

(iii) Assignment of rights. To assign and transfer, in whole or in part, all or any of its rights, privileges, powers, reservations, interests and obligations hereunder to any other person, including without limitation, to any successor designated by Declarant or the Master Association.

(iv) Approval of Amendments. To approve or disapprove any proposed amendment to the DCCR.

(v) Approval of Changes to Common Areas To approve or disapprove any change in use of the Common Areas, the Designated Areas, and the improvements and Facilities, and further to approve or disapprove any and all improvements, alterations and other work performed to, in, on, over, under and across the Common Areas, the Designated Areas, and the improvements and Facilities.

(vi) Transfer to Master Association of Common Areas Etc. To transfer from time to time to the Master Association, by deed and/or other appropriate conveyance document, possession, and the obligation to maintain, landscape, repair and replace Common Areas, Designated Areas, and Improvements and Facilities and other real and personal property and interests (including, without limitation, leases, easements, rights-of-way and licenses). This shall also include transfer of part or all of the Water Company and of the system and equipment providing pumping, storage and transmission of water to the Lots, as well as to other neighboring properties (i.e., the water system) and its organization and operation, including the responsibility for its operation, maintenance; repair and replacement (provided, however, that nothing herein shall require Developer to make any such transfer). It is understood that at the time of creation of the Subdivision, Developer intends to maintain arid control landscaping within easements along the Subdivision roadway for an indefinite period of time. Developer shall retain the right, but not the obligation, to transfer responsibility for maintenance and control of Said Landscaping to the Master Association. For the purposes of this paragraph "maintenance and control" of landscaping shall include, without limitation, the authority to relocate, thin out and sell plants.

(vii) Construction of Structured and Improvements related to Dharma Sanctuary. To construct, on any land owned by Developer, structures and improvements (including, but not limited to, churches and monasteries) related to the Dharma Sanctuary.

The "Dharma Sanctuary" is a 501(c)(3) non-profit foundation dedicated to helping build Tibetan stupas around the world. Since its inception in 2004, the foundation's activities have led to a total of twenty-five stupas being created, sixteen in North America and nine in France. The central focus of building stupas with carved marble blocks rather than conventional concrete techniques has been accomplished. The foundation looks forward to helping more communities realize their stupa building dreams, now made more accessible by being able to assemble stupas, rather than construct them. In 2009 the foundation completed its project at the Kauai Dharma Sanctuary, with live stupas commemorating

the life work of Kyabje Kalu Rinpoche and his lama disciples in Hawaii.

(viii) Construction of Buildings, Improvements, Architectural Walls and Other Structures. To construct, on any land owned by Developer, buildings, improvements, architectural walls, and other structures.

(t) The Master Association is to indemnify the Developer for all liabilities and all suits against the Master Association.

(u) The Master Association has the right to enter each member's property in the event of that owner's default, and perform necessary remedies to the owner's expense.

The Bylaws of the Moloaa Valley Gardens Homeowners Association ("Bylaws") contain standard provisions regarding Master Association membership, meetings, Board of Directors, Officers, etc. Among other things, the Bylaws state the following:

(a) The purposes and objectives of the Master Association are for the administration, fiscal management and operation of the MVG Project in accordance with Chapter 421J, Hawaii Revised Statutes, and its successor statutes, and the DCCR;

(b) Each owner of a unit/lot in the MVG Project is automatically a member of the Master Association by virtue of said unit/lot ownership. At such time as said owner ceases to be the owner of a unit/lot, his, her or its membership in the Master Association shall also automatically terminate;

(c) An annual membership assessment shall be charged to and paid by all members, which shall represent each member's pro rata share of the costs of the Master Association in fulfilling its purposes, as set forth in the Master Association's annual budget as approved by the members at least annually;

(d) An annual membership meeting shall be held within the County of Kauai within three months of the end of the Master Association's fiscal year, or such other date as shall be set each year by the Board of Directors;

(e) Special meetings of the membership may be called by or at the request of the president two or more of the directors, or forty percent (40%) of all the members. The person or persons authorized to call special meetings of the membership may fix any place, within the County of Kauai, as the place for holding such special meeting, and shall fix the time of such meeting;

(f) Members holding fifty percent (50%) or more of the vote, represented in person or by proxy, shall constitute a quorum for the conduct of business at any meeting duly called;

(g) The affairs of the Association shall be managed by the Board of Directors, one of which must be a resident of the State of Hawaii. The Board consists of three members;

(h) At any meeting of the membership of the Master Association duly called, any one or more of the directors may be removed with or without cause by vote of two-thirds the members present and eligible to vote, and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created;

(i) The Board of Directors may authorize any officer or officers, agent or agents of the Master Association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Master Association which authority may be general or may be restricted to any specific instance; and,

(j) These Bylaws may be altered, amended, or repealed, and new Bylaws may be adopted, by the affirmative vote of a majority of those members present at any meeting of the members duly called at which a quorum is present, provided that at least thirty days written notice is given to each member and director of the intention to alter, amend or repeal and adopt new Bylaws at such meeting, which notice shall specify that portion of the Bylaws to be amended and the proposed amendment thereof.

The Master Association's DCCR and Bylaws contain various other important provisions relating to the purchase of Units in the Project. This summary is not meant to completely recite the actual provisions of the DCCR or Bylaws, nor to cover every issue in which a purchaser might have interest. The prospective purchaser is urged to obtain and carefully review a full copy of these documents from the Developer prior to entering into an agreement to purchase a unit in this Project.

NOTE: Prospective Buyers should be aware of the fact that recording coversheet for both the DCCR and Bylaws incorrectly references Units A and B of the Puka Ka Mua condominium project as Units 1 and 2. However, the text of these documents refer to applying to and binding the condominium units created and described by the Declaration of Condominium Property Regime of Puka Ka Mua (which correctly refers to said units as Unit A and Unit B).

End of Exhibit "G"

MOLOA'A VALLEY GARDENS

WATER SERVICE AGREEMENT

This Agreement to provide water services is made this _____ day of _____, _____, by and between the **ANDREW W. FITTS**, whose post office address is P.O. Box 74, Kilauea, Kauai, Hawaii 96754 (hereinafter referred to as "Provider"), and _____, whose post office address is _____ (hereinafter referred to as "User").

WHEREAS, Provider is currently the owner of real property located at Tax Map Key ("TMK") (4) 4-9-11-34-2 and TMK (4) 4-9-11-34-1, and Provider has drilled and constructed a private water well with a pump house building and dedicated electric meter service for the well on TMK (4) 4-9-11-34-2, and plans to drill and construct one or more additional water wells on said property;

WHEREAS, User, based upon the terms and conditions outlined in this Agreement, wishes to obtain water from Provider's private water well;

NOW, THEREFORE, the parties to this Agreement, in consideration of mutual covenants and conditions contained herein, agree as follows:

ARTICLE ONE

DEFINITIONS

"Master Declaration": The Declaration of Covenants, Conditions and Restrictions for Moloaa Valley Gardens Project dated August 15, 2006, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-150167.

"Moloaa Valley Gardens Subdivision" or "Moloaa Valley Gardens Project": The property described in Exhibit "A" attached to that certain Declaration of Covenants,

Conditions and Restrictions for Moloaa Valley Gardens Project dated August 15, 2006, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-150167.

“Provider” or “Developer”: Andrew W. Fitts (as the owner of real property located at Tax Map Key (4) 4-9-11-34-2, as well as real property located at Tax Map Key (4) 4-9-11-34-1, where one or more additional water wells may be drilled and constructed), and his successors and assigns, and such other persons to whom he, or his successors or assigns, may assign his rights as Provider. Provider is also defined as the “Developer” in the Master Declaration.

“User”: _____, and their successors and assigns, and such other persons to whom they, or their successors or assigns, may assign their rights as User.

“Utility Manager”: Provider shall serve as the initial Utility Manager, but may in the future designate another person to serve as Utility Manager.

ARTICLE TWO

TERMS OF WATER SERVICE AGREEMENT SUBJECT TO AND SUBORDINATE TO MASTER DECLARATION

2.1 The terms of this water service agreement shall be subject to and subordinate to the provisions of the Master Declaration.

ARTICLE THREE

WATER SERVICES

The water services shall be provided as herein described:

3.1 Water for domestic and limited agricultural purposes will be made available for up to ten (10) Lots or condominium property regime units (or more, at the sole discretion of Provider) from one or more wells located on TMK (4) 4-9-11-34-2 and TMK (4) 4-9-11-34-1. These ten lots are known as TMK (4) 4-9-11-33-1, (4) 4-9-11-33-2, (4) 4-9-11-34-1, (4) 4-9-11-34-2, (4) 4-9-11-5-1, (4) 4-9-11-5-2, (4) 4-9-11-5-3, (4) 4-9-11-4, (4) 4-9-11-35, and (4) 4-9-11-36.

3.2 In the event that water shortages or similar problems develop after joint use of a private system has been established, the following rules shall apply:

(a) As to domestic potable water usage, the original User who installed the system shall have first priority to reasonable use for residential purposes, including maintenance of landscaping if agricultural water is not otherwise reasonably available;

(b) Users added subsequent to the initial installation shall retain rights according to when (chronologically) they were added to the system;

(c) Should capacity of any multi-unit private water system prove to be insufficient upon connection of any new participant(s), such new participant(s) shall cease use of the water in reverse chronological order of joining the system, unless and until such new participant(s), at his, her, or their expense, provide(s) an alternate solution to capacity problems approved by an engineer licensed to practice in the State of Hawaii; and

(d) Agricultural water, if any, shall be fairly apportioned among the original Users, in amounts as equivalent as may practicably be determined.

3.3 Each User on a monthly basis shall pay to Provider a pro-rata share, based upon User's water usage, of any and all costs related to the provision of water

services and the water system. This amount shall be paid as long as User is provided water under this Agreement.

3.4 Each User's monthly pro-rata share of the costs related to the provision of water services and the water system shall be as reasonably determined by Provider. Provider (or Utility Manager), on an annual basis, shall provide all Users with an accounting for all costs related to the provision of water services to the Users. Such costs shall include, but not be limited to, costs related to: (i) maintaining, repairing, and replacing the well and related equipment; (ii) administrative charges for operating the water system; and (iii) funding of a contingent reserve for maintenance, repair, and replacement of the water system, including, but not limited to, all wells, transmission lines, storage and other equipment related to the provision of water services and the water system.

3.5 In addition to each User's monthly pro-rata share of the costs related to the provision of water services and the water system, each User shall pay to Provider an amount to be determined by User's actual consumption of water provided under this Agreement, at a rate of \$.0025 per gallon (\$2.50 per one thousand gallons) of water used, as determined by a water meter. User understands and agrees that, from time to time, it may become necessary for Provider to reasonably increase the rate charged per gallon of water used, and that Provider reserves the right do so. User agrees to a \$200 non-interest earning deposit to be held by Provider.

3.6 Each User shall, at his or her own expense, install a separate water meter to record monthly usage. Each User shall make User's water meter accessible at all

times and shall allow Provider or the Utility Manager to come upon User's property to take readings of the meter.

3.7 In addition to any remedies provided in the Master Declaration (including, but not limited to Sections 4.6 and 4.7 of the Master Declaration, related to "Interest and Late Charges" and "Lien and Default", respectively), if User fails to pay within thirty (30) days his or her prorated cost of the monthly water charge, then Provider may terminate the User's access to and usage of water from the private water well(s).

3.8. User agrees to grant an easement on or over User's property, if necessary, to allow water service from the private water well to be provided to any other User, and for it to be accessible to Provider for maintenance, repairs, and replacement related to the water system.

3.9 User acknowledges that the water comes from a well and Provider cannot guarantee its quality. As such, Provider shall not be held liable for any water quality or safety issues. User shall bear sole responsibility for water quality and safety by his or her own method of treatment.

ARTICLE FOUR

TERMINATION OF CONTRACT

4.1 This agreement may be cancelled by either party with thirty (30) days written notice. Upon termination of this agreement, User shall have no right to water from Provider's private water well(s).

ARTICLE FIVE

MISCELLANEOUS PROVISIONS

5.1 All claims and/or disputes between the parties arising out of or relating to the services or breach thereof shall be subject to alternative dispute resolutions ("ADR"). The first method of ADR shall be a good faith negotiations between the parties. Failing such negotiations, the parties agree to a good faith participation in non-binding confidential mediation in accordance with the Rules of ADR Hawaii then in effect. If any issues, claims or disputes remain unresolved after mediation concludes, the parties agree to submit any such issues to binding arbitration. The parties agree to participate in good faith in the arbitration and abide by the discovery orders of the arbitrator. The arbitration shall be in accordance with the Arbitration Rules of ADR Hawaii, unless the parties agree otherwise.

5.2 This Agreement shall be governed by the laws of the State of Hawaii.

5.3 The parties acknowledge that this agreement expresses the entire agreement of the parties and that neither the Association nor anyone representing the Association has represented or agreed to anything not stated in this agreement. The parties also acknowledge that they have consulted with or had the opportunity to consult with their respective attorneys before signing this agreement.

5.4 The provisions of this agreement are severable. If any provision of this agreement is held invalid, that invalidity shall not affect any other provision which can be given effect without the invalid provision.

ANDREW W. FITTS,
"Provider"

"User"

EXHIBIT "I"

FOR ILLUSTRATION ONLY



Return by Mail (X) Pickup () To:

County of Kauai
Planning Department
4444 Rice Street, Suite 473
Lihue, Kauai, Hawaii 96766

FARM DWELLING AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 20__, by and between

_____, whose residence and post office address is

_____, hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI, Planning Department, its business and mailing address being 4444 Rice street, Building A, Suite 473, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT".

WITNESSETH:

WHEREAS, the APPLICANT(S) warrant and represent that he/she/they is/are the _____ of that certain parcel of land, Tax Map Key No. (4) _____, more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, this document pertains only to Unit(s) _____ as shown in Exhibit "B" and made a part hereof; and

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

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

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

WHEREAS, the parcel identified by Tax Map Key No. (4) _____, is entitled to _____ residential units (and one guest house); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. The APPLICANT(S), for themselves (himself, herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4444 Rice Street, Suite 473, Lihue, Hawaii 96766, from all claims and causes of

action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

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

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the _____ day of _____, 20__.

APPROVED:

APPLICANT(S)

Planning Director

APPROVED AS TO FORM AND LEGALITY:

County Attorney

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this ___ day of _____, 20 __, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

NOTARY PUBLIC, State of Hawaii
Print Name: _____

My commission expires: _____

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this ___ day of _____, 20___, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

NOTARY PUBLIC, State of Hawaii
Print Name: _____
My commission expires: _____

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this day of _____, 20___, before me appeared _____ to me personally known, who being by me duly sworn, did say that (s)he is the _____ of the PLANNING DEPARTMENT of the COUNTY OF KAUAI; and that said instrument was executed on behalf of said PLANNING DEPARTMENT; and that said _____ acknowledged that (s)he executed the same as his/her free act and deed of the PLANNING DEPARTMENT of the COUNTY OF KAUAI. Said Department has no seal.

NOTARY PUBLIC, State of Hawaii
Print Name: _____
My commission expires: _____