

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer: KAPAA 382, LLC
Address: 4569 Kukui Street, Suite 200, Kapaa, Hawaii 96746

Project Name(\*): KULANA (covers 96 of 103 Units in Project)
Address: Oloheua, Hauiki and Kaapuni Roads, Kapaa, Hawaii 96746

Registration No. 4888
Effective date: January 3, 2006
Expiration date: February 3, 2007

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, if 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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] SUPPLEMENTARY: (pink) This report updates information contained in the:
[X] Final Public Report dated: April 4, 2005

(\* ) 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.
FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104
G:\CPR\CLIENT\Hancock Kulana\Public Report Supp 96 Unit\PUBLIC REPORT SUPP 96 units 2.wpd

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

Required and attached to this report as Exhibit "H"                       Not Required - Disclosures covered in this report.

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

1. The Final Public Report covered 96 of the 108 condominium Units in the Project. At that time, the Developer did not own the remaining 12 condominium units or the three legal lots on which the 12 units were located.

2. Subsequently, one of the three lots known as "Remnant Lot 3" (which was allocated five condominium Units, designated as Units 26A-E, inclusive) was removed from the Project in accordance with Amendment to Declaration and to Condominium Map of the Condominium Property Regime "KŪLANA" dated July 15, 2005, recorded as Document No. 2005-143463. This reduced the number of units in the Project to 103.

3. The other two lots not previously owned by the Developer (Remnant Lot 4 (and its two units) and Lot 8 (with its five units)) have now been conveyed to the Developer. The seven condominium units located on those two lots are the subject of a separate filing with the Real Estate Commission (Reg. No. 5837).

4. With the reduction of the number of units to 103 Units, each Unit has been allocated a 1/103rd common interest in the Project common elements and share of common expenses.

5. Developer and the Owner of Remnant Lot 3 (which Lot has been removed from the Project) have entered into an agreement allowing the Owner of Remnant Lot 3 to use the common elements in the Project. In return for being able to use the common elements, the Owner of Remnant Lot 3 is required to pay the Lot's proportionate share of the common expenses, based on its owning five of the 103 units in the Project. (See Page 20 and Exhibit I.)

6. The Escrow Agreement (summarized in Exhibit G) has been amended and restated, as it now covers the 103 Units in the Project. Disclosure is also added that up to \$4.1 Million of sales proceeds shall be disbursed by Escrow to pay for the costs under a construction contract for improvements in the Project.

7. Changes have been made to the addendum to the Sales Contract (summarized in Exhibit F). These changes include that the Scheduled Closing Date is considered to be "of the essence" so if a Buyer fails to close by the Scheduled Closing Date, Seller may, among other things, cancel the Sales Contract. The Sales Contract has also been amended to include a mandatory arbitration clause in the event of a dispute between the Developer and a buyer.

8. The Disclosure Abstract (Exhibit H of the Public Report) has been amended to reflect there are now 103 units, that each unit shall bear 1/103rd of the common expenses and that the amount of common expenses include reimbursement by Remnant Lot 3 of its allocated cost of the access and utility easements which it shares with the Project.

9. The form of Specimen Apartment Deed has been changed, and the form has been filed with the Real Estate Commission.

10. The Developer's estimated date for completion of the subdivision improvements is now July 1, 2006 (subject to extensions for causes beyond Developer's control); previously, the estimate date was December 31, 2005. (See Page 15 and Page 16)

### SPECIAL ATTENTION

The Developer has disclosed the following:

- (a) This is a CONDOMINIUM PROJECT, not a subdivision. The land area beneath and immediately adjacent to each Unit is designated an "Exclusive Area", and is a LIMITED COMMON ELEMENT. An Exclusive Area is not a legally subdivided lot, and the boundaries of an Exclusive Area are not boundaries of a legally subdivided lot.
- (b) Facilities and improvements normally associated with County-approved subdivisions, such as fire protection, street lighting, utilities, improved access for emergency vehicles, and drainage facilities, etc., are to be provided to the subdivided lots within the Project. These features may not be provided to each of the Units to the same extent. Services such as County street maintenance and trash collection may not be available for the interior private roads and driveways of the Project.
- (c) Construction of subdivision improvements required by the County has begun and is scheduled to be completed by July 1, 2006, subject to extensions for causes beyond Developer's control. Except for construction of "shed" structures, no other improvements are to be made by Developer to Purchaser's Unit. No warranties are given to the purchaser as to the construction, materials or workmanship of the Project. The Project is being sold in "as is" condition (page 15).
- (d) This Public Report does not constitute approval of the Project by the Real Estate Commission or any other governmental agency, nor does it ensure that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
- (e) A condominium Unit offered hereunder is not a residence. Some Units in the Project (designated with "x" or "y") are not permitted to have a residence, but may otherwise be used as County rules permit. Units which may be used for residential use are required to be a "Farm Dwelling", which will require obtaining County permits and approvals of the Design Review Committee which implements and enforces Design Rules and other conditions imposed by covenants, conditions and restrictions imposed on the Project. County rules include that the Project be used for Agricultural Activities, which may impact an Owner's use and enjoyment of his Unit. County rules also restrict permissible use of the Land, the number of dwelling units permitted, and the amount of total development permitted on a legally subdivided lot.
- (f) A prospective purchaser should be aware that making future improvements will require obtaining building and other permits from the County, and that the Developer's subdivision improvements must be completed before permits will be issued to a Unit Owner.
- (g) Obtaining utilities and services beyond those installed by the Developer will require agreements between the Owner and utility providers. Developer disclaims all warranties relating to the availability of such utilities, any conditions that may be imposed by the providers, or the cost thereof.

Each prospective purchaser, together with an architect or professional builder, is urged to review the applicable County ordinances which may affect the Purchaser's use of his Unit and the Project Documents and to review their intended plans with County officials. Developer disclaims all warranties with respect to Purchaser's being able to use the Unit for such User's intended purposes.

**PROSPECTIVE PURCHASERS ARE CAUTIONED TO CAREFULLY REVIEW ALL DOCUMENTS REGARDING THIS CONDOMINIUM PROJECT 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: KAPAA 382, LLC Phone: (808) 822-7711 (x230)  
Name\* (Business)  
4569 Kukui Street, Suite 200, Kapaa, Hawaii 96746  
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):  
Kauai Lease and Loan, Ltd., a Hawaii Corporation, Managing Member  
(President, William R. Hancock)  
(Vice President, James W. Lull)

Real Estate Broker\*: Vision Properties, Inc. Phone: (808) 822-4444  
Name (Business)  
1070 Kuhio Highway  
Business Address  
Kapaa, Hawaii 96746

Escrow: Fidelity National Title & Escrow of Hawaii, Inc. Phone: (808) 742-0001  
Name (Business)  
3417 E Poipu Road, Ste. 104  
Business Address  
Koloa, Kauai, HI 96756

General Contractor\*: Unlimited Construction Services, Inc. Phone: (808) 245-7843  
Name (Business)  
4176 Hoala Street  
Business Address  
Lihue, Hawaii 96766

Condominium Managing Agent\*: Self-Managed by the Association Phone: \_\_\_\_\_  
Name of Apartment Owners (Business)  
Business Address

Attorney for Developer: Jeffrey S. Grad, Esq. Phone: (808) 521-4757  
Name (Business)  
841 Bishop St., Ste. 1800  
Business Address  
Honolulu, HI 96813

\* 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>2004-252101</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]:

1. Amended and Restated Declaration of Condominium Property Regime acknowledged January 20, 2005, recorded as Document No. 2005-015753.
2. Amendment to Declaration and to Condominium Map of the Condominium Property Regime "KŪLANA" dated July 15, 2005, recorded as Document No. 2005-143463.

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>3902</u>	
<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]:

1. Amendment to Declaration and to Condominium Map of the Condominium Property Regime "KŪLANA" dated July 15, 2005, recorded as Document No. 2005-143463.

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>2004-252102</u>	
		Book _____	Page _____
<input type="checkbox"/> Filed -	Land Court:	Document No. _____	

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

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer. The Developer has adopted a Declaration of Covenant, Conditions and Restrictions (CCRs) for this Project. No amendment to the CCRs may be made without Developer's consent prior to the sale of ninety percent (90%) of the common interests of the Project. Attached Exhibit "J" contains a summary of the CCRs.

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75% *</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>n/a</u>

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments. So long as Developer owns more than 10% of the Units, consent by Developer for an amendment is also required.

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:

See attached Exhibit "D"

III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

**Fee Simple:** Individual apartments and the common elements, which include the underlying land, will be in fee simple.

**Leasehold or Sub-leasehold:** Individual apartments and the common elements, which include the underlying land will be leasehold.

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

Exhibit \_\_\_\_\_ contains further 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

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: Olohena, Hauiki and Kaapuni Roads  
Kapaa, Hawaii 96746

Tax Map Key (TMK): (4) 4-3-11:001

[ ] Address [ X ] TMK is expected to change because each CPR Unit has received a separate designated tax map key number

Land Area: 358.876 [ ] square feet [ X ] acre(s) Zoning: Agriculture/Open

Fee Owner: KAPAA 382, LLC (Kauai Lease and Loan, LTD., Managing Member)  
 Name\*  
4569 Kukui Street, Suite 200, Kapaa, Hawaii 96746  
 Business Address

Lessor: N/A  
 Name  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_

**C. Buildings and Other Improvements:**

1.  New Building(s)  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion
2. Number of Buildings: 103 (entire Project) Floors Per Building 1  
 Exhibit \_\_\_\_\_ contains further explanations.
3. Principal Construction Material:  
 Concrete       Hollow Tile       Wood  
 Other Metal posts 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"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	_____	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other-shed	<u>103</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

Note: The Project Land is within lands classified within the State Land Use Agricultural District, and within lands zoned "Agricultural" and "Open" under the CZO of the County of Kauai. "Farm Dwellings" and other structures appropriate to agricultural usage are permitted, for certain Units, subject to certain guidelines. Uses of all Units other than those located on a Remnant Lot are also subject to restrictions contained in the Declaration of Covenants, Conditions and Restrictions summarized in Exhibit J. See the disclosures on Page 20 of this Final Public Report. Guest Houses appurtenant to a Unit may be permitted on the basis of one guest house per Lot, as assigned by and subject to conditions imposed by the Developer.

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: \_\_\_\_\_

Number of Occupants: \_\_\_\_\_

Other: The Declaration of Covenants, Conditions and Restrictions referred to and summarized in Exhibit J impose significant restrictions on all Units other than those Units located on a Remnant Lot. (See also Exhibit L, Additional Disclosure Statement.)

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: -0- Stairways: -0- Trash Chutes: -0-

<u>Apt. Type</u>	<u>Quantity **</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
<u>*</u>	<u>103</u>	<u>0/0</u>	<u>0</u>	<u>16</u>	<u>shade structures</u>
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 103 in Project For additional information, see Schedule 1.

**\*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.**

\*\* Note, that 96 CPR Units (all Units in the Project other than Units 8A-E and Unit 27A and 27B) are covered by this Public Report.

Boundaries of Each Apartment:

The outside surfaces of the exterior walls and roof and the bottom surfaces of the footings and foundations of each improvement, such as a building, constituting the Unit.

Permitted Alterations to Apartments:

There are significant restrictions set forth in Paragraph 20.1 and Paragraph 20.2 of the Declaration. See attached Exhibit "K"

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 N/A elected to provide the information in a published announcement or advertisement. (This Paragraph is not applicable to the Project)

7. Parking Stalls:

Total Parking Stalls: -0-\*

	<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	<u>0</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>0</u>
Guest	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Unassigned	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Other: <u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Total Covered & Open:	<u>-0-</u>	<u>      </u>	<u>-0-</u>	<u>      </u>	<u>-0-</u>	<u>      </u>	<u>-0-</u>

\* Any Unit, when replaced or rebuilt, will have the exclusive use of that number of parking stalls located on its appurtenant dwelling area as determined by the owner of such Unit and as required by law.

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

- Commercial parking garage permitted in condominium project.
- Exhibit        contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool                       Storage Area                       Recreation Area

Laundry Area                       Tennis Court                       Trash Chute/Enclosure(s)

Other: Lake/reservoir (Lot 6), recreational Common Elements and easements for the benefit of this Project

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	<u>    X    </u>	<u>          </u>	<u>          </u>
Structures	<u>    X    </u>	<u>          </u>	<u>          </u>
Lot	<u>    X    </u>	<u>          </u>	<u>          </u>

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

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

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

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

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     B    .

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:

**NOTE:** Reference in Exhibit "C" to "Exclusive Area" is not intended to refer to a legally subdivided lot. Each Exclusive Area is a limited common element within a condominium property regime.

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

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

as follows: each Unit has common interest of 1/103rd, subject to change in Declaration.

- 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 or your purchase and ownership of an apartment in the project.

Exhibit E describes the encumbrances against the title contained in the title report dated September 8, 2005 and issued by Fidelity National Title Insurance Company.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>
Mortgages	Buyer's interest may be terminated by mortgagee but Buyer shall be entitled to return of his deposit, less escrow cancellation fee.

**F. Construction Warranties:**

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

1. Building and Other Improvements:

Developer is giving no warranties to Purchaser on the materials and workmanship of the Units or of the Common Elements. Construction of subdivision improvements required by the County has begun and is scheduled to be completed by July 1, 2006, subject to extensions for causes beyond Developer's control. Developer will assign to the Association all of developer's rights in the contractor's one year warranties following substantial completion for such subdivision improvements.

2. Appliances:

N/A

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

A shed structure, as required under Chapter 514A to constitute a "unit", is or will be constructed in 2005. Construction of on and off-site subdivision improvements required by the County has begun and is scheduled to be completed by July 1, 2006, subject to extensions for time for causes beyond Developer's control.

Except for construction of "shed" structures, no other improvements are to be made by Developer to Purchaser's Unit. No warranties are given by Developer to the purchaser as to the construction, materials or workmanship of the Units or the Common Elements. However, Developer will assign the contractor's warranties to the Association with respect to the subdivision improvements. Otherwise, the Project is being sold in "as is" condition.

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):

#### 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 affiliate 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: Developer may select a Managing Agent prior to formation of the Association.

- 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).

- 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: Utility charges are only with respect to the common elements

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 F contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated December 20, 2004

Exhibit G contains a summary of the pertinent provisions of the escrow agreement.

Other: See Exhibit L, Additional Disclosure Statement.

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 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 issued 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 \_\_\_\_\_

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 on line. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)  
Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)  
Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 4888 filed with the Real Estate Commission on July 2, 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**

**PRIOR AGRICULTURAL USE.**

Prior to 1990, the Land subject to long-term agricultural use. Title to a condominium unit will be subject to disclosures relating to such prior use and a Unit Owner as a condition of receiving his deed to his Unit will acknowledge that he takes ownership to his Unit with full knowledge of potential residual effects of prior, as well as possible future, agricultural uses, in which Seller was not a participant. The Project is subject further to reserved rights in favor of Lihue Plantation Company and its successors to continue various commercial agricultural uses near the Project. Each Owner of a Unit will be required to acknowledge and accept the risks and consequences of prior and future agricultural activities in and near the Project.

**RESERVATION RELATING TO AGREEMENTS WITH NEIGHBORS AND WITH OWNER OF REMNANT 3**

Developer has the right from time to time to enter into easements, licenses and other forms of agreements ("Sharing Agreements") with owners of properties outside the Project ("Neighbors") if such Sharing Agreements are, in Declarant's discretion, for the benefit of the Project or if such Sharing Agreements are required under the County Permit or previously agreed upon Land Use Agreement which provides for certain benefits for the Owner of Lot 86-B (TMK (4) 4-6-07:73) which is located adjacent to the Project. Such Sharing Agreements may include, by way of illustration, agreements relating to the use of utility lines, utility services, access, or other rights in, under or over the property of others, and may include granting rights in favor of the Neighbors to use the Common Elements of the Project. Any such agreements, may include (but shall not require) agreements granting reciprocal rights between the Association and the Neighbors, provided that any rights granted to such Neighbor shall be in return for having granted rights for the benefit of the Project. It is estimated in Exhibit I of the Disclosure Abstract that Neighbors will pay to the Project fees for such agreements. Such rights reserved to Declarant shall expire on the earlier of December 31, 2015 or upon the sale by Declarant of 90% of the Units to third parties.

One neighboring owner is the Owner of Remnant 3, which was initially within the Project, but was removed. The Owner of Remnant 3 has the nonexclusive right to use certain access and utility easements and the common elements of the Project, but has the obligation to reimburse the Project for such use. It is estimated in Exhibit I that the Owner of Remnant 3 will reimburse the Project about \$14,100 annually for such use.

**SALES CONTRACT.**

The Sales Contract is summarized in Exhibit F. Among the more important provisions is that the Scheduled Closing Date is considered to be "of the essence" so if a Buyer fails to close by the Scheduled Closing Date, Seller may, among other things, cancel the Sales Contract. The Sales Contract also includes a mandatory arbitration clause in the event of a dispute between the Developer and a buyer and a Disclosure Statement, a copy of which is attached to Exhibit L to this Public Report.

**UNITS COVERED**

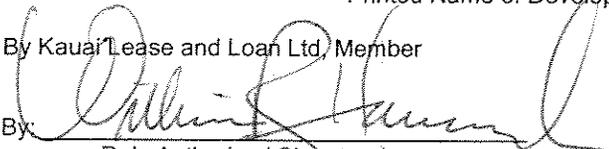
This Public Report covers only 96 of the 103 CPR Units in the Project. The remaining Units (Unit 8A through 8E inclusive and Unit 27A and 27B) are the subject of a separate filing with the Real Estate Commission.

**DISCLOSURE STATEMENT**

A Disclosure Statement containing a number of risk factors of a buyer's purchase of a Unit is attached to the Sales Contract. A copy is also attached to this Public Report as Exhibit L.

- 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 (SHL 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.

KAPAA 382, LLC  
 \_\_\_\_\_  
 Printed Name of Developer

By Kauai Lease and Loan Ltd, Member  
  
 \_\_\_\_\_  
 Duly Authorized Signatory\*

November 14, 2005  
 \_\_\_\_\_  
 Date

WILLIAM R. HANCOCK, President  
 \_\_\_\_\_  
 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"

## LIST OF CPR UNIT AREAS (FOR ENTIRE PROJECT)

KULANA SUBDIVISION			
CPR UNIT AREAS			
LOT	ACRES	CPR	LOCATION OF APT.
<u>LOT 1:</u>			
UNIT			
1A	2.709	1A	Southeast
1B	1.893	1B	West Central
1C	4.956	1C	West Central
1D	4.284	1D	Central
1E	5.202	1E	Central
1F	2.42	1F	Central
1G	2.129	1G	Northwest
1X	3.55	1X	
1Y	2.026	1Y	
<b>TOTAL</b>	<b>29.169</b>		
<u>LOT 2:</u>			
UNIT			
2A	2.428	2A	Central
2B	2.157	2B	Central
2C	1.562	2C	Central
2D	2.244	2D	Central
2E	4.193	2E	Central
2F	1.492	2F	East Central
2G	3.114	2G	South Central
2X	7.711	2X	
2Y	0.466	2Y	
<b>TOTAL</b>	<b>25.367</b>		
<u>LOT 3:</u>			
UNIT			
3A	3.994	3A	Central
3B	2.97	3B	Southeast
3C	2.579	3C	South Central
3D	2.496	3D	South Central
3E	4.01	3E	Southeast
<b>TOTAL</b>	<b>16.049</b>		
<b>PAGE TOTAL:</b>	<b>70.585</b>		

<b>LOT 4:</b>			
UNIT			
4A	4.544	4A	Eastern
4B	4.517	4B	Northwest
4C	4.502	4C	Central
4X	1.519	4X	
TOTAL	15.082		
<b>LOT 5:</b>			
UNIT			
5A	4.881	5A	South Central
5B	4.688	5B	Central
5C	2.56	5C	Southwest
5D	2.297	5D	Southeast
5X	7.619	5X	
5W	0.062	5W	
5Y	1.473	5Y	
5Z	3.341	5Z	
TOTAL	26.921		
<b>LOT 6:</b>			
RESERVOIR	5.363		
TOTAL	5.363		
<b>LOT 7:</b>			
UNIT			
7A	2.731	7A	Central
7B	3.547	7B	Eastern
7C	2.114	7C	West Central
7D	3.016	7D	Southeast
7E	3.903	7E	Southern
7X	3.483	7X	
7Y	0.07	7Y	
TOTAL	18.864		
<b>LOT 8:</b>			
UNIT			
8A	1.738	8A	Southwest
8B	2.363	8B	South Central
8C	3.05	8C	Northern
8D	1.266	8D	South Central
8E	2.127	8E	South Central
8X	2.641	8X	Northern
TOTAL	13.185		
PAGE TOTAL:	79.415		

<b>LOT 9:</b>			
UNIT			
9A	2.601	9A	Central
9B	3.058	9B	Central
9C	2.866	9C	Central
9D	2.631	9D	South Central
9E	2.055	9E	Central
<b>TOTAL</b>	<b>13.211</b>		
<b>LOT 10:</b>			
UNIT			
10A	2.696	10A	East Central
10B	2.483	10B	Central
10C	2.761	10C	Central
10D	1.988	10D	Central
10E	3.046	10E	Western
10X	0.163	10X	
<b>TOTAL</b>	<b>13.137</b>		
<b>LOT 11:</b>			
UNIT			
11A	3.124	11A	Eastern
11B	2.308	11B	Central
11C	2.576	11C	North Central
11D	2.419	11D	North Western
11E	3.068	11E	South Central
11X	0.218	11X	
<b>TOTAL</b>	<b>13.713</b>		
<b>LOT 12:</b>			
UNIT			
12A	2.117	12A	North Central
12B	1.82	12B	North Central
12C	3.206	12C	Central
12D	6.1	12D	Western
12E	2.202	12E	Northwest
12X	0.306	12X	
<b>TOTAL</b>	<b>15.751</b>		
<b>PAGE TOTAL:</b>	<b>55.812</b>		

<b>LOT 13:</b>			
UNIT			
13A	1.468	13A	South Central
13B	1.848	13B	South Central
13C	3.091	13C	North Central
13D	1.893	13D	South Central
13E	3.315	13E	South Central
13X	0.576	13X	
P-2	0.847	P-2	
<b>TOTAL</b>	<b>13.038</b>		
<b>LOT 14</b>			
UNIT			
14A	1.150	14A	North
14B	1.636	14B	Central
14C	4.55	14C	North Central
14D	2.779	14D	South Central
14E	2.929	14E	Central
P-3	0.635	P-3	
<b>TOTAL</b>	<b>13.679</b>		
<b>LOT 15</b>			
UNIT			
15A	1.763	15A	Central
15B	1.618	15B	Central
15C	4.055	15C	Northwest
15D	3.12	15D	Northwest
15E	1.773	15E	West Central
15X	1.422	15X	
<b>TOTAL</b>	<b>13.751</b>		
<b>LOT 16</b>			
UNIT			
16A	2.298	16A	South Central
16B	1.999	16B	Central
16C	3.86	16C	Southern
16D	3.361	16D	Central
16E	3.042	16E	West Central
<b>TOTAL</b>	<b>14.56</b>		
<b>PAGE TOTAL:</b>	<b>55.028</b>		

<u>LOT 17</u>			
UNIT			
17A	4.618	17A	South Eastern
17B	4.760	17B	Central
17C	3.091	17C	Central
17X	2.909	17X	North Western
17Y	1.189	17Y	Central
TOTAL	16.567		
<u>LOT 18</u>			
UNIT			
18A	6.036	18A	Southeast
18B	3.744	18B	North
18C	3.476	18C	South
18D	3.329	18D	Southwest
18E	2.122	18E	North Central
TOTAL	18.707		
<u>LOT 19</u>			
UNIT			
19A	4.372	19A	Northwest
19B	3.889	19B	Central
19C	4.856	19C	Northwest
19D	4.762	19D	Southwest
19E	3.685	19E	Northern
TOTAL	21.564		
<u>LOT 20</u>			
UNIT			
20A	4.009	20A	East Central
20B	8.338	20B	Central
20C	5.985	20C	East Central
20D	3.22	20D	West Central
20E	5.658	20E	Eastern
TOTAL	27.21		
PAGE TOTAL:	84.048		



EXHIBIT "B"

COMMON ELEMENTS

Section 5 of the Declaration establishes the Common Elements for the Project. Section 5 states as follows:

"5. COMMON ELEMENTS. One freehold estate is hereby designated in all of the remaining portions of the Project, herein called the "Common Elements," including specifically, but not limited to:

- (1) The Land in fee simple;
- (2) The Common Property;
- (3) Those Ponds located on Lots 12, 13 and 14; and rights, if any, obtained by Declarant now or in the future on behalf of the Owners in accordance with Paragraph 22.5 of this Declaration.
- (4) Lot 6 , the man-made reservoir located on Lot 6, entry gates and pavilions, any trails and any other recreational facilities of common use.
- (5) Those portions of the Land designated on the Condominium Map as "Common Element", including without limitation those designated as Common Elements 2Y, 5W, 5Y, 5Z, 7X, 7Y, 8X, 10X, 11X, 12X, 13X, P-2, P-3, 15X, 17X or 17Y.
- (6) All ducts, vents, shafts, sewer lines, sewage treatment equipment and facilities (if any), electrical equipment, telephone equipment, pipes, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one Unit for services such as power, light, water, gas (if any), cablevision (if any), sewer, refuse, telephone, and radio and television signal distribution;
- (7) Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use."

EXHIBIT "C"

LIMITED COMMON ELEMENTS.

Section 6 of the Declaration designates certain portions of the Project as "limited common elements", including specifically but not limited to:

"6. LIMITED COMMON ELEMENTS.

6.1 Certain parts of the Common Elements, herein called and designated limited common elements, are hereby set aside and reserved for the exclusive use of certain Units and such Units shall have appurtenant thereto exclusive easements for the use of such limited common elements.

The limited common elements so set aside and reserved are as follows:

(1) Any entrance, exit, gateway, entry, patio, yard, driveway or steps which would normally be used only for the purposes of ingress to and egress from a Unit shall be a limited common element appurtenant to and reserved for the exclusive use of such Unit.

(2) That portion of the Land designated on the Condominium Map as a "Lot" (together with the airspace above such Land area), is for the exclusive use of the Unit having the same letter designation as such Land area on such Condominium Map (such area may be referred to as an "Exclusive Area"). Schedule 1 attached to the Declaration contains a list of the Units, and the area of the Exclusive Area appurtenant to such Unit.

(3) Each Exclusive Area is subject to any nonexclusive easements shown on the Condominium Map which are for the benefit of other Unit Owners, provided that the Owner of the Unit burdened by such easement reserves the right to make use of such easement, subject to the terms and conditions set forth in Paragraph 8.1 of this Declaration and provided further, that such Owner may not construct fences or buildings or plant trees on or over such easement that are for access or utility purposes.

(4) Any other common element of the Project which is rationally related to fewer than all the Units shall be deemed a limited common element appurtenant to and for the exclusive use of such Unit(s) to which it is rationally related.

6.2 A Unit Owner may grant easements on or over the Exclusive Area appurtenant to his Unit, provided that the use of such easement does not present a danger to other Units and does not materially change the level of activity on the Project as a whole."

Note: an "Exclusive Area" is not a legally subdivided lot; it is a limited common element in a condominium property regime.

## EXHIBIT "D"

### DEVELOPER'S RESERVED RIGHTS

The Developer (Declarant) has reserved a number of rights to take action relating to the Project and to amend the Project Documents. A prospective purchaser of a Unit is urged to review the Project Documents, not merely the summaries contained in this Public Report. .

Among the reserved rights are those set forth in Paragraph 22 and rights to amend Project Documents set forth in Paragraph 21.

#### A. Summary of Rights reserved in Paragraph 22 of the Declaration:

1. Rights to have easements to Make Improvements, Complete Repairs and Maintenance of the Project in connection with Developer's obligations. .
2. Right to have sales activities on or from the Project, including the common elements, in connection with the sale of the units in the Project.
3. Right to make to modify the Project to make it conform, if the Project is found not to be in compliance with any federal, state County or other law during the period that Developer is selling the Units in the Project or thereafter. This right shall include, but shall not be limited to, the right to cause noise, dust and other disturbances and nuisances incidental to modifying the common elements as required.
4. Right from time to time to grant and convey to any public or Government Entity (including the County) any and all rights relating to the Roadway Lots (or portion or portions thereof), upon such terms and conditions relating to the dedication and acceptance thereof as Declarant and such grantee may agree.
5. Right to enter into easements, licenses and other forms of agreements ("Sharing Agreements") with owners of properties outside the Project ("Neighbors") if such Sharing Agreements are, in Declarant's discretion, for the benefit of the Project or if such Sharing Agreements are required under the Land Use Agreement or the County Permit. Such agreements may include (but shall not require) agreements granting reciprocal rights between the Association and the Neighbors. This right is reserved to Declarant until the earlier of December 31, 2015 or upon the sale by Declarant of 90% of the Units to third parties.
6. Right to Grant Easements. In addition to the rights reserved in favor of Declarant under the Master Grant of Easements (referred in Exhibit E of the Public Report) Declarant further reserves (a) the right to grant to any public or governmental authority rights-of-way and other easements or to obtain easements or access rights onto public ways, which are for the sole benefit of the Project or which do not materially interfere with the use nor materially impair the value of, any Unit, over, across, under and through the Common Elements and limited common elements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and other public services and utilities; (b) the right to enter for the purpose of installing, repairing, altering and removing such lines and facilities and of trimming any trees in the way thereof; and (c) the right to amend the terms and conditions of any existing easement to reflect the final configuration of the Improvements intended to be made within such area of the easement if such change shall become necessary or desirable after the completion of roadways and other public facilities, private roadways or utilities; provided, however, that any such changes shall not materially change the use by a Unit Owner of such easement or easements.

(The rights granted herein in favor of Declarant shall terminate when Declarant no longer owns any Units in the Project. Thereafter, the Association, through the Board, with the consent or agreement of any holder of any then existing easement affected thereby, is authorized to grant, convey, transfer, cancel, relocate and otherwise deal with any and all such public services and utilities easements now or hereafter located on or affecting the Project.)

#### B. The rights so reserved in favor of the Declarant in Paragraph 21.3 of the Declaration are stated as follows:

"21.3 Declarant's Rights to Make Amendments Required by Law, Lenders, Title Insurers, Etc.

Notwithstanding Paragraphs 21.1 and 21.2;

(a) at any time prior to the first recordation in the Bureau of Conveyances of a conveyance of a Unit, the Declarant may amend this Declaration (including all exhibits) and the Bylaws in any manner, without the consent of any Unit purchaser; and

(b) at any time after the first recordation in the Bureau of Conveyances of a conveyance of a Unit:

(i) Declarant may amend this Declaration (and when applicable, the Condominium Map) to file the "As Built" verified statement required by Section 514A-12 of the Act (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plan thereto filed fully and accurately depicts layout, location, unit numbers, and the dimensions of an improvement or change in a Unit as-built; and so long as the plans filed therewith involve only immaterial Changes to the layout, location, or dimensions of the units as built or any change in any Unit number; and

(ii) So long as Declarant retains any interest in an Unit in the Project,

Declarant shall have the right (but not the obligation) to amend this Declaration and the Bylaws (and the Condominium Map, if appropriate) (without the necessity of the consent or joinder of the Association, the Board, any other Unit Owner or any other person who has an Interest in a Lot or an Interest in a Unit) for the purpose of meeting any requirement imposed by (aa) applicable Law, (bb) the Real Estate Commission of the State of Hawaii, (cc) any title insurance company issuing a title insurance policy on the Project or any of the Units, (dd) any institutional lender lending funds on the security of the Project or any of the Units, or (ee) any other governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; and

(c) Declarant shall have the right to amend this Declaration and the Condominium Map to make minor alterations in the Project, any Unit or in the common elements, so long as such to do not affect the physical location, design or size of any Unit, the use available for the Owner of such Unit for the Unit's of its appurtenant limited common elements, change the common interest appurtenant to an Unit which has been sold and filed in the Bureau of Conveyances location or size of a Unit shall be made without the consent of all persons having an interest in such Unit.

(d) Each and every person party acquiring an interest in the Project, by such acquisition, shall be deemed to have consented to the amendments described in this Section 21 and to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Declarant and its assigns as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of such reserved rights, and shall not be affected by the disability of such party or parties."

C. Note, that the joinder or consent of a Unit Owner is not required, but if such is required in order for Developer or other benefitted person("Third Party") to exercise his rights, , then the Unit Owner must give such joinder or consent upon being requested so by Declarant or such Third Party. If a Unit Owner fails to do so, then Declarant or such Third Party is given a power of attorney from each Unit Owner to give such joinder or consent.

D. Under the sales contract, a Buyer shall be required to deliver a proxy or other authorization in favor of Developer to vote the Buyer's Unit in connection with electing the members of the Board of the Association. To the extent legally permissible, such proxy or authorization shall expire when Developer shall no longer own at least 10% of the Units in the Project.

End of EXHIBIT "D"

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE:

1. For any taxes that may be due and owing and a lien on the property herein described, reference is hereby made to the Office of the Tax Assessor of the Fourth Division.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Claims arising out of rights customarily and traditionally exercise for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii revised Statutes.
4. Terms and provisions, including the failure to comply with any covenants, conditions and restrictions, contained in Land Patent Grant No. 5266, dated April 14, 1910. (the foregoing includes, but is not limited to, matters relating to water rights).
5. Exception and reservation of roads and trails as set forth in Land Patent Grant No. 5266 to Rufus P. Spalding, dated April 14, 1910.
6. Ditches, ponds, drainageways, utilities, building and road widening setbacks and Native Hawaiian access easements as shown on subdivision map prepared by Roger M. Caires, Licensed Professional Land Surveyor No. 7919, dated August 24, 2004.
7. AS TO REMNANT 4:
  - a) Free flowage of ditch and stream, as shown on Tax Map.
  - b) Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document;

In favor of:	The Lihue Plantation Company, Limited, a Hawaii corporation
Purpose:	irrigation ditch system
Recorded:	May 21, 1999, in the Bureau of Conveyances of the State of Hawaii, Document No. 99-082060.
Affects:	land herein described
  - c) Easement for irrigation and drainage purposes, being a strip of land 10 feet wide, more particularly described in instrument dated November 17, 2000, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-162045.
8. AS TO LOTS 12, 14, 16, 18, 19, 20 and 23:

**Easement(s)** for the purpose(s) shown below and rights incidental thereto as set forth in a document;

In favor of: GTE Hawaiian Telephone Company Incorporated  
Purpose: utility  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Book 11015, Page 529.  
Affects: land herein described

**9. AS TO LOTS 12, 14, 16, 18, 19 and 20:**

**Easement(s)** for the purpose(s) shown below and rights incidental thereto as set forth in a document;

In favor of: Citizens Utilities Company  
Purpose: utility  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document No. 98-161869.  
Affects: land herein described

**10. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:**

Deed

Dated: May 21, 1999  
Recorded: May 21, 1999, in the Bureau of Conveyances of the State of Hawaii, Document No. 99-082059.

**11. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document;**

In favor of: The Lihue Plantation Company, Limited, a Hawaii corporation  
Purpose: irrigation ditch system  
Recorded: May 21, 1999, in the Bureau of Conveyances of the State of Hawaii, Document No. 99-082060.  
Affects: land herein described

**12. AS TO LOT 2:**

**a) An agreement, upon and subject to all of the provisions contained therein.**

By and Between: Kapaa 382, LLC, a Hawaii Limited Liability Company, and Robert Grinpas and Esther Grinpas, husband and wife  
Dated: August 13, 1999  
Recorded: January 27, 2000, in the Bureau of Conveyances of the State of Hawaii, Document No. 2000-011540.

b) Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

**MEMORANDUM OF OPTION**

Dated: July 9, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-157806, re: exclusive option to purchase  
Unit G of the Kulana Condominium.

13. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as set forth in a document;

In favor of: William R. Hancock, a married man  
Purpose: a nonexclusive easement in, through, under and across  
Easement K-AU-2 for access and utility  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2002-148166, dated August 1, 2002.  
Affects: lands described herein

Consent by Jeannette P. Meier, by instrument dated August 2, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-148170.

14. AS TO LOTS 5, 7, 9, 10, AND 17:

**Easement(s)** for the purpose(s) shown below and rights incidental thereto as set forth in a document;

In favor of: Kenneth Smalheiser, unmarried, and Daniel Diamond, a married  
man and William R. Hancock, a married man  
Purpose: a nonexclusive easement in, through, under and across  
Easement K-AU-1, for access and utility  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2002-148167.  
Affects: lands herein described

Consent by Jeannette P. Meier, by instrument dated August 2, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-148170.

15. AS TO LOTS 5, 12, AND 15:

An agreement, upon and subject to all of the provisions contained therein.

By and Between: Kapaa 382, LLC, a Hawaii limited liability company, "Seller",  
and Jeanette P. Meier, unmarried, "Buyer"

Dated: April 14, 2003  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2003-074438, re: an exclusive option to  
purchase a portion of TMK (4) 4-3-003-005 (excluding  
remnants 1 through 8 inclusive).

16. An agreement, upon and subject to all of the provisions contained therein.

By and Between: Kapaa 382, LLC ("Kappa 382"); Kapaa 160, LLC ("Kapaa 160"); The Hancock and Company, Inc. Profit Sharing Plan and Trust, William R. Hancock, Trustee, and June Van Dahm and Kris Van Dahm, husband and wife (collectively called the "Lot 28 Owners"); Robert Valenti ("Valenti"); and Karen B. Cole ("Cole")  
Dated: March 14, 2003  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document No. 2003-229571.

17. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as set forth in a document;

In favor of: Kauai Island Utility Cooperative and Verizon Hawaii Inc.  
Purpose: a right and easement for utility  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-087882.  
Affects: lands described herein

No joinder by Daniel J. Diamond; William R. Hancock, Trustee of the Hancock and Company, Inc., Profit Sharing Plan and Trust; and June Van Dahm and Chris Van Dahm.

18. AS TO LOT 8:

a) Easement "AU-25" for pedestrian, vehicular and equestrian access and utility purposes more particularly described in Declaration of Covenants, Conditions and Restrictions for the Kulana Subdivision dated August 27, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-191224.

b) Easement "AU-34" for pedestrian, vehicular and equestrian access and utility purposes more particularly described in Declaration of Covenants, Conditions and Restrictions for the Kulana Subdivision dated August 27, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-191224.

19. AS TO LOTS 1 THRU 7 & 9 THRU 23:

**A mortgage** to secure an indebtedness as shown below, and any other obligations secured thereby

Amount: \$9,000,000.00  
Dated: June 9, 2004  
Loan No.:  
Mortgagor: Kapaa 382, LLC, a Hawaii limited liability company  
Mortgagee: William, F. Mowry, Trustee of the R.S. Mowry Trust dated May 26, 2000, William F. Mowry, and Martha J. Mowry, Trustees of the William F. Mowry Living Trust dated November 16, 2000, and Martha J. Mowry and William F. Mowry, Trustees of the Martha J. Mowry Living Trust dated November 16, 2000  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-157802.

By the provisions of an agreement

Dated: November 3, 2004  
Executed by: William F. Mowry and Martha J. Mowry, Trustees of the William F. Mowry Living Trust dated November 16, 2000, with full powers and authority to buy, lease, mortgage and sell the property herein described and other powers more fully set forth therein, and Martha J. Mowry and William F. Mowry, Trustees of the Martha J. Mowry Living Trust dated November 16, 2000, with full powers and authority to buy, lease mortgage and sell the property herein described and other powers more fully set forth therein, In Trust, and William F. Mowry, Trustee, of the R. S. Mowry Trust dated May 26, 2000, with full powers and authority to buy, lease, mortgage and sell the property herein described, and other powers more fully set forth therein, In Trust (herein collectively referred to as "Mowry Trusts"

Recorded: October 20, 2004, in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-227970.

Said instrument was made subordinate to the lien of the document or interest shown as item No. 2004-190322.

**20. AS TO LOT 4:**

Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

**MEMORANDUM OF OPTION**

Dated: July 9, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-157803, re: exclusive option to purchase Unit A of the Kulana Condominium.

By the provisions of an agreement

Dated: September 10, 2004  
Recorded: September 10, 2004, in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-190323.

Said instrument was made subordinate to the lien of the document or interest shown as item No. 2004-190322.

**21. AS TO LOT 10:**

Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

**MEMORANDUM OF OPTION**

Dated: July 9, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-157804, re: exclusive option to purchase Unit E of the Kulana Condominium

By the provisions of an agreement

Dated: September 10, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-190323.

Said instrument was made subordinate to the lien of the document or interest shown as item No. 24.

**22. AS TO LOT 1:**

Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

**MEMORANDUM OF OPTION**

Dated: July 9, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-157805, re: exclusive option to purchase  
Unit D of the Kulana Condominium.

By the provisions of an agreement

Dated: September 10, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-190323.

Said instrument was made subordinate to the lien of the document or interest shown as item No. 2004-190322.

**23. Terms, provisions, covenants, conditions, reservations and restrictions as contained in Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance;**

By and Between: Kapaa 382, LLC, a Hawaii limited liability company and the  
County of Kauai  
Dated: October 16, 2003  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-180702.

**24. Terms, provisions, covenants, conditions, reservations and restrictions as contained in Agreement to Release Rights to Three Phase Power Installation;**

By and Between: . Kapaa 382, LLC, a Hawaii limited liability company and Kauai  
Island Utility Cooperative, a consumer cooperative  
Dated: August 31, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-189923.

**25. AS TO LOTS 1 THRU 23:**

Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE KULANA SUBDIVISION**

Dated: August 27, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-191224.

Consent and Joinder by Haleiwa Surf Sanctuary, LLC, a Hawaii limited liability company, dated December 2, 2004, recorded in said Bureau as Document No. 2004-255458.

Consent and Joinder by Edelle Sher, unmarried, dated January 12, 2004, recorded in said Bureau as Document No. 2004-257779.

Consent and Joinder by Daniel J. Diamond, husband of Alice J. Diamond, dated December 2, 2004, recorded in said Bureau as Document No. 2004-257782.

Consent and Joinder by William R. Hancock, Trustee of that certain unrecorded William R. Hancock Revocable Living Trust dated May 17, 2002, dated December 1, 2004, recorded in said Bureau as Document No. 2004-257781.

Modification(s) of said covenants, conditions and restrictions

Recorded: May 5, 2005, in the Bureau of Conveyances of the State of Hawaii, Document No. 2005-090236.

(NOTE: The foregoing Modification corrects the legal description of Lots 1-23 by substituting the Exhibit "A" land description, however the Declaration of Condominium Property Regime of Kulana, recorded as Document No. 2004-252101, has not been amended.)

**26. AS TO LOT 2:**

Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

**MEMORANDUM OF OPTION**

Dated: July 9, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-157806, re: exclusive option to purchase  
Unit G of the Kulana Condominium.

By the provisions of an agreement

Dated: September 10, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-190323.

Said instrument was made subordinate to the lien of the document or interest shown as item No. 2004-190322.

27. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

DECLARATION OF GRANT AND RESERVATION OF EASEMENTS FOR KULANA  
SUBDIVISION

Dated: February 13, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-214158.

Consent and Joinder by Haleiwa Surf Sanctuary, LLC, a Hawaii limited liability company, dated December 2, 2004, recorded in said Bureau as Document No. 2004-255458.

Consent and Joinder by Edelle Sher, unmarried, dated January 12, 2004, recorded in said Bureau as Document No. 2004-257779.

Consent and Joinder by Daniel J. Diamond, husband of Alice J. Diamond, dated December 2, 2004, recorded in said Bureau as Document No. 2004-257782.

Consent and Joinder by William R. Hancock, Trustee of that certain unrecorded William R. Hancock Revocable Living Trust dated May 17, 2002, dated December 1, 2004, recorded in said Bureau as Document No. 2004-257781.

28. AS TO LOT 23:

Olohena Road Deferred Dedication Agreement, upon and subject to all of the provisions contained therein.

By and Between: Kapaa 382, LLC, a Hawaii limited liability company and County of Kauai, a political subdivision of the State of Hawaii  
Dated: October 14, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-236777.

29. Condominium Map No. 3902, recorded in the Bureau of Conveyances of the State of Hawaii.

Consent and Joinder by Haleiwa Surf Sanctuary, LLC, a Hawaii limited liability company, dated December 2, 2004, recorded in said Bureau as Document No. 2004-255458.

Consent and Joinder by Edelle Sher, unmarried, dated January 12, 2004, recorded in said Bureau as Document No. 2004-257779.

Consent and Joinder by Daniel J. Diamond, husband of Alice J. Diamond, dated December 2, 2004, recorded in said Bureau as Document No. 2004-257782.

Consent and Joinder by William R. Hancock, Trustee of that certain unrecorded William R. Hancock Revocable Living Trust dated May 17, 2002, dated December 1, 2004, recorded in said Bureau as Document No. 2004-257781.

30. Covenants, conditions, and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in the following:

**Declaration of Condominium Property Regime of KULANA**

Dated: November 24, 2004  
Recorded: in the Bureau of Conveyances of the State of Hawaii,  
Document No. 2004-252101.

Consent and Joinder by Haleiwa Surf Sanctuary, LLC, a Hawaii limited liability company, dated December 2, 2004, recorded in said Bureau as Document No. 2004-255458.

Consent and Joinder by Edelle Sher, unmarried, dated January 12, 2004, recorded in said Bureau as Document No. 2004-257779.

Consent and Joinder by Daniel J. Diamond, husband of Alice J. Diamond, dated December 2, 2004, recorded in said Bureau as Document No. 2004-257782.

Consent and Joinder by William R. Hancock, Trustee of that certain unrecorded William R. Hancock Revocable Living Trust dated May 17, 2002, dated December 1, 2004, recorded in said Bureau as Document No. 2004-257781.

Consent and Joinder by Haleiwa Surf Sanctuary, LLC, a Hawaii limited liability company, dated December 2, 2004, recorded in said Bureau as Document No. 2004-255458.

Consent and Joinder by Edelle Sher, unmarried, dated January 12, 2004, recorded in said Bureau as Document No. 2004-257779.

Consent and Joinder by Daniel J. Diamond, husband of Alice J. Diamond, dated December 2, 2004, recorded in said Bureau as Document No. 2004-257782.

Consent and Joinder by William R. Hancock, Trustee of that certain unrecorded William R. Hancock Revocable Living Trust dated May 17, 2002, dated December 1, 2004, recorded in said Bureau as Document No. 2004-257781.

**Amended and Restated Declaration of Condominium Property Regime** undated but acknowledged January 20, 2005, recorded January 27, 2005, in the Bureau of Conveyances of the State of Hawaii, Document No. 2005-015753.

The foregoing Declaration was amended by Amendment to Declaration and to Condominium Map of the Condominium Property Regime "Kulana" and Quitclaim Deeds, dated July 15, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-143463, removing Remnant 3 (designated as Units 26A through 26E, inclusive) from the Condominium Project.

31. By-Laws of the Association of Apartment Owners of KULANA, dated November 24, 2004, recorded in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-252102.

**END OF EXHIBIT "E"**

## EXHIBIT "F"

SUMMARY OF THE PROVISIONS OF THE SALES CONTRACT. The Sales Contract consists of two documents: a modified current version of the HAR Standard form of Deposit Receipt Offer and Acceptance ("DROA") and a document attached to the DROA which is entitled "SPECIAL CPR ADDENDUM TO THE "KŪLANA" DROA")

1. Description of the Property to be Conveyed: Fee simple title to the Apartment designated and the undivided interest in the common elements set forth in the DROA.
2. Purchase Price and Terms. The purchase price for the Unit is set forth on page 2 of the DROA is to be paid in the method and at the times set forth in the DROA. This may include payment of (a) An initial deposit; (b). An additional cash deposit, if set forth in the DROA ; and (c) the balance of the purchase price is to be paid to escrow by purchaser on or before closing.
3. Financing of Purchase. Paragraph C-24 of the DROA (if selected) provides if Buyer desires financing, a loan application must be made within a certain number of days and if Buyer's application is not approved within a certain number of days after the application, then either Seller or Buyer may cancel the Sales Contract. Upon such cancellation, Buyer's deposits will be refunded by escrow without interest.
4. Closing Costs. Closing costs and escrow fees are to be shared in accordance with the DROA. Seller has agreed in Paragraph C067 of the DROA to permit certain funds to be retained for the Buyer's benefit for costs associated with electrical hookups and start up costs of the Association.
5. Closing. Seller has agreed to cause the Unit to be sold to the Buyer within the time period set forth on page 3 of the DROA , which time is called the "Scheduled Closing Date". Time is considered to be "of the essence".
6. No Present Transfer and Subordination to Construction Loan.
  - (a) The Sales Contract may be subject to existing blanket loans, and any security interest now or hereafter obtained by a lender of Seller is or will be prior and senior to any rights of the Buyer arising under the Sales Contract. This obligation to subordinate the purchaser's right under the Sales Contract to loans now or hereafter made by the Seller is set forth in Paragraph 4 of the Special Provisions.
  - (b) Seller may also assign by way of security all of its interest in the Sales Contract, as collateral for the repayment of the loan and if the Lender acquires the Seller's interest in the Sales Contract, then the Buyer is obligated to perform the Sales Contract, and to attorn to and recognize the Lender as the seller under the Sales Contract.
  - (c) Notwithstanding that the Sales Contract may be subordinate to a blanket lien, if the Buyer performs his obligations under the Sales Contract, then Seller is required to convey the Unit to Buyer at closing free and clear of any blanket lien.
7. Seller's Rights to Cancel Sales Contract. The Seller may cancel the Sales Contract with the Buyer if (a) Buyer fails to qualify for a permanent loan (if Paragraph C-24 of the DROA is selected; (b) Buyer defaults under the Sales Contract (paragraph 5(b) of the Special Provisions); or (c) Buyer dies prior to Closing Date (paragraph 5(a) of the Special Provisions). Pursuant to Paragraph 5(b) of the Special Provisions, if Buyer fails to close as required, then after ten (10) days following Seller's notice of Buyer's default, if Buyer has not cured his default under the Sales Contract, the Seller may cancel the Sales Contract and all sums previously paid by Buyer will belong absolutely to the Seller as liquidated damages. Additionally, Seller may pursue any other remedy, and all costs, including reasonable attorney's fees, incurred by reason of default by the Buyer shall be borne by the Buyer. Time is the essence of the Sales Agreement.
8. Rights of Buyer to Cancel the Sales Contract. The Buyer has the right to cancel the Sales Contract under the following conditions:
  - (a) At any time within thirty (30) days following the date the Final Public Report is delivered to Buyer, if Buyer has not waived such right to cancel. If Buyer so cancels, Buyer will be entitled to receive refund of any deposits, less any escrow cancellation fees and other costs up to \$250. If Buyer does not act within the thirty (30) day period, or if the Unit is conveyed to the Buyer, Buyer will be deemed to have executed the receipt for the Final Public Report and to have waived his right to cancel (paragraphs 6.1 and 6.3 of the Special Provisions).

(b) The Buyer may cancel his purchase if there is a material change in the Project which directly, substantially and adversely affects the use or value of the Buyer's Unit or the amenities available for the Buyer's use (paragraph 7(a) of the Special Provisions).

(c) Buyer fails to qualify for permanent financing if Paragraph C-24 of the DROA has been selected.

9. Paragraph 11 of the Special Provisions provides that the Buyer acknowledges that he or she has examined (and agrees to be bound) by the following:

(a) The Condominium Map (including floor plans, exterior elevations and site map for the Project);  
(b) Escrow Agreement;  
(c) The Declaration of Condominium Property Regime and the By-Laws of the Association of Unit Owners;  
(d) Specimen form of the Apartment Deed;  
(e) Disclosure Abstract; and  
(f) The Final Public Report (or Supplementary Public Report, if any) an effective date having been issued by the Real Estate Commission of the State of Hawaii.

10. Paragraph 12 of the Special Provisions indicates that Seller is giving no warranties relating to construction, design, materials or workmanship of the Unit being bought or the common elements within the . Is disclaiming all such warranties. Buyer is cautioned to have his own inspection of the property, the common elements and the Unit. Seller will assign to the Association of Unit Owners its rights under one year warranties following substantial completion, given by the contractor in connection with its construction of subdivision improvements.

11. Under Subparagraph 2(b) of the Special Provisions, a Buyer shall be required to deliver a proxy or other authorization in favor of Developer to vote the Buyer's Unit in connection with electing the members of the Board of the Association. To the extent legally permissible, such proxy or authorization shall expire only when Developer shall no longer own at least 10% of the Units in the Project.

12. The Special Provisions also contains a mandatory arbitration clause in the event of disputes between the Seller and Buyer.

13. A Disclosure Statement is attached to the Sales Contract which discloses a number of risks associated with owning a Unit in the Project. A prospective buyer is urged to review such Statement closely before agreeing to buy a Unit. A copy of the Disclosure Statement is attached as Exhibit L to this Public Report.

The Summary contained in this Exhibit is merely a summary and is not intended to be a substitute for the Buyer's careful review of the Sales Contract.

End of EXHIBIT "F"

EXHIBIT "G"

SUMMARY OF THE MATERIAL PROVISIONS OF THE ESCROW AGREEMENT

Summary of the Condominium Escrow Agreement between the Developer and Fidelity National Title & Escrow of Hawaii, Inc., a Hawaii corporation.

1. All deposits will be paid to Escrow. A copy of each Sales Contract and all payments made to purchase an Unit shall be turned over to the Escrow Agent.

2. Refunds. A Buyer shall be entitled to a return of his funds, and Escrow shall pay such funds to such Buyer, without interest, in accordance with the Sales Contract if any of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Final Report, the purchaser has exercised his right to cancel the contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or

(d) A purchaser has exercised his right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

Upon such refund, Escrow Agent shall be entitled to a reasonable fee not less than \$25 or a fee commensurate with the work done by Escrow prior to cancellation.

3. Requirements Prior to Disbursement of Buyer's Funds. Escrow Agent shall make no disbursements of Buyer's funds, pursuant to paragraph 5 of the Escrow Agreement until all of the following have occurred:

(a) the Real Estate Commission has issued a final public report (the "Final Report") on the Project;

(b) Seller or Seller's attorney has given a written opinion to Escrow stating that all of the requirements of Sections 514A-39.5 (as to contingent final public reports), 514A-40 (as to final public reports) and 514A-63 of the Hawaii Revised Statutes, then applicable to the Project, have been satisfied.

(c) Seller shall have given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract.

4. Purchaser's Default. Seller must notify Escrow in writing if Purchaser defaults, and must certify that Seller has canceled the Purchaser's Sales Contract. After such cancellation Escrow will treat the Purchaser's funds less Escrow's cancellation fees as belonging to the Seller.

5. Use of Purchaser's funds for Construction of CPR Improvements. The Agreement provides also that the Escrow Agent shall disburse from the Net Sales Proceeds it receives up to \$4.1 Million. Such payments are to be made directly to Unlimited Construction Services, Ltd, in amounts and at the times authorized by Griffith Construction Consultants LLC, the Construction Manager, under a construction contract for certain improvements in the Project. The Developer has placed into such escrow account \$950,000, which shall be disbursed as a portion of such \$4.1 Million.

END OF EXHIBIT "G"

EXHIBIT "H"

AMENDED DISCLOSURE ABSTRACT FOR  
KŪLANA

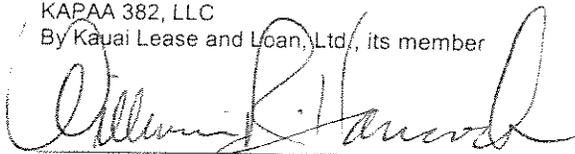
Dated: August 1, 2005

Pursuant to the Hawaii Revised Statutes, Section 514(A)-61, the Developer of KŪLANA makes the following disclosures:

1. The Developer of the project is KAPAA 382, LLC, 4569 Kukui Street, Suite 200, Kapaa, HI 96746, telephone (808) 822-7711 Extension 230.
2. See Exhibit "I" to the Public Report for an estimate of the projected maintenance fees. The Developer hereby certifies that the estimations have been based on generally accepted accounting principles.
3. Pursuant to the terms of final subdivision approval, the Developer must complete the following: water system, public and private roadway and utilities. Developer's contracts call for a scheduled completion by December 31, 2005. Such completion dates are subject to extensions for events beyond the parties' control.
4. All of the Units in the project are to be used for agriculture activities and for such residential uses as Farm Dwelling as permitted by law and under the Association Documents. No apartments shall be used for hotel or timeshare or commercial purposes, except as permitted by law.
5. The real estate agent for the project is VISION PROPERTIES, INC., 1070 Kuhio Highway, Kapaa, HI 96746, telephone number is (808) 822-1141. The designated agent/broker is Edward MacDowell.
6. The Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. The reserves have been set at an amount sufficient to fund the estimated cost of replacement of the depreciable common elements. Repair and maintenance of ditches, lake and any recreational amenities, etc. are anticipated to be non-capital ordinary maintenance expenditures. The anticipated public road and water system will be dedicated to the County of Kauai for future maintenance. Should Developer determine to install additional depreciable common elements, a revised depreciation and replacement reserve schedule shall be prepared. If the changes are material, such revised schedule shall be filed with the Real Estate Commission as part of the filing for the Final Public Report.
7. The Developer discloses Common Interest for the Project is divided equally among the units in the Project.
8. The Developer is not giving any warranties on the materials and workmanship of the Units or the common elements. Developer will assign to the Association of Unit Owners those one-year warranties from the contractor doing the subdivision improvements.
9. The Project is to be self-managed by the Unit Owners, subject to the right of Declarant or the Owners to appoint a corporate managing agent.

KAPAA 382, LLC

By William R. Hancock, its member



William R. Hancock, president

**EXHIBIT "I"**

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

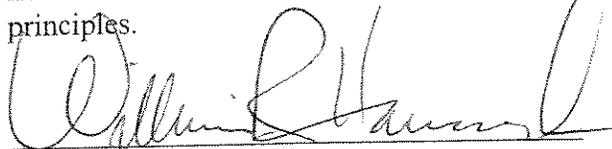
<u>Apartment</u>	<u>Monthly Fee x 12 months</u>	=	<u>Yearly Total</u>
ALL UNITS	\$135.00	=	\$1,620.00

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

Estimate of Maintenance Fee Disbursements:

	<u>Monthly Fee x 12 months</u>	=	<u>Yearly Total</u>
Utilities and Service:			
Electric	\$ 500.00		\$ 6,000.00
Potable Water [X] common elements	100.00		1,200.00
Irrigation Water [X] common elements	1,666.67		20,000.00
Water Feature Maint [common element]	2,500.00		30,000.00
Maintenance, Repairs and Supplies:			
Roads and Common Drives	833.33		10,000.00
Landscaping and Grounds	2,500.00		30,000.00
Insurance	666.67		8,000.00
Reserves (*)	3,333.33		40,000.00
Audit and Management Fees	833.33		10,000.00
Legal	416.67		5,000.00
Supplies/Materials Association	833.33		10,000.00
Adjacent Parcel Contributions	<1,175.00>		<14,100.00>
Contingency	896.67		10,760.00
TOTAL	\$13,905.00		\$166,860.00

WILLIAM R. HANCOCK, President of Developer of the condominium project KŪLANA, hereby certifies that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.



WILLIAM R. HANCOCK

Date: August 1, 2005

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves," the Developer has not conducted a reserve study in accordance with Section 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii. Administrative Rules, as amended.

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

## EXHIBIT "J"

### SUMMARY OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KŪLANA

This is a summary of the recorded Declaration of Covenants, Conditions and Restrictions (the "CCRs") for the condominium Project. This is a summary of the restrictions applicable to all subdivided lots upon which this Project is located. It does not affect any "Remnant Lot" (on which is located Unit 27A or Unit 27B, however. The CCRs were imposed in connection with the County of Kauai's approval of the subdivision of the land on which the Project is to be located.

This summary is not intended to recite the actual provisions of the CCRs, nor to cover every issue in which a purchaser might have interest. A prospective purchaser is urged to obtain a full copy of the CCRs from the Developer or its sale agent and to review the CCRs closely prior to entering into an agreement to purchase a unit in this Project.

#### THE GENERAL PROVISIONS OF THE CCRs.

Article I defines many terms used in the document. Articles II and III have to do with the organization of the subdivision, the imposition of Design Rules affecting any improvement to be made by an Owner. It also creates a Design Review Committee to enforce the Rules. It contains provisions for the possible annexation of other properties to be covered by the CCRs at a later date; imposes the obligations of owners to observe the restrictions; and provides for further and supplementary restrictions, on certain conditions.

#### THE USE OF CONDOMINIUM PROPERTY REGIMES ("CPR'S") FOR OWNERSHIP AND DEVELOPMENT.

Article IV contains the method use of CCRs as a vehicle for ownership and development of the Project as a whole.

#### DESIGN AND USE CRITERIA FOR THE PROJECT.

Article V establishes general design restrictions applicable to this project. There are restrictions on siting of improvements, prohibition of certain noxious uses, requirement for submission of design documents for review and evaluation by a Design Review Committee, and methods of design and construction, and the keeping and maintenance of pets and animals on a lot.

#### ASSOCIATION.

Article VI establishes procedures for enforcement of the CCRs.

Article VII describes past and possible future agricultural uses which entail the existence of many factors which might be found to be objectionable to prospective owners. This Article provides notice to an owner of the negative factors which might exist in buying a condominium unit within the Project..

Article VIII establishes the means for dealing with certain issues arising when enforcing the observation of the CCRs or the breach of obligations under the CCRs, and provides for the use of certain remedies including the use of arbitration.

Article IX deals with the responsibility of each unit owner to protect the Association and other owners from every act of each owner.

#### MISCELLANEOUS.

Article IX covers several miscellaneous items. It includes provisions for the transfer of control to the Owners of the Project following the initial period of control by the Developer. It addresses transfer of property to a governmental entity and the impact of Project Documents on subsequent transferees. It also provides for the method of giving notice of certain matters related to the CCRs. It also allows the Association to enter Units to inspect conditions, with prior notice.

The document establishes the duration of the CCRs (total 55 years from the date of adoption) and mandates retention of all covenants required as a condition of subdivision approval of the County of Kauai. It also provides a means of alteration of the CCRs (75% vote, if permitted under other controls affecting the Project). Other miscellaneous provisions include, such matters as how the covenants should be interpreted in a court of law, the severability of clauses if any one is found to be illegal and similar matters. Finally it sets forth requirement for the maintenance of the stream ditches located within the Project.

## EXHIBIT "K"

### PROVISIONS FOR MAKING CHANGES TO UNITS

The Declaration of Condominium Regime and other Project documents contain significant conditions to changes to be made to a Unit. Among the most important provisions are Paragraphs 20.1, 20.2 and 20.3 of the Declaration which provide as follows:

"20.1 Construction and Other Changes to Units.

Each Unit Owner at his sole option, at any time and from time to time, without the consent or joinder of the Association, the Board, any person having an Interest in a Lot or any person having an Interest in a Unit (other than the holder of a mortgage lien affecting the Owner's Unit, if such mortgage requires consent of such holder,) shall have the right to improve, renovate, remodel, make additions to, enlarge, remove, replace or restore the Buildings and Improvements to or in the Owner's Unit or portions thereof or upon the Exclusive Area appurtenant to Owner's Unit (the foregoing are referred to singly, as a "Change" and collectively as "Changes") upon the conditions set forth in this Section 20.

20.2 Conditions to Making Changes. The following conditions shall apply to an Owner making Changes to his Unit:

- (a) All Changes shall comply with the Declaration and the other Association Documents;
- (b) All Changes within or to a Unit or its appurtenant Exclusive Area located on any of Lots 1 through 5 and Lots 7 through 20 inclusive shall comply with the Master CCRs Declaration. The Master CCRs Declaration provides, in pertinent part, that no Building or Improvement may be constructed, erected or maintained nor may any Agricultural Activity be undertaken, on any Lot or Unit until plans therefor have been submitted to and approved by the Design Review Committee.
- (c) Notwithstanding (b), Changes within or to a Unit or its appurtenant Exclusive Area located on any of Remnant Lots shall not be required to comply with the Master CCRs Declaration.
- (d) All Changes shall conform with the CZO and the applicable Laws, including the requirements for issuance of building and, if the Change relates to construction of a Farm Dwelling, complying with permits by the County for Farm Dwellings and other Improvements.
- (e) The Improvements and Buildings constituting the change are within the uses permitted under Section 10 of the Declaration.
- (f) Any such Change shall be at the expense of the Unit Owner making the Change (who shall indemnify the Association and the other Unit Owners from all such costs) and such Change shall be expeditiously made and done in a manner that will not unreasonably interfere with the use or enjoyment by Owners of other Units, the limited common elements appurtenant to each of such Units or the Common Elements.
- (g) During the course of making such Change, the Unit Owner making such Change will cause to be maintained at his expense builder's all-risk insurance in an amount considered reasonably prudent. At the request of the Association, the Owner making the Change shall cause the Association to be named as an additional insured and shall deposit with the Association evidence of such insurance.
- (h) The Unit Owner making the Change shall have the right to utilize, relocate and realign existing and/or to develop additional, central and appurtenant installations for services to the Unit affected by such Change for electricity, sewer and other utilities and services; provided that the same shall not cause any permanent interruption in the services of such utilities to any other Unit Owners and shall not otherwise unreasonably interfere with another Unit Owner's use or enjoyment of his Unit, the Common Elements or the Unit's appurtenant limited common elements.
- (i) If notwithstanding Paragraph 20.1 above, the consent or joinder of another Unit Owner is required in connection with making the Change, or seeking building or other permits with a Governmental Entity or person providing utility services, then the Unit Owner shall be deemed to have a special power of attorney from each such other Unit Owner to provide such consent or joinder; provided that all cost and expense relating to the Change shall be borne by the Owner making the Change.

20.3 Conditions to Changes Relating to a Farm Dwelling. In addition to the conditions set forth in Paragraph 20.2 above, an Owner whose Change relates to constructing a Farm Dwelling may not do so until the completion of roadway and other subdivision Improvements made in accordance with the County Permit and with the Land Use Agreement and the acceptance thereof by the County ("County Permit Requirements"), unless such condition is waived by the County and Declarant or unless the Change is to be made within or to a Unit or its appurtenant Exclusive Area which is located on any of Remnant Lots."

End of EXHIBIT "K"

## EXHIBIT "L"

### Additional Disclosure Statement.

1. Standards for Future Development. Each Unit being offered for sale is a Unit within a condominium project, and such Unit is not a legally separate lot. The standards for improvements within the lots on which the Project is located (the "Land") are different and may be less onerous than the standards required if each Unit consisted of a subdivided lot.

The Condominium Property Regime for the Project imposes an additional set of restrictions and obligations, apart from those imposed by the land use and other requirements of the County of Kauai and the State.

Except as to those Units located on a Remnant Lot, all Units in the Project are also subject to a Master Declaration of Covenants, Conditions and Restrictions ("CCRs"). The CCRs also impose additional restrictions, such as on the types of permitted uses and locations on an Exclusive Area on which residences and other improvements may be constructed.

Those additional CCRs also include Guidelines for the design of improvements that must be met, and a Design Review Committee, whose approval is required before improvements, including homes, can replace the initial sheds on an Owner's Unit.

Although the foregoing imposed restrictions are intended to benefit the Project, they do impose a set of restrictions of which a prospective owner should be aware.

2. Agricultural and other uses. The Project is located principally within areas zoned for agricultural purposes, and to a lesser extent within an area zoned "Open". However, the CCRs imposed on all Units (other than those located on Remnant lots) require agricultural uses and activities.

An Owner is required as a condition of obtaining building approvals to promise to undertake and then to maintain Agricultural Activities in connection with his Unit. Such Agricultural Activities (which include cultivation of crops or breeding of animals, for example) are defined by the County, may change from time to time, and may be applied in different ways depending on the type of permit sought and the timing thereof.

The CCRs are not intended to restrict the kinds of Agricultural Activities by a Unit Owner. An Owner may find offensive such Agricultural Activities, such as the cultivation of crops or the breeding of animals.

If Unit is permitted to be used for residential purposes, such would be as a "Farm Dwelling" as defined under the County zoning code (CZO). This will require that the owner enter into an agreement with the County to undertake and later maintain Agricultural Activities in connection with his Unit.

After an Owner obtains his own permit for a Farm Dwelling, the Owner may be obligated without receiving any compensation to join in and consent to applications to the County by other Unit owners for building and other permits, if the Unit belonging to such other Owner is located on the same legal lot as the original Owner.

3. Permitted Uses. Subject to the terms of the Declaration, the Owner of a Unit other than those designated with the letter "x" or "y" is permitted to have a Farm Dwelling, subject to obtaining County permits and other approvals. Units designated with the letter "x" or "y" is permitted to have structures and improvements (other than a Farm Dwelling) as permitted under CZO.

Each legal lot on which are located several Units (as opposed to a Unit itself or its appurtenant Exclusive Area) is also permitted a single "Guest House". Seller has reserved the right to assign such right to one Unit owner per legal lot, on such terms and conditions as Seller may impose. Any such Guest House is subject to County rules and may not be sold (except to another owner of a Unit located on the same lot) separately from the Unit to which such right is appurtenant.

#### 4. Construction of Subdivision Improvements by Seller.

Seller entered into contracts with a bonded contractor to complete the subdivision improvements imposed by the County for subdivision approval. Such improvements are divided into improvements made to existing and future County roads and facilities ("Off-site Improvements") and improvements for roads and utilities within the Project Land ("On-site Improvements").

No building permits for Unit Owners will be issued until completion of the Subdivision Improvements and the County's acceptance thereof. This may delay the ability of an Owner to obtain permits and to construct improvements to his Unit.

Although contracts to complete the Subdivision Improvements call for scheduled completion by December 31, 2005, that is not a guaranty, and the completion may be extended for events beyond the Seller's control.

All warranties for the quality of the workmanship and materials of the Subdivision Improvements will be given by the Contractor, not the Seller, and will be limited to one year after substantial completion of the Subdivision Improvements.

5. Construction Risks of Unit Owners. There are risks involved in an Owner's purchase of a Unit. Such risks include issuance of County permits, approvals by the Design Review Committee, the prior completion and acceptance by the County of Subdivision Improvements, the installation of adequate utility services and the cooperation of other Unit Owners.

Moreover, even after approvals are obtained, there may be shortages of materials or contractors, the availability of utility service may be limited, and the cost of making such improvements by an owner may not be reasonable or may exceed the Owner's ability to pay for them.

6. Reserved Rights of Seller. Exhibit D to the Final Public Report contains a list of rights that Seller has reserved and may exercise without the consent or joinder of a Unit Owner. A prospective buyer is urged to review that list of such reserved rights.

7. Financial information. The Project is subject to two mortgage loans totaling \$14 Million. The proceeds from the loans have been disbursed to Seller. A portion of such funds has been placed in an escrow account to pay for the off-site portion of the Subdivision Improvements.

The payment estimated at \$4.1 Million for the on-site portion of the Subdivision Improvements required by the County will be paid from sales proceeds from sales of the Units and from sales of any legal lots which are sold into a separate escrow fund meeting the requirements of the Condominium Act, which the Lenders have agreed may be disbursed to pay for the remainder of Subdivision Improvements. The availability of such funding is based on the sales of Units or the availability of additional funding from the Seller.

8. Prior Agricultural Use. The Land was previously subject to long-term agricultural use. Title to a condominium unit will be subject to disclosures relating to such prior use and a Unit Owner as a condition of receiving his deed to his Unit will acknowledge that he takes ownership to his Unit with full knowledge of potential residual effects of prior, as well as possible future, agricultural uses, in which Seller was not a participant. The Project is subject further to reserved rights in favor of Lihue Plantation Company and its successors to continue various commercial agricultural uses near the Project. Each Owner of a Unit will be required to acknowledge and accept the risks and consequences of prior and future agricultural activities in and near the Project.

KAPAA 382, LLC.

\_\_\_\_\_  
\_\_\_\_\_, its member  
(Seller) \_\_\_\_\_  
Date

\_\_\_\_\_  
\_\_\_\_\_  
Date

\_\_\_\_\_  
\_\_\_\_\_  
(Buyer) \_\_\_\_\_  
Date