

CONDOMINIUM PUBLIC REPORT

Prepared &
Issued by: Developer: KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC
Address: c/o Elite Properties of America, Inc.
6385 Corporate Drive, Suite 200
Colorado Springs, Colorado 80919

Project Name(*): MALIE WAI
Address: 5-1579 Kuhio Highway, Suite 202
Kapaa, Kauai, Hawaii 96746

Registration No. 5991

Effective date: October 15, 2010
Expiration date: November 15, 2011

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY:**
(yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.
- FINAL:**
(white) The developer has legally created a condominium and has filed complete information with the Commission.
 No prior reports have been issued.
 This report supersedes all prior public reports.
 This report must be read together with _____
- SUPPLEMENTARY:**
(pink) This report updates information contained in the:
 Preliminary Public Report dated: _____
 Final Public Report dated: June 22, 2006
 Supplementary Public Report dated: _____
- And Supersedes all prior public reports
 Must be read together with _____
 This report reactivates the _____
public report(s) which expired on _____

(*) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104/0107

SPECIAL ATTENTION

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

1. There are presently two residential structures, one non-residential structure and two shade sheds on the property, all of which may be defined as an "apartment" under the condominium property act.
2. This public report does not constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and is not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.
4. Facilities and improvements normally associated with County-approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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General Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

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

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

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

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

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

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

Operation of the Condominium Project

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

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC Phone: (719) 592-9333
c/o Elite Properties of America, Inc.
6385 corporate Drive, Suite 200
Colorado Springs, Colorado 80919

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):

Gary A. Tobey, Manager

Real Estate Broker *: KOA PROPERTIES LAND AND HOMES, LLC Phone: (808) 828-6644
4270 Lighthouse Rd. Suite D (Business)
Kilauea, Kauai, Hawaii 96754

Escrow: TITLE GUARANTY ESCROW SERVICES, INC. Phone: (808) 533-6261
235 Queen Street (Business)
Honolulu, Hawaii 96813

General Contractor *: Phone: (808)
(Business)

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

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

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

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

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The Declaration for this condominium is:

Proposed

Recorded - Bureau of Conveyances: Document No. 2005-193219

Book _____ Page _____

Filed - Land Court: Document No. _____

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

First Amendment to Declaration of Condominium Property Regime of Malie Wai dated November 3, 2005, recorded as Document No. 2005-244297; Second Amendment to Declaration of Condominium Property Regime of Malie Wai dated June 30, 2010, recorded as Document No. 2010-096352 and Third Amendment to Declaration of Condominium Property Regime of Malie Wai dated September 14, 2010, recorded as Document No. 2010-138343.

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

The Condominium Map for this condominium project is:

Proposed

Recorded - Bureau of Conveyances Condo Map No. 4077

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]:

Second Amendment to Declaration of Condominium Property Regime of Malie Wai dated June 30, 2010, recorded as Document No. 2010-096352.

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

The Bylaws for this condominium are:

Proposed

Recorded - Bureau of Conveyances: Document No. 2005-191220

Book _____ Page _____

Filed - Land Court: Document No. _____

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

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

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

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

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

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

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

2. **Developer**

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

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

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: 5-1105 and 5-1111 Kuhio Highway
Kilauea, Kauai, Hawaii 96741

Tax Map Key: (TMK): (4) 5-1-005-025,
CPR Nos. 001, 002, 003,
004 and 005

[] Address [] TMK is expected to change because _____

Land Area: 16.29 [] square feet [X] acre(s) Zoning: Agriculture

Fee Owner: KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC
 c/o Elite Properties of America, Inc.
 6385 Corporate Drive, Suite 200
 Colorado Springs, Colorado 80919

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: 5 Floors Per Building 1
 Exhibit "A" contains further explanations.
3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other Shade structures constructed principally of metal and shade cloth

4. Permitted Uses by Zoning:

	No. of Apts.	<u>Use Permitted by Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>2</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: Sheds	<u>2</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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

Yes No

5. Special Use Restrictions:

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

Pets: Household pets may be kept consistent with any applicable law and restrictive covenants applicable to the Project. Animals shall not include those defined as pests under §150-A-2 HRS and prohibited from importation under §141-2, §150-5, or §150-6 HRS.

Number of Occupants: _____

Other: The Units of the Project may only be occupied and used only for agricultural uses. Residential uses currently require the execution of a Farm Dwelling Agreement with the County of Kauai. See sample Farm Dwelling Agreement attached hereto as Exhibit "I".

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>
Unit A	<u>1</u>	<u>2/2 1/2</u>	<u>2,641</u>	<u>3,060</u>	<u>Pool, Spa, Pond Deck Outdoor lanais, Decks, Walkways and Garage</u>
Unit B	<u>1</u>	<u>3/3 1/2</u>	<u>3,320</u>	<u>3,725</u>	<u>Outdoor lanais, Decks Walkways, Pool, Spa Pond and Garage</u>
Unit C	<u>1</u>	<u>0</u>	<u>0</u>	<u>20</u>	<u>Shade Structure</u>
Unit D	<u>1</u>	<u>0</u>	<u>0</u>	<u>20</u>	<u>Shade Structure</u>
Unit E	<u>1</u>	<u>-1</u>	<u>1,752</u>	<u>949</u>	<u>Agriculture building</u>

Total number of Apartments: 5

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

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

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

Permitted Alterations to Apartments:

See Exhibit "B"

Apartments Designated for Owner-Occupants Only:

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

7. Parking Stalls:

Total Parking Stalls: 4*

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>2</u> Units A & B	_____	_____	_____	_____	_____	<u>4</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>4</u>	_____	<u>0</u>	_____	<u>0</u>	_____	<u>4</u>

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

* Units C, D and E have ample space for parking within its limited common element area.

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool

Storage Area

Recreation Area

Laundry Area

Tennis court

Trash Chute/Enclosure(s)

Other: _____

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

There are no violations.

Violations will not be cured.

Violations and cost to cure are listed below.

Violations will be cured by _____
(Date)

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

N/A

11. Conformance to Present Zoning Code

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

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

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

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

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

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

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

D. Common Elements, Limited Common Elements, Common Interests:

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

- described in Exhibit "C" .
 as follows:

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

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit "D" *.

as follows:

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

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

described in Exhibit _____.

as follows:

Units A, B, C, D and E: 20% each.

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

Exhibit "E" describes the encumbrances against the title contained in the title report dated July 27, 2010 and issued by Title Guaranty of Hawaii, Inc.

Blanket Liens:

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

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
MORTGAGE	Lender has priority over Buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. Should the lender terminate Buyer's sales contract, Buyer shall be entitled to a refund of all deposits, less escrow cancellation fee.

F. Construction Warranties:

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

1. **Building and Other Improvements:**

None: Units are sold "as is".

2. **Appliances:**

None. All appliances are sold "as is".

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

The construction of Unit A was completed in July 8, 2008.
The construction of Unit B was completed in May 9, 2008.
The construction of Unit C and D were completed in December 2005.
The construction of Unit E was completed in 2003.

H. **Project Phases:**

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

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

IV. CONDOMINIUM MANAGEMENT

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

Initial Condominium Managing Agent: When the developer or the developer's 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 _____

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

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

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

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

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

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

None Electricity (____ Common Elements only ____ Common Elements & Apartments)

Gas (____ Common Elements only ____ Common Elements & Apartments)

Water Sewer Television Cable

Other _____

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract
Exhibit "G" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated November 29, 2005.
Exhibit "H" contains a summary of the pertinent provisions of the escrow agreement.
- Other _____

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

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

2. **Rights Under the Sales Contract:** Before signing the sales contract, prospective buyers should ask to see and carefully review all 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 online. Please refer to the following sites:

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

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

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

This Public Report is a part of Registration No. 5991 filed with the Real Estate Commission on June 22, 2006.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

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

1. Unit E is an agricultural use unit with no farm dwelling entitlement. In the event an additional farm dwelling or other residential entitlement shall become available to the Project such entitlement shall be allocated to Unit E.
2. The prospective purchaser (except for the purchaser of Unit E) shall have the right to build such farm dwelling at purchaser's expense. The purchaser shall also, in such event, file the "as-built" certificate within thirty days of completion of the farm dwelling in conformance with Section 514A-12, Hawaii Revised Statutes, and record an amendment of the Declaration of Condominium Property Regime ("Declaration") to describe the improvements. The County of Kauai Planning Department requires, in order to process the necessary permits for the construction of a residence, authorization from at least 75% of the legal and equitable ownership of the entire project, consistent with the Declaration and the Bylaws ("condominium documents").
3. Except as limited specifically by the condominium documents and subdivision restrictive covenants (if any), all uses permitted in an Agricultural Zone are permitted. Uses in one zone are not the same as in the other, and the prospective purchaser should consult the appropriate state and county agencies for information on uses and construction in the respective zones.
4. A buyer should understand that all development and use of the property shall be in compliance with County codes and ordinances, that owners in this condominium project will not necessarily receive the same County benefits as owners of approved subdivided lots and that owners who develop their limited common element later than others may find that land use and zoning charges or insufficient utility capacities may thwart their expectations.
5. The property has been dedicated to agricultural use. Upon dedication of the land to agricultural use, the owner forfeits the right to change the use of the land to a use other than the approved agricultural use for a period of 10 years. Failure to observe the restriction on the use of the land shall cancel the dedication and special tax assessment privileges retroactive to the date of the dedication. The difference in the amount of taxes that were paid and those that would have been due from the assessment in the higher use shall be payable with a ten percent per annum penalty. Once the dedication expires, the unit owner can either re-dedicate or cease the agricultural use. Initially, the dedication applies to the entire property; however, once the CPR is created, the County applies the dedication to each unit and appurtenant limited common area. This means that the unit owner has the option of either continuing to enjoy the lower real property tax rate and continue agricultural use, or cease the agricultural use and be taxed at the higher residential rate. The County Tax Assessor will inspect the units and appurtenant limited common areas in order to access the unit for tax purposes and will send the property owner notice of the new appraised value and rate at which the unit will be taxed. At that point the unit owner can elect what to do.
6. The use of hazardous material is restricted except as provided under Article H of the Declaration and all hazardous materials laws.
7. For the purpose of Exhibit "F" of the Supplementary Public Report the Developer has not conducted a reserve study in accordance with § 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.
8. Purchasers of Units should be aware that Chapter 205, Hawaii Revised Statutes ("H.R.S."), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

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

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

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

9. The Waiakalua Reservoir ("Reservoir"), which is located in the vicinity of the Project, is owned by the Kilauea Farms Community Association ("KFC Association") and has been governed by the Declaration of Protective Covenants, Conditions and Restrictions for Kilauea Farms (the "KFC Covenants"). The KFC Covenants recently expired. The Reservoir, in its current configuration, is not in compliance with various State of Hawaii, Department of Land and Natural Resources ("DLNR") regulations. Certain repairs to the Reservoir are needed in order to bring the Reservoir into compliance with the DLNR regulation or, alternatively, the Reservoir may be modified and/or reconfigured to remove the Reservoir from DLNR's oversight.

The KFC Association is currently under contract to sell the Reservoir to a non profit corporation that will determine how to proceed with the Reservoir. Whether the Reservoir is owned by the KFC Association or another party, the Reservoir owner will be investigating its options concerning the Reservoir and its operation. The various Reservoir options include, among others, reducing the size of the Reservoir, draining the Reservoir and returning the area to open space, or undertaking repairs to the Reservoir to address the DLNR noted deficiencies.

What option will be pursued and when is unknown at this time. What is known is that some action is required concerning the Reservoir in order to address the current Reservoir related violations noted in the DLNR's April 21, 2009 letter, a copy of which is attached for your review as Exhibit "L".

The Developer is not making any representations or warranties concerning the Reservoir and its impact upon the Project, and encourages Buyer to investigate the Reservoir situation as part of its overall due diligence investigation of the Project.

10. Portions of the earthen wall forming the Reservoir may be located on Unit D or Unit E. If portions of the earthen wall forming Reservoir are located on Units D or E, and the owners of Units D and E are determined to be responsible for maintaining, repairing or reconstructing the portions of the earthen walls located on their respective units, the owner of Unit E shall be solely responsible for such work as set forth in Exhibit "K".

11. HRS 514B – New Condominium Law

A new condominium law for the State of Hawaii took affect as of July 1, 2006, and is codified as Hawaii Revised Statutes, Chapter 514B ("HRS 514B"). The former condominium law, found at Hawaii Revised Statutes Chapter 514A, will continue to be applicable to this Project, subject to certain sections being superseded by HRS 514B. Buyers should retain counsel to answer any questions they may have with regard to the effect HRS 514B will have on this project.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC

Owner/Developer

By 
GARY A. TOBEY
Its Manager

September 14, 2010
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

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

EXHIBIT "A"

DESCRIPTION OF BUILDINGS

(a) Unit A consists of a one story, two (2) bedroom, two and a half (2 1/2) bathrooms, a kitchen, living room, dining room, laundry room, walk-in closets and powder room with an enclosed living area of 2,641 square feet; outdoor lanais, decks and walkways with an area of 849 square feet; a pool, spa and pond deck with an area of 1,554 square feet; and a garage with an area of 657 square feet, for a total area of 5,866 square feet. Unit A is located on a 1.43 acre limited common element.

(b) Unit B consists of a one-story, three (3) bedrooms, three and a half (3 1/2) bathrooms, a kitchen, living room, dining room, a study, powder room, laundry room, walk-in closets, and storage, with an enclosed living area of 3,320 square feet; outdoor lanais, decks and walkways with an area of 1,936 square feet; a pool, spa and pond with an area of 1,058 square feet; and a garage with an area of 731 square feet, for a total area of 7,173 square feet. Unit B is located on a 1.779 acre limited common element.

(c) Unit C consists of a 20 square foot shade structure constructed of metal posts and shade cloth, located in the southern portion of a 1.060 acre limited common element. Unit C is located on a 1.06 acre limited common element.

(d) Unit D consists of a 20 square foot shade structure constructed of metal posts and shade cloth, located in the southern portion of a 1.060 acre limited common element. Unit D is located on a 1.02 acre limited common element.

(e) Unit E consists of a nonresidential agricultural accessory building consisting of three workspace rooms, a kitchen, a bathroom, an entry room and storage with an enclosed living area of 1,752 square feet plus a wrap around lanai of 949 square feet for a total area of 2,701 square feet. Unit E is located on an 11.003 acre limited common element.

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

EXHIBIT "B"

ALTERATION OF PROJECT

Section XVI, ALTERATION OF INDIVIDUAL CONDOMINIUM UNIT of the Declaration provides that:

(a) Generally. Individual unit owners may remodel, expand or otherwise alter their unit, provided it is permitted by and done in complete accordance with all applicable ordinances, codes, rules, regulations or other requirements in force at the time of said construction. Such construction shall be further subject to the requirements that it does not violate this Declaration, the Bylaws or any Restrictive Covenants of record for the Project.

Except as provided to the contrary elsewhere herein, said alterations shall not require the consent or permission of other unit owners or the Association. However, any newly constructed improvements shall maintain a minimum setback of the greater of the distance required by subdivision or Project Protective Covenants, or five (5) feet from all property lines (including all individual limited common element land area perimeter boundaries); and provided, further, that said newly constructed improvements shall not alter the essential nature and character of the project, and shall not unreasonably interfere with any other unit owner's enjoyment of their unit. All alterations shall be made at the expense of the unit owner making said alterations, and shall be expeditiously made and in a manner that will not unreasonably interfere with the other unit owner's use of his land area. Any alterations of a unit subject to a mortgage or agreement of sale may require the consent of the lender and/or fee owner, as their interests may appear.

(b) Owner to Amend Declaration. the owner of any altered unit shall have the right and duty, and shall be required to amend this Declaration and the Condominium Map to reflect any such alterations. If required by the Condominium Property Act, promptly (currently 30 days) after completion of such alterations, the owner of the altered unit shall record an amendment to this Declaration in the Bureau of Conveyances, State of Hawaii, together with a complete set of floor plans and elevations of the portions of the Project altered, certified as-built by a registered architect or professional engineer. As long as all legal requirements are met as required herein, all other unit owners, by acquiring an interest in any other unit, shall be deemed to have been granted a power-of-attorney from all other unit owners to execute an amendment to this Declaration solely for the purpose of describing the alterations to his respective unit. This power-of-attorney shall be deemed coupled with each owner's interest in his unit and shall be irrevocable.

* SPECIAL NOTATION: When applying for building permits, use permits, zoning permits or any other land use permits with governmental agencies, 75% of the owners of the Project may be required to sign the permit forms. In such case, all unit owners shall be required to sign such permit applications and related documents as may be necessary for any unit owner to obtain such permits.

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

EXHIBIT "C"

COMMON ELEMENTS

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

1. The land described in Exhibit "A", attached to the Declaration, in fee simple.
2. Easement AU-1, affecting units A, B and C for the benefit of Units B, C, D and E, for landscaping access and utility purposes, consisting of approximately 1.231 acres, as depicted on the Condominium Map; and
3. Easement U-1, affecting Units A, B and C for the benefit of Units B, C and D, for utility purposes, consisting of approximately 4,902 square feet, as depicted on the Condominium Map; and
4. All commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; and any and all other future elements and facilities in common use or necessary to the Project.
5. The landscaping, irrigation lines and hedge located on those portions of the Unit A Limited Common Element as shown on the Condominium Map.

EXHIBIT "D"

LIMITED COMMON ELEMENTS

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

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
A	1.43 acre
B	1.779 acre
C	1.06 acre
D	1.02 acre
E	11.003 acre

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. SETBACK (100 feet wide) for building purposes, as shown on File Plan No. 1646.
4. DESIGNATION OF EASEMENT "1" (15 feet wide) for irrigation purposes, as shown on File Plan No. 1646.
5. The terms and provisions contained in AGREEMENT dated March 16, 1977, recorded in Liber 12110 at Page 330, by and between the STATE OF HAWAII and C. BREWER AND COMPANY, LIMITED, regarding use of land, besides other land, for agriculture purposes.
6. The terms and provisions contained in AGREEMENT TO INCORPORATE AGRICULTURAL RESTRICTIONS INTO INSTRUMENTS OF CONVEYANCE dated June 30, 1980, recorded in Liber 15060 at Page 397, by and between HAWAIIANA INVESTMENT CO., INC., and the COUNTY OF KAUAI PLANNING DEPARTMENT.
7. The terms and provisions contained in DECLARATION dated February 23, 1981, recorded in Liber 15368 at Page 13.

Said Declaration was amended by instrument dated July 3, 1989, recorded as Document No. 90-064533.

NOTICE OF RELEASE dated April 26, 1988, recorded in Liber 21865 at Page 763.
8. The terms and provisions contained in DEED dated June 30, 1981, recorded in Liber 15662 at Page 345.
9. The terms and provisions contained in the FARM DWELLING AGREEMENT dated August 22, 1984, recorded in Liber 18148 at Page 533, by and between WILSON MINEO OKAMOTO and the COUNTY OF KAUAI PLANNING DEPARTMENT.
10. GRANT to CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, dated September 14, 1984, recorded in Liber 18184 at Page 602, granting an easement for utility purposes.
11. DESIGNATION OF EASEMENT "E-18" for electrical purposes, as shown on File Plan No. 1646.
12. GRANT to CITIZENS UTILITIES COMPANY, whose interest is now held by KAUAI ISLAND UTILITY CO-OP, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as VERIZON HAWAII INC., dated November 18, 1987, recorded in Liber 21690 at Page 214, granting an easement over said Easement "E-18".

13. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "MALIE WAI" CONDOMINIUM PROJECT dated --- (acknowledged June 13, 2005), recorded as Document No. 2005-193219.

Condominium Map No. 4077 and any amendments thereto.

Said Declaration was amended by instruments dated November 3, 2005, recorded as Document No. 2005-244297, and dated June 30, 2010, recorded as Document No. 2010-096352.

14. The terms and provisions contained in the following:

BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS dated --- (acknowledged June 13, 2005), recorded as Document No. 2005-193220.

15. GRANT to KAUAI ISLAND UTILITY COOPERATIVE and HAWAIIAN TELCOM, INC., dated May 10, 2006, recorded as Document No. 2006-153698, granting a perpetual right and easement for utility purposes over Easement "AU-1", being more particularly described therein.

16. PURCHASE MONEY MORTGAGE dated October 25, 2006, in favor of PULPIT ROCK INVESTMENTS, LLC, a California limited liability company and JBS FAMILY ENTERPRISES, LLLP, a Colorado limited liability limited partnership, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2006-224143.

SUBORDINATION AGREEMENT dated June 14, 2007, recorded as Document No. 2007-117506. Subordinates said above PURCHASE MONEY MORTGAGE to the lien of that certain MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT; AND FIXTURE FILING recorded as Document No. 2007-117504.

SUBORDINATION AGREEMENT dated June 14, 2007, recorded as Document No. 2007-117509. Subordinates said above PURCHASE MONEY MORTGAGE to the lien of that certain MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT; AND FIXTURE FILING recorded as Document No. 2007-117507.

The interest of PULPIT ROCK INVESTMENTS, LLC, a Colorado limited liability company, was assigned to SLW, LLC, a Colorado limited liability company, by ASSIGNMENT OF PROMISSORY NOTE AND PURCHASE MONEY MORTGAGE dated effective as of December 26, 2008, recorded as Document No. 2009-148949.

SUBORDINATION OF MORTGAGE dated as of September 22, 2009, recorded as Document No. 2009-148950. Subordinates said above Mortgage to the lien of that certain Mortgage recorded as Document No. 2009-148947.

SUBORDINATION OF MORTGAGE dated as of September 22, 2009, recorded as Document No. 2009-148951. Subordinates said above Mortgage to the lien of that certain Mortgage recorded as Document No. 2009-148948.

17. -AS TO UNIT NO. A:-

- (A) MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT; AND FIXTURE FILING dated June 14, 2007, in favor of FINANCE FACTORS, LIMITED, a Hawaii corporation, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2007-117504.
- (B) FINANCING STATEMENT made by and between KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, as Debtor, and FINANCE FACTORS, LIMITED, a Hawaii corporation, as Secured Party, dated June 29, 2007, and recorded as Document No. 2007-117505.
- (C) ADDITIONAL SECURITY ADJUSTABLE RATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT dated September 22, 2009, in favor of FINANCE FACTORS, LIMITED, a Hawaii corporation, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2009-148948 – covers the premises described herein, besides other premises.

18. -AS TO UNIT NO. B:-

- (A) MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT; AND FIXTURE FILING dated June 14, 2007, in favor of FINANCE FACTORS, LIMITED, a Hawaii corporation, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2007-117507.
- (B) FINANCING STATEMENT made by and between KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, as Debtor, and FINANCE FACTORS, LIMITED, a Hawaii corporation, as Secured Party, dated June 29, 2007, and recorded as Document No. 2007-117508.
- (C) ADDITIONAL SECURITY ADJUSTABLE RATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT dated September 22, 2009, in favor of FINANCE FACTORS, LIMITED, a Hawaii corporation, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2009-148947 – covers the premises described herein, besides other premises.

19. -AS TO UNIT NO. C:-

- (A) ADDITIONAL SECURITY ADJUSTABLE RATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT dated September 22, 2009, in favor of FINANCE FACTORS, LIMITED, a Hawaii corporation, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2009-148947 – covers the premises described herein, besides other premises.
- (B) ADDITIONAL SECURITY ADJUSTABLE RATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT dated September 22, 2009, in favor of FINANCE FACTORS, LIMITED, a Hawaii corporation, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2009-148948 – covers the premises described herein, besides other premises.

20. -AS TO UNIT NO. D:-

- (A) ADDITIONAL SECURITY ADJUSTABLE RATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT dated September 22, 2009, in favor of FINANCE FACTORS, LIMITED, a Hawaii corporation, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2009-148947 – covers the premises described herein, besides other premises.
- (B) ADDITIONAL SECURITY ADJUSTABLE RATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT dated September 22, 2009, in favor of FINANCE FACTORS, LIMITED, a Hawaii corporation, by KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, recorded as Document No. 2009-148948 – covers the premises described herein, besides other premises.

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

EXHIBIT "F"

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>
Unit A	\$20.00 x 12 = \$240.00
Unit B	\$20.00 x 12 = \$240.00
Unit C	\$20.00 x 12 = \$240.00
Unit D	\$20.00 x 12 = \$240.00
Unit E	\$20.00 x 12 = \$240.00

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

Estimate of Maintenance Fee Disbursements:

Monthly Fee x 12 months = Yearly Total

Utilities and Services

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

Maintenance, Repairs and Supplies

- Building
- Grounds
- Roadways

\$100.00 x 12 = \$1,200.00

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance

Reserves(*)

Taxes and Government Assessments

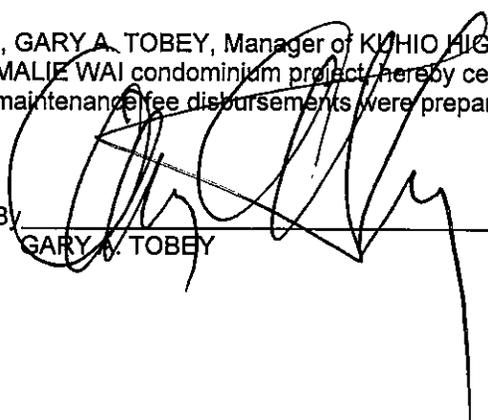
Audit Fees

Other

TOTAL

\$100.00 x 12 = \$1,200.00

I, GARY A. TOBEY, Manager of KOHIO HIGHWAY DEVELOPMENT COMPANY, LLC, the owner/developer for the MALIE WAI condominium project hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

By  _____
GARY A. TOBEY

September 14, 2010
Date

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

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

End of EXHIBIT "F"

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

EXHIBIT "G"

SUMMARY OF PURCHASE CONTRACT

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

(a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a unit.

(b) That the purchaser acknowledges having received and read, prior to signing the Purchase Contract, the following: The Developer's Public Report and any amendments; the recorded project Declaration and Bylaws and any amendments; the project House Rules, if any, with amendments; a letter sized Condominium Project Map and amendments; and the Notice of Buyer's Right to Cancel.

(c) That the Developer makes no representations concerning rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.

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

(e) Requirements relating to the purchaser's financing of the purchase of a unit.

(f) That the unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.

(g) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.

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

(i) That, unless requested, the purchaser will not receive interest on deposits made under the Purchase Contract.

(j) If the purchaser shall default:

(1) The contract may, at the Developer's option, be terminated by written notice to the purchaser; and

(2) Any sums paid by the purchaser shall belong to the Developer as liquidated damages (up to a maximum of 20% of the total purchase price); and

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

(k) If the Developer shall default:

- (1) The purchaser may bring an action for damages for breach of contract; and
- (2) The purchaser may seek specific performance of the contract; and
- (3) The Developer shall be responsible for any costs incurred in accordance with the contract.

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

EXHIBIT "H"

SUMMARY OF ESCROW AGREEMENT

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

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) A purchaser shall be entitled to a return of such purchaser's funds and Escrow shall pay such funds to such purchaser, together with any interest which may have accrued to the credit of such purchaser, if any one of the following has occurred (collectively, the "Cancellation Provisions"):
 - (i) Seller and purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or
 - (ii) Seller shall have notified Escrow of Seller'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 Seller; or
 - (iii) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to cancel the sales contract pursuant to HRS §514B-86 (thirty-day right to cancel), or, if applicable, HRS §514B-89 (failure to complete construction before specified completion deadline); or
 - (iv) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to rescind the sales contract pursuant to HRS §514B-87, by a valid rescission signed by all purchasers of the affected unit and postmarked no later than midnight of the thirtieth calendar day after the date that the purchasers received the notice of rescission from Seller, in which case the purchasers shall be entitled to a prompt and full refund of any moneys paid.
- (d) The purchaser is entitled to a refund if the purchaser or seller cancels the Sales Contract in accordance with its cancellation provisions, or if the purchaser terminates its reservation before the Sales Contract is binding. However, Escrow may deduct from the refund cancellation fees in accordance with the Sales Contract in an amount not to exceed \$250.00.

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

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

(e) The purchaser's funds that are placed in trust prior to closing may be used by the seller after:

(1) the purchaser has (i) been provided with a developer's public report; and any amendments thereto, recorded copies of the project Declaration and Bylaws, with any amendments, the project House rules (if any), with any amendments, a letter sized Condominium Project Map, with any amendments, and a Notice of Buyer's Right to Cancel; (ii) executed a receipt and notice and has waived his right to cancel or thirty (30) days have elapsed since the purchaser has been provided with the final public report and receipt and notice of right to cancel;

(2) the seller notifies escrow in writing that since (i) and (ii) have happened, the Sales Contract is binding; and

(3) the seller's attorney advises escrow that the Sales Contract is binding and the requirements of Hawaii Revised Statutes, Sections 514B-87 and -91 have been met.

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

EXHIBIT "I"

FOR ILLUSTRATION ONLY

AFTER RECORDATION RETURN BY MAIL TO:
COUNTY OF KAUAI
Planning Department
Building A, Suite 473
4444 Rice Street
Lihue, HI 96766

Document contains ____ pages

FARM DWELLING AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____,
20____, by and between _____,
_____, whose residence and post office address
is _____,
_____, hereinafter called the "APPLICANT(S)", and the COUNTY OF
KAUAI, Planning Department, its business and mailing address being 4444 Rice street, Building
A, Suite 473, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT".

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling"

as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District regulations, as recited herein; and

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

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

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

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

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

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

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

9. The APPLICANT(S), for themselves (himself, herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4444 Rice Street, Suite 473, Lihue, Hawaii 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

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

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

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

APPROVED:

APPLICANT(S)

Planning Director

APPROVED AS TO FORM AND LEGALITY:

County Attorney

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

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

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

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

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

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

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

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

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

EXHIBIT "J"

DISCLOSURE ABSTRACT

Pursuant to Hawaii Revised Statutes, Section 514(A)-61, the Developer of the MALIE WAI Condominium project makes the following amended disclosures:

1. The Developer of the Project is KUHIO HIGHWAY DEVELOPMENT COMPANY, LLC, a Hawaii limited liability company, whose mailing address is c/o Elite Properties of America, Inc., 6385 Corporate Drive, Suite 200, Colorado Springs, Colorado 80919.

2. The attorney for Developer is Jonathan J. Chun, Esq., of Belles Graham Proudfoot & Wilson & Chun, LLP, whose mailing address is 4334 Rice Street, Suite 202, Lihue, Kauai, Hawaii 96766.

3. The real estate broker for the project is Neal Norman and Tiffany Spencer of KOA PROPERTIES LAND AND HOMES, LLC, whose mailing address is, Kilauea, Kauai Hawaii 96754, telephone number is (808) 828-6644.

4. The escrow company for the project is TITLE GUARANTY ESCROW SERVICES, INC., whose mailing address is 235 Queen Street, Honolulu, Hawaii 96803, and whose telephone number is (808) 522-6261.

5. See Exhibit "F" to this report for the projected annual maintenance fees. The Developer hereby certifies that the estimations have been based on generally accepted accounting principles.

6. There are no warranties against defects of material and workmanship in individual apartments, common elements or exclusive use areas, and the purchaser buys his/her unit in an "as is" condition.

7. All of the apartments of the project are to be used for agricultural and permitted residential purposes only. No apartments shall be used for hotel or timeshare purposes. There will be no commercial use except those activities permitted by county ordinance.

8. The Developer has not conducted a reserve study in accordance with Section 514A-83.6, and the replacement reserve rules, Subchapter 5, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. There are no depreciable common elements in the Project.

IN WITNESS WHEREOF, the Developer has executed this Disclosure Abstract this 14th day of September, 2010.

KUHIO HIGHWAY DEVELOPMENT
COMPANY, LLC

By

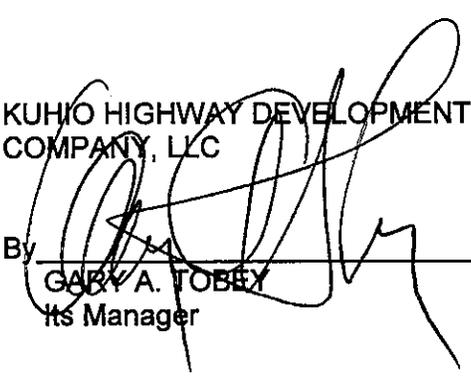

GARY A. TOBEY
Its Manager

EXHIBIT "K"

RESPONSIBILITIES REGARDING THE RESERVOIR WALL

A. Responsibility for Reservoir Wall. In the event portions of the Waiakalua reservoir wall are determined to be located on Unit D or Unit E and that the owners of Units E or D have responsibility and liability to maintain, repair or reconstruct the reservoir wall, Unit E shall have the following duties, rights and responsibilities with regard to those portions of the reservoir wall located on Units E and D, but only to the extent of the applicable responsibility and liability:

(1) Unit E shall be liable and responsible for maintaining, operating, repairing, constructing, reconstructing, replacing or removing (collectively "Use and Operation") those portions of the Waiakalua reservoir wall that may be located on Unit D or Unit E, as applicable.

(2) Unit E shall be liable and responsible for complying with the provisions of H.R.S. Chapter 179D (Dam Safety Act) and the rules and regulations adopted thereunder with regard to the Use and Operation of the Reservoir, if and to the extent applicable.

(3) If it is determined that the owners of Unit D or Unit E are responsible to address any of the applicable deficiencies noted on the Notice of Dam Deficiency Waiakalua Reservoir (H100010), Kauai Hawaii dated April 21, 2009 from the State Department of Land and Natural Resources and that certain 2008 Visual Inspection of Waiakalua Reservoir Dam, Kauai (KA-0010) dated December 9, 2008 from the State Department of Land and Natural Resources the owner of Unit E and not Unit D shall be responsible to address said deficiencies, to the extent applicable.

B. Easement In Favor Of Unit E. The owner of Unit E shall have an easement over, under and across those portions of Unit D required to access, maintain, use, operate, repair, construct, reconstruct, replace or remove those portions of the Waiakalua reservoir wall that may be located on Unit D.

EXHIBIT "L"

LINDA KINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

ENGINEERING DIVISION
POST OFFICE BOX 373
HONOLULU, HAWAII 96802

APR 21 2009

LAURA B. ZEIGER
CHAIRPERSON
BOARD OF PUBLIC UTILITIES AND
COMMISSION ON WATER SUPPLY
DORIS L. TUCKER
DIRECTOR
KEN C. KAWANAKA
DEPUTY DIRECTOR - WATER
ADAM B. BROWN
BOARD OF WATER UTILITIES
COMMISSIONER OF PUBLIC UTILITIES
UNIVERSITY AND HONOLULU
KAWANAKA, HONOLULU, HAWAII

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7007 2560 0000 9256 6746

Ms. Colleen Romano
Colleen A. Romano Trust/Estal
P.O. Box 343
Kilauea, Hawaii 96754

Dear Ms. Romano:

NOTICE OF DAM SAFETY DEFICIENCY
WALAKALUA RESERVOIR (HI00010)
KAUAI, HAWAII

Pursuant to report from one of the dam owners regarding seepage at the toe near the left side of the embankment, our staff engineer, Jimmy Leung, conducted a visual inspection of Walakalua Reservoir (HI00010) on April 17, 2009. During the inspection, extensive seepage was observed at the downstream toe of the embankment near the left abutment with indication that soil fines are being carried out by this seepage. The water elevation at the time of inspection is slightly above the sill elevation of the spillway.

Based on the above observation and finding, the following is issued for your immediate action:

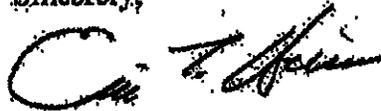
1. Lower the water level in this reservoir immediately to a level that can expose the inoperable gate.
2. Remove the inoperable gate to allow the reservoir to remain drained through the gate opening.
3. Install a staff gauge so that the water level may be reported in a controlled manner.
4. Weekly reports to be submitted to our office (fax: (808)587-0283 or e-mail jimmy.m.leung@hawaii.gov) and the Kauai County Civil Defense Agency (Mark Marshall, fax: (808)241-1360 or e-mail m.marshall@kauai.gov).
5. Retain the services of a professional engineer to assess the seepage and slope stability of the embankment and submit proposed remediation activities to our office.

Please note that you must address the deficiencies noted in our previous letter dated December 9, 2008 (attached for your convenience). This reservoir is to remain drained until all deficiencies are addressed in a satisfactory manner. Please also find enclosed a copy of the Final - Phase I Dam Safety Inspection Report conducted by Kleinfelder, Inc. with an adobe.acrobat file on CD for your information and use. You may combine your responses as applicable.

Enclosed is a blank data sheet that you may use to compile your data and to report to our office. Please fill in the key elevation at the top of the page so that we may reference the field measurement readings.

If you have any question, you may contact Mr. Jimmy Leung of my staff at (808)587-0238.

Sincerely,



ERIC T. HIRANO
Chief Engineer

Enclosures

c: Mark Marshall, Kauai County Civil Defense Agency
Mr. & Mrs. Jack and Beverly Harter
Mr. Gary Tobey
Ms. Renee J. Hicks
Mr. Stephan V. Hunt
Mr. & Mrs. Greg & Dorte Morse
Mr. Ming Fang
Mr. Robert H. Jones
Mr. William L. Flaherty