**AMENDED DEVELOPER'S PUBLIC REPORT**
**FOR A CONDOMINIUM**

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|---|---|
| CONDOMINIUM PROJECT NAME | KAHU'AINA FARMS (PHASE 2)* |
| Project Address | 7480 Koolau Road, Kilauea, Hawaii 96754 |
| Registration Number | 6711 |
| Effective Date of Report | May 19, 2009 |
| Developer(s) | FALKO PARTNERS, LLC, a California limited liability company |

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, including any omitted material facts, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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

**For use in connection with the Sale of Phase 2 units (#11, 12, and 13) only.*

## SPECIAL ATTENTION

The Amended Developer's Public Report SUPERSEDES the prior Developer's Public Report with an effective date of October 31, 2008.

**NOTES:**

1. The entire condominium project contains 13 Units. This Amended Developer's Public Report covers Units 11-13 (Phase 2). Developer has obtained a separate Developer's Public Reports for the remaining 10 Units, Registration Number 6428 (Phase 1). The amended version of Registration No. 6428 points out some of the differences compared to the original report and must be given to all who purchase thereunder. For purposes of this Developer's Public Report, each group of condominiums subject to a Developer's Public Report shall be referred to as a "Sales Phase." Although separate Developer's Public Reports will be issued, all 13 Units comprise a single condominium project. In other words, the act of separating the various Units into different Sales Phases does not create separate and distinct condominium projects. Accordingly, the common elements described in Exhibit "E" of this Developer's Public Report serve each of the 13 Units.

2. The Estimate of Annual Maintenance Fees contained in Exhibit "M" covers all 13 Units, including the 3 Units designated herein.

3. Developer has reserved the right, in its sole and absolute discretion and without being required to obtain the consent or joinder of, or provide notice to, any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, any Unit purchaser, or any other person who may have an interest in the Community or in any Unit, to reconfigure, delete or withdraw land from the property that has been made subject to the Declaration as permitted pursuant to Section S of the Declaration in order to create the Community Land. Declarant has further reserved the right to reconfigure and adjust the boundaries of the Community such that the boundaries vary from that reflected on the Condominium Map provided not less than thirty-eight (38) acres remain Community land and subject to the Declaration. In addition, Developer may remove any land located in the Special Management Area and/or the State Land Use Conservation District, as shown on the Condominium Map even if not reflected on the Condominium Map as removable land. Upon such removal, the land deleted, removed or withdrawn shall no longer be subject to the Declaration, and will not be administered by the Association.

4. The sales contract between Buyer and Developer will become binding when **ALL** of the following events occur:

   - The condominium documents have been recorded;
   - A copy of an amended public report with an effective date issued by the Real Estate Commission has been delivered to the Buyer, along with copies of the recorded Condominium Documents; and
   - The Buyer has waived Buyer's 30-day right to cancel the sales contract.

5. It is suggested that prospective purchasers first read Exhibit Q of this Public Report for an overview of how the Developer (sometimes "Declarant" herein) proposes to develop the approximately 347 acres in this project. Initially the land area of this project is the same as that of the master planned Kahu'aina Plantation, but the Developer plans to withdraw portion(s) of the land and may create other projects similar to this Kahu'aina Farms out of such withdrawn portions. Details relative to this can be found in the Master Declaration

for Kahu'aina Plantation, which is available for inspection by purchasers on request, and in Exhibit L (Developer's reserved rights) of the Public Report.

Essentially, purchasers are buying into an agricultural condominium project that is located in the master planned Kahu'aina Plantation, which may include other projects that may be similar to this one.

6. Changes made as follows pursuant to the rights of Developer under the Declaration:

(a) Amendment to Declaration of Condominium Property Regime of Kahu'aina Farms Condominium Map No. 4702 (Dated March 3, 2009/Document No. 2009-052114).

(b) Amendment to Condominium Map for Kahu'aina Farms No. 4702 (Dated March 3, 2009/Document No. 2009-052113)

This resulted in changes to the following pages and Exhibits of the Developer's Public Report:

(a) Page 5 has been revised to reflect the date of the updated title report.

(b) Page 10 has been revised to reflect the recordation of the Amendment to the Declaration and Condominium Map referenced above.

(c) Exhibit A (Section 1.3 – Unit types and Sizes of Units) has been revised to reflect the revised description of the Units.

(d) Exhibit F (Section 1.10 – Limited Common Elements) has been revised to reflect the revised description of the Limited Common Elements.

(e) Exhibit H (Section 1.12 – Encumbrances Against Title) has been updated.

A major change was the redefinition of "unit", formerly defined as a 16 square foot wood, metal and cloth shed and its appurtenant limited common element. The unit is now defined as a spatial area, shown in Exhibit A, which includes the shed and coincides approximately in size and location with the area that was previously referred to as the "buildable area" in Exhibit F, and its appurtenant limited common element or private yard area. Use of the term "buildable area" has been deleted and limited common element and private yard area are now used interchangeably and is shown for each unit in the new Exhibit F.

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| EXHIBIT P: | Section 5.3 | -- | Blanket Liens |
| EXHIBIT Q: | Section 6 | -- | Miscellaneous Information Not Covered Elsewhere in this Report |


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The Condominium Map (8 1/2 x 11) has NOT been provided to Buyer. Pursuant to Section 514B-86(a)(1)(A) of the Act, Seller advises Buyer that it is impractical, for legibility reasons, to provide buyers a letter-sized Condominium Map. Accordingly, Buyer shall have the opportunity to examine the Condominium Map at the Sales Office of Seller upon request.

**General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. 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 and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

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

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

**Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit 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 a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first 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 purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

## 1. THE CONDOMINIUM PROJECT

### 1.1 The Underlying Land

| | |
|---|---|
| Fee Simple or Leasehold Project | ☒ Fee Simple ☐ Leasehold (attach Leasehold Exhibit) |
| Developer is the Fee Owner | ☒ Yes ☐ No |
| Fee Owner's Name if Developer is not the Fee Owner | |
| Address of Project | 7480 Koolau Road, Kilauea, Hawaii 96754 |
| Address of Project is expected to change because | |
| Tax Map Key (TMK) | (4) 5-1-003-006 (por.); (4) 5-1-03: 009, 10, 11, 17, 18 and 23 to 29 inclusive |
| Tax Map Key is expected to change because | The property has been subdivided. The TMK No. may change after the File Plan for the subdivision has been recorded. |
| Land Area | 347.383 acres (approximate). This area may be reduced to 38 acres. **See Exhibit L for details.** |
| Developer's right to acquire the Property if Developer is not the Fee Owner (describe) | N/A |

### 1.2 Buildings and Other Improvements

| | |
|---|---|
| Number of Buildings | 3 (one 4' x 4' shed per unit) |
| Floors Per Building | 1 |
| Number of New Building(s) | 3 |
| Number of Converted Building(s) | N/A |
| Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.) | Wood, metal and cloth |

### 1.3 Unit Types and Sizes of Units

| Unit Type | Quantity | BR/Bath | Net Living Area | Net Other Areas | Other Areas (lanai, garage, etc.) | Total Area |
|---|---|---|---|---|---|---|
| | | | | | | |
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See **Exhibit A**.

| | |
|---|---|
| 3 | **Total Number of Units** |

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

### 1.4 Parking Stalls

| | |
|---|---|
| Total Parking Stalls in the Project: | * |
| Number of Guest Stalls in the Project: | N/A |
| Number of Parking Stalls Assigned to Each Unit: | N/A |
| Attach Exhibit ____ specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open). | |
| If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights. | |

### 1.5 Boundaries of the Units

Boundaries of the unit:

See **Exhibit B** for a description of the unit boundaries.

### 1.6 Permitted Alterations to the Units

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):

See **Exhibit C.**

### 1.7 Common Interest

Common Interest: Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit'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 unit owners. The common interest for each unit in this project, as described in Declaration, is:

Described in **Exhibit D.**

As follows: See **Exhibit D.**

### 1.8 Recreational and Other Common Facilities (Check if applicable):

| | |
|---|---|
| ☐ | Swimming pool |
| ☐ | Laundry Area |
| ☐ | Storage Area |
| ☐ | Tennis Court |
| ☐ | Recreation Area |
| ☐ | Trash Chute/Enclosure(s) |
| ☐ | Exercise Room |
| ☐ | Security Gate |
| ☐ | Playground |
| ☒ | Other (describe): None at this time |

### 1.9 Common Elements

| |
|---|
| Common Elements: Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below. |
| Described in **Exhibit E.** |
| Described as follows:<br><br>See **Exhibit E.** |

| **Common Element** | **Number** |
|---|---|
| Elevators | **N/A** |
| Stairways | **N/A** |
| Trash Chutes | **N/A** |

### 1.10 Limited Common Elements

| |
|---|
| Limited Common Elements: A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project. |
| Described in **Exhibit F.** |
| Described as follows:<br><br>See **Exhibit F.** |

### 1.11 Special Use Restrictions

| The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below. | |
|---|---|
| ☒ | Pets: See **Exhibit G.** |
| ☒ | Number of Occupants: Occupancy shall be in accordance with any limitations imposed by State or municipal law ordinances. |
| ☒ | Other: See **Exhibit G.** |
| ☐ | There are no special use restrictions. |

### 1.12 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 a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens). |
| **Exhibit H** describes the encumbrances against title contained in the title report described below. |
| Date of the title report: April 13, 2009 |
| Company that issued the title report: First American Title Company, Inc. |

### 1.13 Uses Permitted by Zoning and Zoning Compliance Matters

| Uses Permitted by Zoning: | | | | |
|---|---|---|---|---|
| | Type of Use | No. of Units | Use Permitted by Zoning | Zoning |
| ☐ | Residential | | ☐ Yes ☐ No | |
| ☐ | Commercial | | ☐ Yes ☐ No | |
| ☐ | Mix Residential/Commercial | | ☐ Yes ☐ No | |
| ☐ | Hotel | | ☐ Yes ☐ No | |
| ☐ | Timeshare | | ☐ Yes ☐ No | |
| ☐ | Ohana | | ☐ Yes ☐ No | |
| ☐ | Industrial | | ☐ Yes ☐ No | |
| ☒ | Agricultural | 3 | ☒ Yes ☐ No | Open |
| ☐ | Recreational | | ☐ Yes ☐ No | |
| ☐ | Other (specify) | | ☐ Yes ☐ No | |
| Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws? **See Exhibit I** | | | ☒ Yes ☐ No | |
| | | | | |
| Variances to zoning code have been granted. | | | ☐ Yes ☒ No | |
| Describe any variances that have been granted to zoning code. | | | | |

### 1.14 Other Zoning Compliance Matters

| Conforming/Non-Conforming Uses, Structures and Lots |
|---|
| In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.<br><br>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.<br><br>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot. |

| | Conforming | Non-Conforming | Illegal |
|---|---|---|---|
| Uses | ☒ | ☐ | ☐ |
| Structures | ☒ | ☐ | ☐ |
| Lot | ☒ | ☐ | ☐ |

| If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed: |
|---|
| |

**1.15 Conversions**

| **Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.** | ☐ **Applicable**<br>☒ **Not Applicable** |
|---|---|
| Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units: | |
| Developer's statement of the expected useful life of each item reported above: | |
| List of any outstanding notices of uncured violations of any building code or other county regulations: | |
| Estimated cost of curing any violations described above: | |

| **Verified Statement from a County Official N/A** |
|---|
| Regarding any converted structures in the project, attached as Exhibit ____ is a verified statement signed by an appropriate county official which states that either:<br><br>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:<br>(i) Any variances or other permits that have been granted to achieve compliance;<br>(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and<br>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;<br>or<br><br>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above. |
| Other disclosures and information: |

### 1.16 Project In Agricultural District

| | |
|---|---|
| **Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?**<br>**If answer is "Yes", provide information below.** | ☒ Yes<br>☐ No |
| Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? ☒ Yes ☐ No<br><br>If the answer is "No", provide explanation. | |
| Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? ☒ Yes ☐ No<br><br>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance. | |
| Other disclosures and information: The Master Declaration, CPR Declaration, Agricultural Guidelines, Purchase Contract, and Unit Deed disclose that the project is in an agricultural district, subject to conformance with State and County laws with respect to its use, including but not limited to Hawaii Revised Statutes, Chapter 205 and Kauai County Code, Chapter 8, and farm dwelling unit requirements set forth therein. The County of Kauai may require each unit owner to enter into a separate farm dwelling unit agreement. | |

### 1.17 Project with Assisted Living Facility

| | |
|---|---|
| **Does the project contain any assisted living facility units Subject to Section 321-11(10), HRS?**<br>**If answer is "Yes", complete information below.** | ☐ Yes<br>☒ No |
| Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project. | |
| The nature and the scope of services to be provided. | |
| Additional costs, directly attributable to the services, to be included in the association's common expenses. | |
| The duration of the provision of the services. | |
| Other possible impacts on the project resulting from the provision of the services. | |
| Other disclosures and information. | |

## 2. PERSONS CONNECTED WITH THE PROJECT

| | |
|---|---|
| **2.1 Developer(s)**<br><br>(Often referred to as "Declarant" in his Public Report) | Name: **See Exhibit J**<br><br>Business Address:<br><br>Business Phone Number:<br>E-mail Address: |
| Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary). | **See Exhibit J** |
| **2.2 Real Estate Broker** | Name: Rosemary A. Smith<br>Business Address: 872 Kamalu Road<br>Kapaa, Kauai, HI 96746<br><br>Business Phone Number: (808)-822-5216<br>E-mail Address: rosewood@aloha.net |
| **2.3 Escrow Depository** | Name: Title Guaranty Escrow Services, Inc.<br>Business Address: 235 Queen Street, 1st Floor<br>Honolulu, Hawaii 96813<br><br>Business Phone Number: (808) 742-8490<br>E-mail Address: mhubbard@tghawaii.com |
| **2.4 General Contractor** | Name: N/A<br>Business Address:<br><br>Business Phone Number: |
| **2.5 Condominium Managing Agent** | Name: Hawaiiana Management Company, Ltd<br>Business Address: Pacific Park Plaza, Suite 700<br>711 Kapiolani Boulevard<br>Honolulu, Hawaii 96813<br><br>Business Phone Number: (808) 593-9100 |
| **2.6 Attorney for Developer** | Name: Dennis M. Lombardi, Esq.<br>Lauren R. Sharkey, Esq.<br>Business Address: 737 Bishop St, Suite 2600<br>Honolulu, Hawaii 96813<br><br>Business Phone Number: (808) 547-5400<br>E-Mail Address: DML@caselombardi.com<br>LRS@caselombardi.com |

## 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

### 3.1 Declaration of Condominium Property Regime

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

| Land Court or Bureau of Conveyances | Date of Document | Document Number |
|---|---|---|
| Bureau of Conveyances | September 3, 2008 | 2008-138986 |

| Amendments to Declaration of Condominium Property Regime | | |
|---|---|---|
| Land Court or Bureau of Conveyances | Date of Document | Document Number |
| Bureau of Conveyances | March 3, 2009 | 2009-052114 |
| | | |
| | | |
| | | |

### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit 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 that affect how the condominium project will be governed.

| Land Court or Bureau of Conveyances | Date of Document | Document Number |
|---|---|---|
| Bylaws | September 3, 2008 | 2008-138987 |

| Amendments to Bylaws of the Association of Unit Owners | | |
|---|---|---|
| Land Court or Bureau of Conveyances | Date of Document | Document Number |
| | | |
| | | |
| | | |
| | | |

### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

| | |
|---|---|
| Land Court Map Number | |
| Bureau of Conveyances Map Number | 4702 |

Dates of Recordation of Amendments to the Condominium Map:
March 3, 2009 (Document No. 2009-052113)

### 3.4 House Rules

| | |
|---|---|
| The Board of Directors may adopt rules and regulations (commonly called "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. Changes to House Rules do not need to be recorded to be effective. | |
| The House Rules for this project: | |
| Are Proposed | ☐ |
| Have Been Adopted and Date of Adoption | ☐ |
| Developer does not plan to adopt House Rules | ☒ |

### 3.5 Changes to the Condominium Documents

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

| Document | Minimum Set by Law | This Condominium |
|---|---|---|
| Declaration | 67% | 67%, **See Exhibit K** |
| Bylaws | 67% | 67%, **See Exhibit K** |

### 3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents

| | |
|---|---|
| ☐ | No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any). |
| ☒ | Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:<br><br>**See Exhibit L** |

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

| |
|---|
| Management of the Common Elements: The Association of Unit 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. |

| The Initial Condominium Managing Agent for this project is (check one): **See Exhibit M** | |
|---|---|
| ☒ | Not affiliated with the Developer |
| ☐ | None (self-managed by the Association) |
| ☐ | The Developer or an affiliate of the Developer |
| ☐ | Other (explain) |

### 4.2 Estimate of the Initial Maintenance Fees

| |
|---|
| Estimate of the Initial Maintenance Fees: The Association will make assessments against your unit 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 unit and the unit 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 M** contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses. |

### 4.3 Utility Charges to be Included in the Maintenance Fee

| If checked, the following utilities are included in the maintenance fee: | |
|---|---|
| ☒ | Electricity for the common elements |
| ☐ | Gas for the common elements |
| ☐ | Water |
| ☐ | Sewer |
| ☐ | TV cable |
| ☒ | Other (specify) refuse collection |

### 4.4 Utilities to be Separately Billed to Unit Owner

| If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee: | |
|---|---|
| ☒ | Electricity for the Unit only |
| ☒ | Gas for the Unit only |
| ☒ | Water |
| ☒ | Sewer |
| ☒ | TV cable |
| ☐ | Other (specify) |

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

| Sales Documents on file with the Commission include, but are not limited to, the following: | |
|---|---|
| ☒ | Specimen Sales Contract<br>**Exhibit N** contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer. |
| ☒ | Escrow Agreement dated: August 24, 2007<br>Name of Escrow Company: Title Guaranty Escrow Services, Inc., a Hawaii corporation<br>**Exhibit O** contains a summary of the pertinent provisions of the escrow agreement. |
| ☐ | Other |

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants. **N/A**

| | |
|---|---|
| ☐ | The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B. |
| ☐ | Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit ____. |
| ☐ | Developer has or will designate the units for sale to Owner-Occupants by publication. |

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

| | |
|---|---|
| ☒ | There are no blanket liens affecting title to the individual units. **See Exhibit P** |
| ☐ | There are blanket liens that may affect title to the individual units. |

| Type of Lien | Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance |
|---|---|
| | |
| | |
| | |

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:

Building and Other Improvements: **N/A**

Appliances: **N/A**

### 5.5 Status of Construction, Date of Completion or Estimated Date of Completion

| |
|---|
| Status of Construction: Developer estimates construction to commence approximately June 2010. |
| Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser. |
| Completion Deadline for any unit not yet constructed, as set forth in the sales contract: The Unit shall be completed no later than twenty-four (24) months following the date that the Purchase Contract becomes a binding contract, which is the earlier of the date: a) Buyer delivers to Seller Buyer's written waiver of Buyer's right to cancel the Purchase Contract following Seller's delivery to Buyer of the Notice of Right to Cancel this Purchase Contract, or (b) thirty (30) days have expired following Seller's delivery to Buyer of the Notice of Right to Cancel, provided Buyer has not exercised Buyer's right to cancel, subject to Seller's right to extend the Completion Deadline for force majeure events, which are defined in the Purchase Contract or in a further addendum to the Purchase Contract. |
| Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:<br>**N/A** |

### 5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance

| |
|---|
| The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below. |

#### 5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance

| | |
|---|---|
| ☒ | The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project.<br><br>*If this box is checked, Section 5.6.2, which follows below, will not be applicable to the project.* |

#### 5.6.2 Purchaser Deposits Will Be Disbursed Before Closing

| | |
|---|---|
| Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box): | |
| ☐ | For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or |
| ☐ | For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses. |

In connection with the use of purchaser deposits (check Box A or Box B):

| | |
|---|---|
| **Box A** ☐ | The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.<br><br>If Box A is checked, you should read and carefully consider the following notice, which is required by law:<br><br>**Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.** |
| **Box B** ☐ | The Developer has **not** submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.<br><br>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the **Important Notice Regarding Your Deposits** set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, **you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment**. (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.<br><br>You should understand that, although the **Important Notice Regarding Your Deposits** set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase. |

**Material House Bond**. If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

### 5.7 Rights Under the Sales Contract

| |
|---|
| Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report. |
| **1. Developer's Public Report** |
| **2. Declaration of Condominium Property Regime (and any amendments)** |
| **3. Bylaws of the Association of Unit Owners (and any amendments)** |
| **4. Condominium Map (and any amendments)** |
| 5. House Rules, if any |
| 6. Escrow Agreement |
| 7. Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted. |
| 8. Other: Master Declaration Of Covenants And Covenants, Conditions, Restrictions And Easements For Kahu'aina Plantation, Design Guidelines and all documents as provided in Exhibit H. |

| |
|---|
| 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 514B, HRS) and the Administrative Rules (Chapter 107, HAR), are available online. Please refer to the following sites: |
| Website to access official copy of laws: www.capitol.hawaii.gov |
| Website to access rules: www.hawaii.gov/dcca/har |

### 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

#### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

(1) The purchaser has signed the sales contract.

(2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.

(3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.

(4) The purchaser does at least one of the following:
   (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

(b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
(c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of $250.

### 5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of $250.00.

### 5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

(1) Checking the waiver box on the rescission form; or

(2) Letting the 30-day rescission period expire, without taking any action to rescind; or

(3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30th calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

**See Exhibit Q.**

**The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a)(13), HRS.**

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

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 purchasers 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. The Developer hereby agrees promptly to amend this report to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

Falko Partners, LLC, a California limited liability company

By: _____ Mar. 3, 2009
Duly Authorized Signatory* Date

Matt Evans, President of Lyon Ventures, LLC, a California limited liability company, its Managing Member
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; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.**

## EXHIBIT A

Section 1.3 -- Unit Types and Sizes of Units

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE UNIT TYPES AND SIZES OF UNITS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

### UNITS DIMENSIONS

The dimensions of each Unit are described as follows and shown on the Condominium Map:

| Unit | Size (square feet) of Unit |
|---|---|
| 11 | 21,680 |
| 12 | 21,673 |
| 13 | 21,681 |

The Unit shall be deemed to consist of the Unit area, as shown on the Condominium Map, all the space bounded by (i) the ground of the Unit area shown on the Condominium Map, (ii) the imaginary horizontal plane thirty (30) feet above the surface of the ground or as allowed under the County of Kauai Comprehensive Zoning Ordinances, and (iii) the imaginary vertical planes along the perimeter of such Unit Area.

The Unit means the area as shown on the Condominium Map, all improvements and facilities constructed or reconstructed therein, and all Limited Common Elements appurtenant to such unit. The unit includes as limited common elements the Private Yard Areas delineated on the Condominium Map and any access driveways on the unit.

### ACCESS TO COMMON ELEMENTS

Each Unit has immediate access to the common elements of the Community.

### ACCESS TO A PUBLIC STREET

The Community will have access to Koolau Road by means of the Community Access Roads and Driveway Access Easements within the Community, all as reflected on the Condominium Map.

### END OF EXHIBIT A

## EXHIBIT B

Section 1.5 -- Boundaries of the Units

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE BOUNDARIES OF THE UNITS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

### BOUNDARIES OF THE UNITS

Each Unit shall include any improvements made thereto by a Unit Owner and include all walls, columns and partitions (both load bearing and not load bearing) which are within the Unit's perimeter walls including without limitation the windows, sliding glass doors, screen doors, door frames and window frames, the air space within the Unit, the garage including its floor, foundation, ceiling, roof, doors and perimeter walls, the lanais, if any, all rollers, locks, handles, tracks, and appurtenant hardware associated with all windows, doors and exterior automobile garage doors and all sliding or swinging screen doors and all glass window screens and all fixtures originally installed in the Unit, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Unit. The Unit shall also include all load-bearing columns, girders, beams, building components and other elements included within each Unit. The Unit shall not include any pipes, shafts, wires, conduits or other utility or service lines running through a Unit which are utilized for or serve more than one Unit, all of which are deemed Common Elements as provided in the Declaration. If any wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element appurtenant solely to that Unit, and any portion thereof serving more than one Unit or any portion of thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

### END OF EXHIBIT B

# EXHIBIT C

Section 1.6 -- Permitted Alterations

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE PERMITTED ALTERATIONS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

1. Repair, Reconstruction, Restoration, and Replacement. Except as provided in Sections K, L, and P of the Declaration, repair, reconstruction, restoration, and replacement of the Community different in any material respect from the Condominium Map shall be undertaken by the Association or any Owners only pursuant to an amendment of the Declaration and shall in all instances comply with the law. Except as expressly provided otherwise in the Declaration, any such amendment shall be duly executed by or pursuant to the affirmative vote of sixty-seven percent (67%) of the Owners and accompanied by the written consent of the eligible holders of first mortgage (as hereinafter defined) on Units to which at least sixty seven percent (67%) of the votes of Units subject to mortgages held by such eligible holders are allocated, and in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such repair, reconstruction, restoration, replacement, construction, alteration or addition, the Association shall duly Record and file of record such amendment together with a complete set of plans of the Community as so altered, certified as built by a Hawaii licensed, registered architect or professional engineer.

2. Alterations or Additions to Units. Any alterations or additions solely within a Unit or within a Buildable Area appurtenant to and for the exclusive use of a Unit or more than one Unit, shall require only those approvals specified in the Declaration. Upon completion of authorized and approved alterations or additions, the Owner(s) of the affected Unit shall duly Record and file of record an amendment to the Declaration together with the approved plans showing only such alterations or additions within a Unit space or within a Limited Common Element as aforesaid. Such amendment to the Declaration need only be executed by the Owner(s) affected and their first mortgagees, as may be required, and the Design Review Committee.

3. Declarant's Rights. Any other provision in the Declaration to the contrary notwithstanding and without limitation of the rights reserved to Declarant in other sections of the Declaration, including, without limitation Declarant's rights to alter Units and/or the Community under Sections E or otherwise in the Declaration, prior to and following (ii) the time that all Units in the Community have been sold and the conveyance thereof Recorded, and (ii) the filing by Declarant of the "as built" verified statement (with plans, if applicable) required by Section 514B 34 of the Act, Declarant shall have the right, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Owner or any mortgagee, lienholder, or any other person who may have an interest in the Community, to do the following:

(a) To make alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which decrease or increase the size of, or change the location of any Unit (and the Limited Common Elements appurtenant thereto) in the Community which is not sold and the conveyance thereof Recorded; and

(b) To make other alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Unit in the Community or in the Common Elements which do not affect any Unit which has been sold and the conveyance thereof Recorded.

4. Permitted Alterations. Except as otherwise provided in the Declaration, the Bylaws or the Design Guidelines, an Owner may make "nonmaterial structural additions" to an Owner's Unit as the foregoing term is used in and subject to the provisions of Section 514B-140(c) of the Act.

5. Government Regulations. If there is any conflict between the requirements or actions of the Board and the mandatory regulations or ordinances of any governmental entity relating to the Community, the government regulation or ordinance, to the extent that such regulations and ordinances are more restrictive, shall control, and the Board shall modify its requirements or actions to conform to the government regulation or ordinance; provided, however, that if the governmental rules or regulations are less restrictive, the provisions of the Declaration shall nonetheless apply. The application by an Owner for review and approval by the Board of any Plans and Specifications or other submittals by such Owner shall in no way be deemed to be satisfaction of compliance with any applicable statute or law, or governmental rule or regulation or public utility requirement (hereinafter collectively referred to as "Additional Requirements"); provided, however, if the Additional Requirements are less restrictive than the provisions of the Declaration, the provisions of the Declaration shall nonetheless apply.

**END OF EXHIBIT C**

## EXHIBIT D

Section 1.7 -- Common Interest

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE COMMON INTEREST CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

The Common Interest for each Unit is based on all 13 Units which comprise the condominium project, including the 3 Units designated herein.

Each Unit Owner shall have the following common interest in the Association:

| Unit | Common Interest |
|---|---|
| 11. | 7.6923% |
| 12. | 7.6923% |
| 13. | 7.6924% |

Note that Unit 13 has been rounded up a de minimis amount to ensure that the total Common Interest equals 100%

## END OF EXHIBIT D

## EXHIBIT E

Section 1.9 -- Common Elements

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE COMMON ELEMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

The Common Elements of the Community shall specifically include, but are not limited to, the following:

1. The Land in fee simple and those improvements to the Land, excluding the Units, but including without limitation the Community roads, roadway easements, any common area landscaping and similar improvements;

2. All the benefits, if any, inuring to the Land or the Community from all easements, if any shown on the Condominium Map or listed in Exhibit "A" attached to the Declaration of Condominium Property Regime.

3. All yards, grounds, trees, gardens, walkways, walkway railings, gates, landscaping, recycling area, trash bins, and refuse facilities not located within a Unit;

4. All roads, driveways, access lanes, paved areas, ramps and loading areas not located within a Unit;

5. All access driveways and roadway areas, which are not designated as Limited Common Elements;

6. All drainage facilities or swales, pipes, shafts, wires, conduits or other utilities or service lines running through a Unit which are utilized for or serve more than one Unit or other features of the Community.

7. All vents, shafts, sewer lines, water lines, pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations on, above, over, under and across the Community to the point of their respective connections to Improvements comprising a part of the Units or the Limited Common Elements appurtenant thereto, which serve more than one Unit, including, without limitation, those providing electricity, light, gas (if any), water, refuse, drainage, irrigation, telephone, and radio and television signal distribution (if any); and

8. Any and all other apparatus and installations existing for common use by more than one (1) Unit, and any and all other parts of the Community necessary or convenient to its existence, maintenance or safety, or normally in common use;

9. All other parts of the Community not included in the definition of a Unit, not within a Unit or designated as a limited Common Element.

## END OF EXHIBIT E

## EXHIBIT F

Section 1.10 -- Limited Common Elements

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE LIMITED COMMON ELEMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

Without limitation of designations specified in the Declaration and as determined appropriate by the Board of Directors of the Association, certain parts of the Common Elements, herein called the "Limited Common Elements", are hereby designated and set aside for the exclusive use of certain Units, and such Units shall have appurtenant thereto exclusive use of such Limited Common Elements as follows:

1. Private Yard Areas – the land area appurtenant to each Unit, as described in the Declaration and below. The Private Yard Areas are not legally subdivided lots. A Private Yard Area includes the land area appurtenant to the Unit as shown on the Condominium Map.

2. Any other area designated as a limited common element for the exclusive use of specific Owners.

| Unit | Limited Common Element (in acres) |
|---|---|
| 11 | 2.066 |
| 12 | 3.112 |
| 13 | 2.815 |

**END OF EXHIBIT F**

## EXHIBIT G

Section 1.11 -- Special Use Restrictions

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE SPECIAL USE RESTRICTIONS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

Certain special use restrictions applicable to Units in the Community, as set forth in this Exhibit G, are contained in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Kahu'aina Plantation ("Master Declaration"), of which the Community is a subdistrict. The term "Lots" as used herein shall refer to and include Units. All capitalized terms used in this Exhibit G shall have the same meanings as used in the Master Declaration, unless otherwise expressly defined in the Declaration.

1. **Hazardous Materials**. Each Owner and Occupant shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "**Environmental Laws**"). The Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, the "**Hazardous Materials**"). No Owner shall knowingly use, generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about any Unit, any Common Area or any portion of the Property, or transport to or from any portion of the Property any Hazardous Materials except in compliance with the Environmental Laws.

2. **Property Restrictions**. No covenants, conditions, restrictions or easements, or similar instruments shall be Recorded by any Owner or other Person, except Declarant, against any Lot without the provisions thereof having been first approved in writing by the Board and Declarant, which approval may be withheld in the sole discretion of the Board and Declarant, and any such covenants, conditions, restrictions or easements Recorded without the Board's and the Declarant's approval being evidenced thereon shall be null and void.

3. **Permits and Rezoning.** Each Lot Owner shall be responsible for obtaining any and all applicable permits, including use, building, special and variances permits. No applications for general plan changes, rezoning, variances, special permits, use permits or the like affecting any Lot shall be filed with any governmental authority unless the proposed use of the Lot has first been approved by the Board and Declarant and the proposed use otherwise complies with the Master Declaration and any applicable Supplemental Declaration. This provision shall not in any way prohibit, restrict or otherwise limit the right of Declarant to apply for, prosecute and receive rezoning and/or reclassification of any portion of the Property, or the Annexation Property then owned (or the subject of an option to purchase) by Declarant, or to apply for, prosecute and receive variances or use permits relating to such property.

4. **Covenants, Conditions, Restrictions and Easements Applicable to Lots**. Subject to the Declarant's rights as outlined in Section 21.2 of the Master Declaration, the following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots, the Owners thereof, and all Occupants:

(a) **Agricultural Use**. The Community is located within the State's agricultural district and each Lot must be used only in accordance with the uses described in the Hawaii Revised Statutes, Chapter 205, as may be amended from time to time, which provide in part as follows:

(1) Lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B shall be restricted to the following permitted uses as permitted by Hawaii Revised Statutes, § 205-4.5(a) (2006):

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

(b) Game and fish propagation;

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

(d) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling" as used in this paragraph means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

(e) Public institutions and buildings that are necessary for agricultural practices;

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

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

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

(i) Roadside stands for the sale of agricultural products grown on the premises;

(j) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the abovementioned uses and are permitted under section 205-2(d) HRS;

(k) Agricultural parks;

(l) Plantation community subdivisions, which as used in this paragraph means a subdivision or cluster of employee housing, community buildings, and acreage established on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation and in residential use by employees or former employees of the plantation; provided that the employees or former employees shall have a property interest in the land; or

(m) Agricultural tourism conducted on a working farm, or a farming operation as defined in Section 165-2 HRS, for the enjoyment, education, or involvement of visitors;

provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that as adopted ordinances regulating agricultural tourism under section 205-5 HRS; or

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

(2) Lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D and E and so long as such lands remain with the State's agricultural district, the land shall be restricted to the following permitted uses as permitted by Hawaii Revised Statutes, § 205-2(d):

(a) Activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry;

(b) Farming activities or uses related to animal husbandry, and game and fish propagation;

(c) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(d) Wind generated energy production for public, private, and commercial use;

(e) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in HRS Section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in HRS Section 205-4.5(a)(12);

(f) Wind machines and wind farms;

(g) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land, provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;

(h) Agricultural parks;

(i) Agricultural tourism conducted on a working farm, or a farming operation as defined in HRS Section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and des not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under HRS Section 205-5; and

(j) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in HRS Section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(b) **Agricultural Master Plan**. Each Owner, acting through the Master Association, shall comply with the provisions of the Agricultural Master Plan.

(c) **Single-Family Use**. The Buildable Area on a Lot shall be used only for the construction and occupancy of a Single-Family Farm Dwelling Unit and typical activities incidental thereto. All such Farm Dwelling Units shall be used, improved, and devoted to use, pursuant to the applicable State of Hawaii and/or County laws and regulations; provided however, if the size of a Lot permits construction of additional FDU(s) by law, such FDU(s) may be permitted by Supplemental Declaration.

(d) **Garages**. On-site parking for at least four (4) vehicles is required with a minimum of 2 covered and enclosed spaces and all of which parking areas shall be located within the Buildable Area. All parking areas shall be designated in the areas accessible to, but separate from, any access driveway and porte cochere areas. Open parking areas shall be screened from view from streets, easements or neighboring properties with walls or landscaping. No garage shall be used for other than the parking of trailers, transportation vehicles or agricultural vehicles, provided, however, that a garage may be used for laundry, storage purposes or minor repairs not otherwise prohibited, so long as such use is not visible from any sidewalk or Road. No garage shall be used for living, cooking or sleeping purposes.

(e) **Violation of Law or Insurance**. No Owner or Occupant shall permit anything to be done or kept in or upon such Owner's Lot or in or upon any Common Area which will result in the cancellation, or increase in premium, or reduction in coverage of insurance maintained by the Master Association or which would be in violation of any law.

(f) **Signs**. No sign of any kind shall be displayed to the public view or from any Lot without the approval of the Design Review Committee, pursuant to the Design Guidelines, except: (i) each Owner shall install and maintain a street address sign for each Lot conforming to the uniform designs established by the Design Review Committee or within these Design Guidelines ; (ii) such signs as may be used by Declarant in connection with the development and sale or leasing of Lots or other property in the Property and the Community in general; (iii) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; and (iv) as may be approved by Declarant or the Board, such signs as may be required for traffic control and regulation of Roadways or Common Area. Notwithstanding the above, Declarant may post any and all signs which it, in its sole discretion, deems necessary. Such activities of the Declarant shall not be considered a nuisance or otherwise prohibited by the Master Declaration.

(g) **Pets**. All pets must be restrained such that they cannot leave the Lot when left unattended. In no event shall any domestic pet be allowed to run free away from its owner's Lot without a leash, or conduct itself so as to create an unreasonable annoyance. The Master Association may require the removal of any pet that is permitted to roam free, or, any pet that the Master Association, in its sole discretion, determines endangers the health, makes objectionable noises or odors, or otherwise constitutes a nuisance to the Community. Pet owners are responsible for any damage to Common Area caused by their pets. For purposes of this section, the term "pet" does not include livestock or other animals necessary for Agricultural Activities. In many locations, especially where there adjacent open space or agricultural uses, rodent control is essential.

(h) **Pest Control.** It is in the Owner's best interest to contact a local pest control company to arrange for a preventive maintenance program. In many locations, especially where there are adjacent open space or agricultural uses, rodent control is essential. Uncontrolled, rodents can damage water and electrical systems in the home. Owner fully understands that it is the Owner's and the Master Association's responsibility, not Declarant's responsibility, to control pests (insects, rodents and the like) including termites in and around the Owner's Lot.

(i) **Nuisances; Construction Activities**. No Owner shall permit or suffer anything to be done or kept about or within such Owner's Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners or Occupants, or annoy them by unreasonable noises or otherwise, nor shall an Owner commit or permit any nuisance or commit or suffer any illegal act to be committed therein or thereabout. Each Owner shall comply with the Master Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. The normal business activities of the Declarant shall not be considered a nuisance or otherwise prohibited by this Master Declaration. Additionally, normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by the Master Declaration, but all Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Design Review Committee, which also may require screening of the storage areas. The Board in its sole discretion shall have the right to determine the existence of any unreasonable annoyance or nuisance under this Master Declaration.

(j) **Waste Water Systems**. All Owners are responsible for installation of individual waste water systems which shall be designed by a Hawaii licensed engineer and approved by the Hawaii State Department of Health. The design shall be subject to review by the Design Review Committee. The type and number of individual wastewater systems to be used on each Lot will be determined by the wastewater rules in effect at the time of any building permit applications.

(k) **Lights**. Exterior building lighting should be the minimum needed to provide general illumination and security of entries, patios, and outdoor spaces. With the exception of driveway lights, walkway and landscape accent lights, all lighting must occur within the Buildable Area. The light source of any exterior lighting shall not be directly visible from the common roadways or neighboring properties. An exterior lighting plan shall be submitted for review by the Design Review Committee in accordance with the applicable Design Guidelines.

(l) **Antennas**. Only to the extent permitted by law, radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, may be placed or maintained upon any Lot. Any antennas or other devices for the reception or transmission of radio, microwave or other similar signals, placed or maintained upon any Unit shall be screened so that it is not visible from any road or adjacent Lots pursuant to the Design Guidelines. The Board and/or the Design Review Committee reserve the right to adopt restrictions for installation of antennas for public safety reasons and for historic preservation reasons and other restrictions as allowed by law.

(m) **Service Yard and Storage Tanks**. All garbage or trash shall be kept, maintained or contained in garbage and trash receptacles and other maintenance utility or service facilities located in enclosed service yards on any Lot. All trash receptacles, utility equipment (e.g., transformers, air conditioning, pool equipment, etc.), tanks and mechanical equipment shall be visually screened so that they are not visible from roads, common areas, or surrounding residences. Solid noise-absorbing equipment covers may be required after installation if the equipment is audible from adjacent properties. No garbage and trash receptacles shall remain on any Roads for more than twenty-four (24) hours. Tanks and mechanical equipment must be enclosed within the buildings or fenced service yards on any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot, provided that non-commercial, non-odoriferous, contained and reasonably concealed composting and mulching shall be permitted.

(n) **Accessory Structures and Outbuildings**. Accessory structures and outbuildings, including gazebos, and other accessory structures are permitted subject to height and aggregate area requirements determined by the Design Review Committee. Agricultural Outbuildings shall be allowed with approval by the Design Review Committee.

(o) **Safe Condition**. Without limiting any other provision in this Section, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots.

(p) **Fires**. All Lots and Farm Dwelling Units are subject to the Fire Code of the County of Kauai and established controlled fire limits, pursuant to such Code.

(q) **Drainage**. No Owner shall erect, construct, maintain, permit or allow any fence or other Improvement or other obstruction that would interrupt the existing drainage of the land. For the purpose hereof, "existing" drainage is defined as the drainage which exists at the time the Lot is conveyed to an Owner by Declarant, or later grading changes which are shown on plans approved by the Design Review Committee. The existing drainage may include drainage from Common Area or other property across any Lot. Each Owner shall maintain the drainage system, if any, constructed by Owner. Each Owner shall be solely responsible for all surface water escaping the Owner's Lot and any and all damages resulting therefrom. This Section shall not be deemed to restrict or otherwise affect rights reserved to Declarant to alter or change drainage patterns within or upon the Property.

(r) **Rental of Lots**. Without limitation of the restrictions specified at Section 5.4(v), an Owner who leases or otherwise grants occupancy rights to such Owner's Lot to any Persons shall be responsible for assuring compliance by the Occupant with all of the provisions of the Master Declaration, any Supplemental Declaration, the Articles, Bylaws, Master Association Rules and Design Guidelines, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by the Occupant thereof.

(s) **Landscaping and Maintenance**. Except as otherwise provided in the Master Declaration and in designated easements which are to be maintained by the Master Association, each Lot Owner shall install and keep all areas within the Buildable Areas, Natural Landscape Areas, and any other designated areas, as provided in this Master Declaration, any Supplemental Declaration, the Articles, Bylaws, Master Association Rules and Design Guidelines, landscaped and shall keep all shrubs, trees, hedges, grass and plantings of every kind located on such Owner's Lot neatly trimmed, shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material and shall maintain all paved and concrete areas, including driveways and parking areas, in good condition and repair. Each Owner shall be responsible for the proper maintenance and care of any trees planted on Owner's Lot. Declarant, the Master Association may plant trees in certain designated Common Areas in the Community. Owners may not remove, replace, alter or relocate any trees or plantings so located.

(t) **Machinery and Equipment**. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except: (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a Farm Dwelling Unit, appurtenant structures, other Improvements or in conjunction with the agricultural use of the Lot; or (ii) that which Declarant or the Master Association may require for the development operation and maintenance of the Property.

(u) **Offensive Activity**. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property.

(v) **Unsightly or Unkept Conditions**. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot.

(w) **Artificial Vegetation, Exterior Sculpture, and Similar Items**. No artificial vegetation shall be permitted on any Lot except within an enclosed Farm Dwelling Unit. Exterior sculptures, fountains, flags, and similar items must be approved by the Design Review Committee.

(x) **Continuity of Construction**. All Improvements commenced on any Lot shall be prosecuted diligently to completion, pursuant to the applicable Design Guidelines. In the event there is any damage to improvements from fire, such improvements shall be rebuilt in accordance with the provision of the Declaration or the Lot shall be cleared.

(y) **No Further Separation and Consolidation**. No Owner shall, without the prior written approval of the Board, which approval must be evidenced on the map, plan or other instrument creating the easement or other interest, subdivide or separate its Lot into smaller lots or parcels of land or transfer less than all of such Lot or grant any easement or other interest that would have the effect of subdividing or separating a Lot into smaller parcels. This provision shall not in any way prohibit, restrict or otherwise limit Declarant from subdividing, condominiumizing, separating, consolidating or resubdividing Lots or any other property owned by Declarant.

(z) **Lot Coverage.** Not more than thirty-five percent (35%) of each Lot in the Community described in Exhibit A of the Declaration shall be used for construction of the Farm Dwelling Unit, accessory structures and paved driveways, if any.

(aa) **Visual Impacts.** For any Lot which is visible from the beach areas located on the seaward side of the shoreline, the Buildable Area is limited to single-story structures of which the cumulative visible width shall not exceed one hundred (100) feet. Owners are encouraged to achieve the maximum one hundred (100) feet visible width through a combination of staggered setbacks and landscape screening.

(bb) **Agricultural Water System and Company**. Each Lot Owner will be a member of any water company (the "Water Company") established to administer and to maintain the Agricultural Water System and will be subject to the attendant obligations attributable to such membership. Such obligations include, without limitation, the responsibility to pay assessments to the Water Company for maintenance of the system and for the use of water delivered by the Water Company to the Lot Owner. The Water Company may establish limits on the use of non-potable water.

The Water Company is governed by the following documents including, but not limited to, the Articles of Incorporation of Kahu'aina Water Association, Inc., the Bylaws of the Kahu'aina Water Association, Inc., the Declaration of Covenants, Conditions, Restrictions and Easements for Kahu'aina Water Association, Inc., and that certain Grant of Easement (Water) between Falko Partners, LLC and Kahu'aina Water Association, Inc.

5. **No Dwelling Units in Conservation or Special Management Areas**. If any portion of the Property is within the Conservation land use district established by the State Land Use Commission or Special Management Area ("SMA"), there shall be no residential development within that portion of the Property. No Dwelling Units in Conservation or Special Management Areas. If any portion of the Property is within the Conservation land use district established by the State Land Use Commission or Special Management Area ("SMA"), there shall be no residential development within that portion of the Property.

6. **No Limitation of Transfer of Short Term Ownership**. The Owners shall have the absolute right to sell, lease, rent or otherwise transfer their respective Units subject to all provisions of the

Act, all applicable laws, and the Community Documents. Any lease or rental agreement of a Unit shall be in writing and shall provide that it shall be subject in all respects to the provisions of the Community Documents and that the failure of the lessee or tenant to comply with the terms of the Community Documents shall be a default under the lease or rental agreement.

7. **Use of Unit**. An Owner shall not use his or her Unit and/or any appurtenant Limited Common Element for any purpose which will injure the reputation of the Community or suffer anything to be done or kept in his or her Unit or elsewhere in the Community which will (a) jeopardize the soundness of any building in the Community, (b) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (c) increase the rate of fire insurance on any structure or the contents of any structure, or (d) reduce the value of the Community or any structure in the Community.

8. **Agricultural Use**. An Owner shall use his or her Unit and/or any appurtenant Limited Common Element for agricultural use as more fully set forth in the Master Declaration. Each Unit is located in the State's agricultural district and therefore, accordingly, each Unit must comply with the agricultural uses described in Chapter 205 of the Hawaii Revised Statutes. Agricultural activities and uses of the Unit include the cultivation of crops, including but not limited to flowers, vegetables, foliage, and fruit, orchards, forage, forestry and farming activities or the raising of livestock. A maximum of one (1) farm dwelling unit, which is defined as a single-family dwelling located on and used in connection with a farm, is permitted on the Buildable Area appurtenant to each Unit. Each Owner shall execute any Farm Dwelling Unit agreement required by the County and no other structures are permitted on the Buildable Area appurtenant to such Unit.

**END OF EXHIBIT G**

**EXHIBIT H**

Section 1.12 -- Encumbrances Against Title

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE ENCUMBRANCES AGAINST TITLE CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

1. Real Property Taxes as may be due and owing. For additional information contact the County of Kauai, Department of Finance.

2. Title to all mineral and metallic mines reserved to the State of Hawaii.

3. AS TO LOT 15 ONLY

   a. Shoreline setback lines as they may be established by the State Land Use Commission or by the various Counties pursuant to the Hawaii Revised Statutes.

   b. Rights of others thereto entitled in and to the continued uninterrupted flow of the Waipake Stream.

   c. Any Adverse claim based upon the assertion that:

      (a) Said land or any part thereof is now or at anytime has been below the ordinary highwater mark of the Waipake Stream.

      (b) Some portion of said land has been created by artificial means or has accreted to such portion so created.

      (c) Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Waipake Stream, or has been formed by accretion to any such portion.

4. All customary and traditional rights, of native Hawaiians as provided for by law, for subsistence, cultural and religious purposes, which rights may involve access to the subject property.

5. Access rights in favor of Exclusions 2, 3, 4, 5, 6 and 7; as set forth as disclosed by the Deed recorded January 26, 1979 as Book 13443 Page 188.

6. A reservation in favor of the Grantor of water and riparian rights, as disclosed and being more fully set forth in the Deed recorded January 26, 1979 as Book 13443 Page 188.

7. The terms and provisions contained in the unrecorded Grazing License Agreement dated June 23, 1978, to Princeville Cattle Company which may be terminated upon 45 days prior written notice; as disclosed in Deed recorded January 26, 1979 as Book 13443 Page 188.

8. Easement in favor of Parcel 13 over the existing dirt access road over Parcel 6 to the public highway, and provisions for the relocation of said easement, as set forth by the Order Granting Motion for

Partial Summary Judgment, filed in the Circuit Court of the Fifth Circuit, State of Hawaii, in Civil No. 3301, recorded March 20, 1985 as set forth in Book 18512 Page 181 of Official Records.

9. A Grant of Easement for utility purposes within Easement E-1, E-2, E-3, E-4, E-5, E-6, E-7 and E-8, as shown on the map attached thereto, in favor of GTE Hawaiian Telephone Company Incorporated (now Hawaiian Telcom, Inc.), recorded April 16, 1986 as Bok 19431 Page 106.

10. The terms and provisions contained in the Farm Dwelling Agreement, recorded October 25, 1994 as Document No. 94-175110.

11. Terms and conditions as set forth in the Notice of Dedication, wherein My Legacy Limited Partnership c/o Joe Kirkwood, Jr., dedicates the premises described herein for agricultural use for a period of 10 years effective January 1, 2000. Said Notice was recorded January 28, 2000 as Document No. 2000-012163.

12. A Right-of-Entry, in favor of Kauai Island Utility Cooperative, a cooperative association, and Verizon Hawaii Inc. (now Hawaiian Telcom, Inc.), recorded March 11, 2004 as Document No. 2004-050666.

13. Easements A-1, A-2 and A-3 for Agricultural Activity Purposes, as described in or disclosed by instrument recorded June 17, 2008 as Regular System Document No. 2008-098015 of Official Records.

14. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Kahu'aina Plantation recorded September 2, 2008 as Regular System Document No. 2008-138198 of Official Records.

15. A Grant of Easement for agricultural activity purposes over and across Easement A-1, Easement A-2 and Easement A-3, in favor of Falko Partners, LLC, a California limited liability company, recorded September 2, 2008 as Regular System Document No. 2008-138199 of Official Records.

16. Regular System Condominium Map No. 4702.

The foregoing Condominium Map was amended by instrument recorded April 7, 1009 as Regular System Document No. 2009-052113 of Official Records.

17. The terms and provisions contained in or incorporated by reference in the Declaration of Condominium Property Regime of Kahu'aina Farms, as may be amended. Said Declaration was recorded September 3, 2008 as Regular System Document No. 2008-138986 of Official Records.

The foregoing Declaration was amended by instrument recorded April 7, 1009 as Regular System Document No. 2009-052114 of Official Records.

18. The terms and provisions contained in or incorporated by reference in the Condominium By-Laws of the Association of Apartment Owners of Kahu'aina Farms, as may be amended. Said By-Laws were recorded September 3, 2008 as Regular System Document No. 2008-138987 of Official Records.

19. Designation of the following easements as shown on File Plan No. 2458:

Easement 1 for water well purposes affecting Lot 15.
Easement 2 (15 ft. wide) for waterline purposes affecting Lot 15 and Road Lot A.
Easement 3 for water tank purposes affecting Lot 15.
Easement 4 for waterline purposes affecting Lot 15.
Easement 5 (5 ft. wide) for waterline purposes affecting Lot 15.

Easement 6 for waterline purposes affeting Lot 15.
Easement 7 for electrical purposes affecting Lot 15 and Road Lot A.
Easement 8 for electrical purposes affecting Lot 15.
Easement 9 (30 ft. wide) for electrical purposes affecting Lot 1.
Easement 10 (20 ft. wide) for electrical purposes affecting Lot 3.
Easement 11 for electrical purposes affecting Lot 15.
Easement 12 for public parking purposes affecting Lot 15.
Easement 13 (10 ft. wide) for public pedestrian access purposes affecting Lot 15.
Easement 14 for access purposes affecting Lot 15.
Easement 15 (10 ft. wide) for access purposes affecting Lot 15.
Easement 16 (10 ft. wide) for access purposes affecting Lot 15.
Easement 17 (10 ft. wide) for access purposes affecting Lots 4 and 15.
Easement 18 (10 ft. wide) for access purposes affecting Lot 15.
Easement 19 (10 ft. wide) for access purposes affecting Lot 15.
Easement 20 for detention basin purposes affecting Lot 15.
Easement 21 for retention basin purposes affecting Lot 15.
Easement 22 for retention basin purposes affecting Lot 4.
Easement 23 for retention basin purposes affecting Lot 5.
Easement 24 for detention basin purposes affecting Lot 15.
Easement 25 for detention basin purposes affecting Lot 15.
Easement 26 for drainage purposes affecting Lot 15.
Easement 27 for drainage purposes affecting Lot 15.
Easement 28 for drainage purposes affecting Lot 15.
Easement 29 for drainage purposes affecting Lot 15.
Easement 30 for drainage purposes affecting Lot 15.
Easement 31 for drainage purposes affecting Lot 15.
Easement 32 for drainage purposes affecting Lots 7 and 15.
Easement 33 for drainage purposes affecting Lot 15.
Easement 35 for drainage purposes affecting Lot 15.
Easement 36 for drainage purposes affecting Lot 15.
Easement 37 for drainage purposes affecting Lot 15.
Easement 38 for drainage purposes affecting Lot 15.
Easement 39 for landscaping purposes affecting Lot 15.
Easement 40 for landscaping purposes affecting Lot 15.
Easement 41 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 42 (30 ft. wide) for landscaping purposes affecting Lot 1.
Easement 43 (30 ft. wide) for landscaping purposes affecting Lot 2.
Easement 44 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 45 (30 ft. wide) for landscaping purposes affecting Lot 3.
Easement 46 (30 ft. wide) for landscaping purposes affecting Lot 4.
Easement 47 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 48 (30 ft. wide) for landscaping purposes affecting Lot 5.
Easement 49 (30 ft. wide) for landscaping purposes affecting Lot 6.
Easement 50 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 51 (30 ft. wide) for landscaping purposes affecting Lot 7.
Easement 52 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 54 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 56 (30 ft. wide) for landscaping purposes affecting Lot 10.
Easement 57 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 58 (30 ft. wide) for landscaping purposes affecting Lot 11.
Easement 59 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 60 (30 ft. wide) for landscaping purposes affecting Lot 12.
Easement 61 (30 ft. wide) for landscaping purposes affecting Lot 13.
Easement 62 (30 ft. wide) for landscaping purposes affecting Lot 14.
Easement 63 (30 ft. wide) for landscaping purposes affecting Lot 15.
Easement 64 for archaeological purposes affecting Lot 15.
Easement 65 for access and utility purposes affecting Road Lot A.
Flood and building setback lines affecting Lots 12, 13, 14 and 15.

Restriction of vehicular access rights affecting Lot 15.

20. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration Releasing Rights to Three-Phase Power Installation recorded November 20, 2008 as Regular System Document No. 2008-176925 of Official Records.

21. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Grant and Reservation of Easements for the Kahu'aina Plantation Subdivision recorded November 20, 2008 as Regular System Document No. 2008-176927 of Official Records.

22. AS TO LOT 15 ONLY:

a. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration Incorporating Conditions of Approval into Instruments of Conveyance (CDUP No. KA-3448) recorded November 20, 2008 as Regular System Document No. 2008-176926 of Official Records.

b. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the In Situ Agreement recorded December 2, 2008 as Regular System Document No. 2008-181952 of Official Records.

Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Agricultural Subdivision Agreement recorded January 13, 2009 as Regular System Document No. 2009-004158 of Official Records.

23. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.

24. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

25. Easements, claims of easement or encumbrances which are not shown by the public records.

26. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.

**END OF EXHIBIT H**

## EXHIBIT I

Section 1.13 -- Uses Permitted by Zoning and Zoning Compliance Matters

The County of Kauai's zoning designation for the Community is open. Uses permitted in this zoning designation include those specified in the Kauai County Code, Chapter 8, Article 8 for open districts, which provides as follows:

A. PERMITTED USES FOR UNITS IN OPEN DISTRICTS.

I. Generally Permitted Uses And Structures.

(1) Accessory uses and structures
(2) Day-use areas
(3) Diversified agriculture
(4) Livestock and grazing, except as provided in Sec. 8-8.3 of the Kauai County Code
(5) Outdoor recreation
(6) Parks and monuments
(7) Private recreation areas
(8) Resource management
(9) Single family detached dwellings
(10) Undeveloped campgrounds

Pursuant to Chapter 205 of the Hawaii Revised Statutes, single family dwelling units must be farm dwelling units. Farm dwelling means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.

**END OF EXHIBIT I**

**EXHIBIT J**

Section 2 -- Persons Connected with the Community

| | |
|---|---|
| **Developer(s)** | Name: FALKO PARTNERS, LLC<br><br>Business Address: c/o Bowman Capital<br>1875 South Grant Street, Suite 600<br>San Mateo, California<br>94402<br><br>Business Phone Number: 650-287-2203<br><br>E-mail Address: matt@bcm.com |
| Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary). | FALKO PARTNERS, LLC<br>Managing Member: LYON VENTURES, LLC<br>Member(s): LAWRENCE BOWMAN |

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE PERSONS CONNECTED WITH THE COMMUNITY. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

## EXHIBIT K

Section 3.5 -- Changes to the Condominium Documents

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE CHANGES TO THE CONDOMINIUM DOCUMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

### AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME

Pursuant to Paragraph P of the Declaration:

1. Amendment of Declaration by Owners. Except as otherwise expressly provided in the Declaration or in the Act, the Declaration may be amended by the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Owners at a meeting of the Association called for that purpose, and effective only upon the Recording of an instrument setting forth such amendment and vote, duly executed by two officers of the Association as provided in the Bylaws; provided, however, that, except as otherwise expressly provided in the Declaration or in the Act, the approval of eligible holders of first mortgages (as defined below) on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such eligible holders are allocated, together with such other approval requirements as set forth in this Section, shall be required to materially amend any provision of the Declaration, or to add any material provisions hereto, which establish, provide for, govern or regulate any of the following:

    (a) By act or omission, seek to abandon or terminate the Community;

    (b) Change the common interest appurtenant to any individual Unit;

    (c) Partition or subdivide any Unit;

    (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Community shall not be deemed a transfer within the meaning of this subsection;

    (e) Use condemnation proceeds or hazard insurance proceeds for losses to the Property or any part thereof (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of same;

    (f) Amend any provision of the Declaration or the Bylaws that materially and adversely affect mortgagees, provided, however, that this subsection shall not apply to any actions taken pursuant to rights expressly reserved to Declarant in the Community Documents. To qualify as an "eligible holder of first mortgage," a first mortgagee must have made a written request to the Association for timely written notice of proposed amendments to the Community Documents, as provided in Section 10.4 the Bylaws; provided, however, that this subsection shall not apply to any actions taken pursuant to rights expressly reserved to Declarant in the Community Documents.

2. Amendment of Declaration by Declarant. Any provision of this Section to the contrary notwithstanding, Declarant may amend the Declaration, the Bylaws and/or the Condominium Map, without the approval, consent or joinder of any person or group of persons, including the Association, any Owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Community, to correct typographical or mathematical errors and to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Community or any of the Units, by any institutional lender lending funds on the security of the Community or any of the Units, or by any governmental agency (including without limitation the VA, HUD, FNMA and/or FHLMC) or as otherwise required by Declarant; provided, however, that, except as otherwise provided herein, no such amendment which would change the common interest appurtenant to a Unit or substantially change the design, location or size of a Unit shall be made without the consent to such amendment by all persons having an interest in such Unit.

3. Amendment of Declaration by Declarant to File an As Built Certificate. Any provision of this Section to the contrary notwithstanding, Declarant may amend the Declaration (and when appropriate the Condominium Map) without the approval, consent or joinder of any person or group of persons, including the Association, any Owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Community or in any Unit, to file a verified statement of the Declarant, a registered architect, or a professional engineer certifying that the final Recorded Condominium Map fully and accurately depicts the layout, location, and dimensions of the Units, as built, or that any revised plans being filed simultaneously with the amendment involve only immaterial changes to the layout, location and dimensions of the Units as built or such other changes as Declarant is permitted to make pursuant to the Declaration.

4. Amendment of the Declaration by Declarant. Any provision of this Section to the contrary notwithstanding, Declarant may amend the Declaration (and when appropriate the Condominium Map) as provided in Sections E, L.3, and S or otherwise in the Declaration without the approval, consent or joinder of any person or group of persons, including the Association, any Owner or any mortgagee, lienholder, or any other person who may have an interest in the Community or in any Unit.

5. Votes Required. Any provision of this Section to the contrary notwithstanding, any amendment affecting any provision of the Declaration which is for the express benefit of holders or insurers of first mortgages on Units shall require the approval of eligible holders of first mortgages on Units to which at least sixty-seven percent of the votes of Units subject to mortgages held by such eligible holders are allocated, together with such other approval requirements as set forth in this Section. Except to the extent such rights are specifically reserved by the Declarant under the Declaration, any holder, insurer, or guarantor of a first mortgage of a Unit whose interest appears in the record of ownership or who has otherwise delivered a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number) shall be entitled to:

(a) Prior written notice of any proposed amendment to the Declaration or these Bylaws effecting a change in (1) the boundaries of a Unit, (2) the common interest pertaining to the Unit, or (3) the purposes to which the Unit, the Limited Common Elements appurtenant thereto, or the Common Elements are restricted;

(b) Prior written notice of any proposed termination of the Community;

(c) Timely written notice of any actual or threatened condemnation or eminent domain proceeding or casualty loss affecting a Unit or the Property or any portion thereof;

(d) Timely written notice of any significant damage or destruction to the Common Elements or to a Unit on which there is a first mortgage held, insured, or guaranteed by such holder;

(e) A copy of any bond required to be posted before commencing or permitting construction of any Improvements on or to the Property;

(f) Timely written notice of all meetings of the Association (the holder or insurer of a first mortgage being permitted to designate a representative to attend all such meetings);

(g) Notice of any default by the Owner of the Unit involved which is not cured within sixty days;

(h) Upon request therefore, a certificate of any then unpaid assessments for common expenses due from the Owner of the Unit involved, as provided in Section 6.13 of the Bylaws;

(i) A copy of all pleadings filed in any lawsuit, administrative proceedings, or other action affecting the Property, or any portion thereof, upon specific written request and at such Person's expense; and

(j) Prior written notice of any proposal to subdivide, encumber, sell, or transfer the Common Elements or any part thereof, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Community shall not be deemed a transfer within the meaning of this subsection.

(k) Prior written notice of a lapse, cancellation, or material modification of any insurance policy required to be maintained by the Association.

(l) Prior written notice of any proposed action that requires the consent of a specified percentage of mortgagees.

6. No Impairment or Diminishment of Declarant's Rights. Any provision of the Declaration to the contrary notwithstanding, and in addition to such other approval requirements as are set forth in this Section, to the extent permitted by Section 514B-106(d) of the Act, the prior written approval of Declarant is required before any amendment which would impair or diminish the rights of Declarant to complete the Property or sell or lease Units therein in accordance with the Declaration shall become effective. Notwithstanding any other provisions of the Declaration, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant:

(a) Mortgagee Approval. Any amendment or action requiring the approval of Mortgagees pursuant to the Declaration;

(b) Capital Improvement Assessment. The levy of a Capital Improvement Assessment for the construction of new facilities not constructed in the Common Elements by Declarant;

(c) Reduction in Services. Subject to any restrictions contained in the Bylaws regarding limitations on general assessment increases, any significant reduction of Association maintenance, repair, upkeep, or other services;

(d) Assessments. Alteration in the method of fixing and collecting assessments or any increases in assessments beyond the amounts permitted under the Bylaws;

(e) Responsibility for Repairs. Reduction in the level of, or change in allocation of, responsibility for maintenance of and repairs to all or any portion of the Common Element subject to the Declaration, or any other maintenance obligations of the Association set forth in the Declaration;

(f) Common Elements. Conveyance or dedication by the Association of all or any portion of the Common Elements;

(g) Improvements to and Maintenance of Common Elements. Modification to Improvements to the Common Elements or to the level or frequency of maintenance of the Common Elements;

(h) Enforcement of the Declaration. Alteration in the method of enforcing the provisions of the Declaration; or

(i) Declarant's Reserved Rights. Any modification of the rights reserved and granted to Declarant herein with respect to development or sale of the Property or which are for the express benefit of Declarant.

**AMENDMENT TO BYLAWS**

Pursuant to Section 11.2 of the Bylaws:

1. Vote or Consent Requirements. Except as otherwise expressly provided in the Declaration of Condominium Property Regime, the Bylaws, or in the Act, the Bylaws may be amended in any respect not inconsistent with law or the Declaration of Condominium Property Regime by the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Owners, provided that each of the particulars set forth in Section 514B-108 of the Act shall always be embodied in the Bylaws, and provided further that an amendment to the provisions of the Bylaws that are for the express benefit of holders or insurers of first Mortgages on Units shall require the approval of eligible holders of first Mortgages on Units to which there are allocated at least fifty-one percent (51%) of the votes allocated to all Units subject to first Mortgages held by such eligible holders, together with the vote of not less than sixty-seven percent (67%) of the Owners, and provided further that an amendment to the provisions of the Bylaws that are for the express benefit of Developer shall also require the express written consent and joinder of Developer, together with such other approval requirements as set forth in Section 11 of the Bylaws.

2. Proposed Amendments. Proposed amendments to the Bylaws with the rationale for the proposal may be submitted to the Owners either by the Board of Directors or by a volunteer Owner's group. If a volunteer Owner's group desires to submit a proposal to the Owners, it shall first submit the proposal to the Board of Directors with the rationale for the proposal and a petition supporting the proposed Bylaws signed by not less than twenty-five percent (25%) of the Owners. Within thirty (30) days from the receipt of the proposal, the rationale, and the petition by the Board, the Board shall mail to the Owners for approval without change the proposed amendments to the Bylaws, the rationale for the proposal, ballots for voting, and the Board's comments, if any, concerning the proposal. No proposal by the Board or the volunteer Owner's group shall be valid unless the required percentage of votes or consents for such amendment are obtained within three hundred sixty-five (365) days of the mailing to Owners or in such shorter time as is specified in the mailing.

3. Adoption of Group's Proposal. If the Board fails to mail the proposed amendments to these Bylaws, rationale, and ballots for voting to the Owners within thirty (30) days of the receipt of the petition by the Board, then the Owner's group may mail such items to the Owners, and the vote thus taken will be valid, provided the Owner's group has complied with all other applicable rules on voting for Bylaws amendments. The results of such vote shall be presented to the officers of the Association who shall promptly execute such documents as shall be necessary to permit the amendments to be Recorded.

4. When Amendments Are Effective. An amendment to the Bylaws shall be effective only upon the Recording of such amendment.

**END OF EXHIBIT K**

## EXHIBIT L

Section 3.6 -- Rights Reserved by Developer to Make Changes to the Condominium Community or Condominium Documents

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL OF THE RIGHTS RESERVED BY DEVELOPER UNDER THE CONDOMINIUM DOCUMENTS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF SUCH RESERVED RIGHTS, PURCHASER SHOULD REFER TO THE DECLARATION TO DETERMINE THE ACTUAL RIGHTS RESERVED BY DEVELOPER. IF ANY CONFLICT OR DIFFERENCES EXISTS BETWEEN THIS SUMMARY AND THE DECLARATION, THE DECLARATION WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

Developer has the right to change the condominium documents for any of the following reasons or purposes:

1. **Easement and Reserved Rights Exercisable by Declarant**. Declarant shall have the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements of the Community or Private Yard Areas for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary for the operation, care, upkeep, maintenance or repair of any Unit, the Common Elements or any easements for utilities or for any public purpose. Notwithstanding anything to the contrary contained in the Declaration, Declarant may exercise rights reserved to it under the Declaration without the requirement that it satisfy conditions applicable to the exercise of any right available to the Association.

2. **Declarant's Reserved Rights Concerning Easements**. Declarant reserves a present easement over the whole of the Common Elements, together with the right for itself and its successors and assigns, to designate, grant, convey, transfer, cancel, relocate, reserve or otherwise deal with any easements, licenses, and rights of way at any time for utilities, any public-type facility (mailboxes and the like), private sanitary and storm sewers, cable television transmission facilities, party walls (including the creation of the same on the Community boundaries, refuse disposal, landscape, maintenance, driveways, parking areas, access roadways and other similar purposes, on, over, across, under and through the Common Elements of the Community and the Private Yard Areas. Without limiting the generality of the foregoing, Declarant reserves the right to utilize any common roadway and utility facilities (including without limitation water, private sewer, electrical, telephone, and cable) described in the prior sentence (such as, but not limited to, waterlines, private sewer lines access roadways and the like) whether located in designated easement areas or otherwise, together with the right of entry to construct, reconstruct, operate, maintain, repair and relocate such lines, access roadways and the like) whether located in designated easement areas or otherwise, together with the right of entry to construct, operate, maintain, repair and relocate such lines, facilities and appurtenances and to grant any such easements or rights of way to governmental or quasi-governmental authorities, utility or service companies, homeowner's associations or other entities and the right to grant, dedicate, designate, use and enjoy easements and/or rights-of-way for access purposes (including for vehicular and pedestrian access). Declarant may, in its discretion, complete any construction of intended facilities in advance of the designation or creation and granting of the easement covering the facilities so constructed. The rights reserved to Declarant include specifically without limitation the right to utilize any utility service to the Community to complete such construction, to perform warranty or punchlist repair services within the Community and to serve adjacent and separate developments outside of the Community provided Declarant with respect to such separate and/or adjacent communities submeters such use, and may use roadways in the Community to serve adjacent developments provided the Association controlling such development shares pro rata in the cost of maintenance and repair of the roadway and reimburses the Association for any submetered use (such

as water service), the Association shall be entitled to confirm submeter readings. Each Owner, by purchasing a Unit, consents to any such designation, granting, conveyance, transfer, cancellation, relocation and reservation of easements and/or rights of way as provided above without the necessity of any Owner or those claiming by, through or under an Owner entering into any further agreement respecting such action or document; provided, however, that such Owner and those claiming by, through or under an Owner agrees to join in and execute such documents and instruments and do such other things as may be necessary or convenient to effect the same promptly at the request of Declarant without payment of additional consideration.

3. **Declarant's Easement to Conduct Extensive Sales Activities**. Declarant, and its agents, successors, mortgagees and assigns, shall for the benefit of the Community have the right and an easement to conduct extensive sales activities on and at the Community, including the use of any Unit owned by Declarant (and any other Unit, with the express permission of the Owner of such Unit) and the Common Elements (excluding Limited Common Elements appurtenant to other Units) for model homes, sales and management offices, parking and extensive sales displays and activities, and the posting and maintenance of signs and other advertisements relating to such sales activities. Without limitation of the foregoing, Declarant reserves, for itself and its successors and assigns, the right during the course of Declarant's sales of Units in the Community to supplement, modify and amend the estimated breakdown of annual maintenance fees and estimated cost of assessment to each Unit, as Declarant deems appropriate, to reflect changes in estimated expenses applicable to ownership of Units attributable to the increase in cost of service or modification of proposed service to the Association reflected in the budget for annual maintenance fees. Upon such modifications, Declarant may supplement and amend its public report applicable to the Community, which modification shall not be deemed material any respect.

4. **Declarant's Easement to Complete Construction and Make Repairs.** Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon any portion of the Community, including the Common Elements, any utility service, Limited Common Elements and any Unit, as may be reasonably necessary for the inspection of and for the completion of Improvements to and correction of defects and other "punchlist" items in the Unit or Private Yard Area or the Community. The rights reserved in this Section shall continue until ten (10) years after the later of: (i) the Recording of the "as built" verified statement required by Section 514B-34 of the Act; and (ii) the "date of completion" of the Improvements as defined in Section 507-43(f), Hawaii Revised Statues of the last increment constructed in the Community.

5. **Declarant's Easements for Development, Construction, and Sale**. Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon the Community and each and any portion of the Community and the individual Units to create and cause noise, dust, vibration and other nuisances or annoyances created by and resulting from any work connected with or incidental to the development, construction and sale of any Unit or other Improvement to the Community, any additional increment to the Community, or any other community which Declarant, its successors or assigns, may develop on property adjacent to or in the vicinity of the Community. Each and every Owner or other person acquiring any interest in the Community waives any and all rights, claims or actions that might otherwise be asserted against Declarant, its agents, employees, licensees, successors, mortgagees and assigns, based on any such noise, dust, vibration and other nuisances or annoyances. Without limitation of the foregoing:

(a.) Declarant, its agents, employees, consultants, contractors, licensees, successors, Mortgagees and assigns, shall have an easement over, under and upon the Community as may be reasonable or appropriate for additional construction, the completion of renovations to the Improvements of the Community, and (at the option of Declarant) the correction of defects therein. In addition to any other easements reserved to Declarant under the Declaration, in connection with, and to the extent necessary for the development and construction of Units, common facilities, and/or increments following the transfer of ownership of any Unit to an individual or entity other than Declarant, Declarant shall have the right to enter upon the Community premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing all increments in accordance with the

Declaration and the Condominium Map. Such rights shall include, but are not limited to, the following:

(i.) An easement over, under and across the Common Elements of the Community and all utility service to the Community for the purposes of all work connected with or incidental to the development, construction and sale of the Units or increments; and

(ii.) The right in the nature of an easement over and upon the existing buildings and Common Elements of the Community to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the increments or Units.

(b.) Declarant, its contractors, subcontractors, licensees, mortgagees and assigns, and their respective employees and agents, shall have the right and an easement in favor of Declarant and its successors and assigns is hereby granted at any time and from time to time prior to the thirtieth (30th) anniversary date from the recording of the Declaration, to enter upon, use, remove, replace, add to, or otherwise alter the Common Elements and the Limited Common Elements of the Community and to do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing any additional increment to the Community, connecting any such additional increment to the utility installations of the Community, and selling the Units contained within any such additional or increment, including, but not limited to, the right to consolidate any parcel(s) of land covered hereby with any other parcel(s) of land in connection with the merger of increments; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the Community, and provided further that any person exercising such rights shall use reasonable efforts, without additional cost to Declarant and consistent with maintaining the progress of the design, development, construction, completion and sale of the additional increment, to minimize interference with the Owners' use and enjoyment of the Property. Declarant further reserves the right to grant, for the benefit of the Owner or Owners from time to time of all or any portion of each of the other Increments, and without the consent or joinder of, or notice to, any party having any interest in the Community, easements over, under, across, along, upon and through the Common Elements of the Community for ingress and egress purposes, access purposes, electrical, gas, communications and other utility purposes, private sanitary sewer, drainage and drainline, waterline, and flowage purposes, and all other purposes, to the State of Hawaii, the County, County Board of Water Supply (all references to which shall include a reference to the County Department of Water, as appropriate), any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, provided that such easements and rights-of-way do not materially impair or interfere with the use of any Unit in the Community or the Common Elements of the Community.

(c.) Without limiting the foregoing, Declarant shall have the following retained and reserved construction easements:

(i.) A non-exclusive easement for access to, the right to connect to and the use for their intended purposes and maintenance, all facilities located in the Community including heating, ventilating and air conditioning systems, boilers and hot water systems;

(ii.) A non-exclusive easement permitting encroachments in the event and to the extent that, by reason of the original construction or any reconstruction or replacement of any improvements currently located or hereafter constructed on any part of the Community or the subsequent settlement or shifting of any part of the improvements on any portion of the Community;

(iii.) A non-exclusive easement for ingress and egress of persons and vehicles through, over and along all portions of the Community as they exist on the date the Declaration is Recorded and which, by their nature, currently permit the passage of

persons and motor vehicles, respectively, for the purpose of affording access to and egress from the public alleys and streets adjoining the Community; and

(iv.) A non-exclusive easement for ingress and egress of persons and vehicles through, over and along all portions of the Community to construct and maintain facilities therein, provided that the existence of the facilities when completed does not materially interfere with the use of the Community through or in which the facilities are constructed for their intended purpose. During construction of the facilities, Declarant and its contractors may restrict the use of the Common Elements of the Community as would be normal for the type of construction involved, provided that the Common Elements of the Community can still be used for the purpose for which they were designed, or reasonable alternative services are available.

(d.) The purpose of the easements declared and granted in this Section is to enable Declarant to fully exploit and use the Community or any portion thereof for any lawful purpose whatsoever and to construct thereon any improvements which Declarant is lawfully permitted to construct, and, in connection with such construction, to connect to, rest upon, abut and otherwise receive support for any improvements which may be created, from the Improvements currently located on the Community adjoining the area of such Improvement and for ingress and egress through the Common Elements of the Community as currently enjoyed. Declarant's exercise of rights reserved in this Section are subject to Declarant's agreement to repair at its sole cost, in a good and workmanlike manner and in accordance with all laws any damage caused to the Community by reason of the exercise of the easements granted by this Section. The easements granted in this Section are perpetual and may be assigned in whole or in part, subject to such limitations as may be determined appropriate by Declarant in Declarant's sole discretion, by Declarant to one or more Owners.

**6. Declarant's Reserved Right Regarding County, State and Federal Licenses and Permits.** Each Owner acknowledges and agrees that Declarant, on behalf of the Association, may seek or has obtained certain licenses and permits from the County Department of Planning (the "KDP") and any other Federal, State or local government agencies, including the Hawaii Department of Land and Natural Resources ("DLNR") and US Army Corps of Engineers, relating to the development of the Community, including, but not limited to the private storm sewer system any declaration regarding Improvements or use of properties Declarant is required to impose on the Land in order to proceed with the development of the Land (collectively the "licenses and permits"). To the extent that any such licenses or permits have not been issued to the Association, Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns, reserve the right to transfer to the Association any and all obligations in connection with such permits. Declarant hereby reserves the right, without the joinder or consent of, or notice to, the Association or any Owner or their mortgagees, to enter and/or to amend such license or permit as may be required by the KDP and to encumber the Land and the Association with the obligations thereunder arising, including but not limited to the: (i) Agricultural Subdivision Agreement; (ii) Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance; and (iii) Agreement Regarding Conditions of Zoning Permit Approval. In connection with such licenses and permits, the Association shall have the responsibility to comply at all times now and in the future with all requirements under such licenses and permits transferred to the Association or that encumber the Land, and all KDP regulations and any other applicable statutes, ordinances and rules and regulations of Federal, State or County agencies relating to the discharge, drainage and runoff of storm water and surface water, and their constituents, from the Community into the private storm sewer system. Neither the Association nor any Owner shall take any actions that may in any way undermine the Association's obligations to comply with the foregoing requirements. Each Owner and the Association shall execute any and all documents required by Declarant in Declarant's sole discretion to transfer, if required, any applicable license or permit to the Association, including without limitation any license relative to discharge, drainage and runoff. Without limitation of the foregoing, the rights reserved to Declarant by this Section include by way of example and not limitation, the right: (i) to provide open space(s) or a sidewalk or pathway for use by the public in the Community; (ii) to establish a private park area(s) at the Community; (iii) to designate one or more areas and/or to record against the Community an

agreement with the Department of Land and Natural Resources of the State of Hawaii for purposes of addressing the preservation, location and/or relocation of any burial or historic sites or artifacts found during development of the Community and protected under the laws of the State of Hawaii; (iv) to amend the Community Declaration and to modify the Condominium Map and scope of any Limited Common Element or Common Element, including, without limitation, the recreational facilities; (v) to create beach access ways, public parking areas, and restricted private or open to public areas for such uses as may be designated by Declarant; (vi) to perform stream remediation or such other actions within the stream as maybe required or permitted by DLNR and (vii) to perform such additional offsite requirements as may be mandated, including, without limitation, road widening improvements and/or the provisioning of utilities, traffic signals, bus stops and/or stop signs. The Association and each Owner shall indemnify and hold harmless Declarant, its successors and assigns, from and against any and all claims and demands for damages in connection with the Association's fulfillment of its obligations under transferred licenses and permits, including, without limitation, any and each of the items described in this section.

7. **Declarant's Reserved Right Regarding Grading and Drainage Channels.** Declarant hereby reserves to itself and the Association, and their respective officers, agents, employees, successors, and assigns, an easement to enter upon, across, over, in and under any portion of the Community, including Private Yard Area, for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of any portion of the Community for all reasons determined appropriate by Declarant, including without limitation so as to improve the drainage of water on the Community. Reasonable efforts shall be made to use this easement so as to disturb as little as possible the uses of the Owners, the Association and Declarant, as applicable, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work. The rights reserved in this Section shall continue until ten (10) years after the later of: (i) the Recording of the "as built" verified statement required by Section 514B-34 of the Act; or (ii) the "date of completion" of the improvements as defined in Section 507-43(f), Hawaii Revised Statues of the last increment constructed in the Community.

8. **Declarant's Right for Roadway and Utility Purposes.** Declarant hereby reserves an easement for roadway and utility purposes on and over the Community Access Roads as shown on the Condominium Map. Without limitation of Declarant's rights under the Declaration, Declarant further reserves the right to grant to the County of Kauai Island Utility Cooperative ("KIUC"), the Board of Water Supply, any private water supplier, any utility, or any agency or organization acting on their behalf any or all of the easement areas designated under the Condominium Map or in the Declaration, without joinder or consent of, or notice to, the Association, any Owner, or any Owner's Mortgagee.

9. **Declarant's Reserved Right to Transfer Property to the Association**. The Association shall accept title to any property, including any Improvements thereon and personal property transferred to the Association by Declarant, together with the responsibility to perform any and all duties associated therewith, which, upon conveyance or dedication to the Association, the Association shall maintain at its expense for the benefit of the Owners as provided in the Declaration. Property interests transferred to the Association by Declarant shall constitute Common Elements of the Community, which may include, without limitation, any landscaping flowage, drainage, or utility easements (pending dedication of all or portions of the affected easement areas to the County), the roadways, any license, lease or operating agreement described in Section E.15 of the Declaration, and may encompass fee simple title, easements, leasehold interests and licenses to use; provided, however, that any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association "as-is," "where-is," free and clear of all liens and encumbrances except for the following: (i) the lien for property taxes and assessments not then due and payable; (ii) the terms of the Declaration and the terms of the Supplemental Declaration annexing the property to the Property; (iii) easements, rights-of-way, reservations, covenants, conditions, restrictions and equitable servitudes or other non-financial encumbrances as Declarant in its discretion may deem appropriate; and (iv) such financial encumbrances as may be reasonably accepted and assumed by the Association and specifically approved by resolution of the Board. Any property or interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burden on the Association other than the normal burdens of

ownership and maintenance of property and the operation of facilities thereon; provided, however, such conveyance instrument may contain an indemnity of the Declarant by the Association. Each Owner, by accepting title to any portion of the Property and becoming an Owner, is deemed to approve and accept the acquisition by the Association of Common Elements as provided herein, and any common expenses which may relate thereto. The conveyance by Declarant may be without warranty of any kind except as aforesaid and without the benefit of escrow or title insurance, provided, however, the Association may purchase such title insurance, at the Association's expense, as the Association may wish. Upon transfer, the Association agrees to assume the obligations of the Declarant under any applicable leases, contracts, and other agreements. Furthermore, and notwithstanding anything to the contrary contained or implied in the Declaration, Declarant shall have the absolute right, without consent or joinder of, or notice to, the Association, or any member thereof or its Board, to convey to the Association the Common Element(s) and properties described in this Section.

**10. Right to Improve Private and Public Recreational Facilities.** Declarant shall have the absolute right, notwithstanding the lease, sale, or conveyance of any Unit and without being required to obtain the consent or joinder of or provide notice to any Unit Owner, lien holder, or other persons, to improve Common Elements with recreational facilities, all of which upon such construction shall be Common Elements of the Community and may be made available for use by all members of the Master Association. If made available to members of the Master Association, Declarant reserves the right, without being required to obtain the consent or joinder of or provide notice to any Unit Owner, lien holder, or other persons, to withdraw such Common Elements, and necessary access thereto, from the Community, or to permit use of such facilities by members of the Master Association upon the condition that the Master Association pay a fair proportion of the cost to maintain such facilities, as determined by Declarant, in Declarant's sole and absolute discretion. Although Declarant has reserved the right to include these and other items within the Community, but Declarant has no obligation to provide these or any additional items and has made no promise to do so.

**11. Minor Alterations to the Community.** Declarant shall have the absolute right, notwithstanding the lease, sale, or conveyance of any Unit and without being required to obtain the consent or joinder of or provide notice to any Unit Owner, lien holder, or other persons, to make other alterations in the Community (and to amend the Declaration and the Condominium Map accordingly) which make minor changes in any Unit in the Community or in the Common Elements that do not affect the physical location, design, or size of any Unit that has been sold and the conveyance thereof Recorded.

**12. Right of Inspection**. Declarant reserves the right, but not the obligation, to make any inspection of the Common Elements, Limited Common Elements, or Units.

**13. Alterations and Transfers of Common Interest**. Declarant reserves and shall have the right to alter the common interest and easements appurtenant to each Unit, which otherwise shall have a permanent character, as noted in this Section. The common interest, voting rights and easements appurtenant to each Unit may be altered (diminished or increased) by a Recorded amendment to the Declaration: (a) as may be determined necessary by Declarant, without the consent of any party, to correct typographical or mathematical errors in the statement of such common interests, (b) filed by Declarant, without the joinder of any party, upon the alteration of the Community as permitted pursuant to this Section and upon alteration permitted by this Section, and/or (c) upon the action or consent of all Owners of Units affected thereby, and the consent of the holders of any mortgage affecting such Units as shown in the Association's records of ownership, or who have given the Board notice of their interest.

**14. Declarant's Right to Alter Common Elements and Limited Common Elements to Relocate Units and to Increase or to Decrease the Number of Units and Modify Common Interests**.

**a.** The Declarant or its authorized representatives shall have the right and an easement, in favor of the Declarant and its successors and assigns, is hereby granted at any time and from time to time prior to the twentieth (20th) anniversary date hereof, to enter upon, use, remove, replace, add to, or otherwise alter the Common Elements and the Limited Common Elements of the

Community and to do all things reasonably necessary, desirable or useful to relocate Units (including but not limited to Spatial Units) which have not been sold and the conveyance thereof Recorded, within the Community Area to reduce the number of Units in the Community, and for designing, developing, constructing or completing any additional Units (including but not limited to Spatial Units) within the Community (Units in addition to and other than those currently identified in the Declaration), connecting any such additional or relocated Units to the roads and utility installations of the Community, and selling the Units including, but not limited to, the right to consolidate any parcel(s) of land covered hereby with any other parcel(s) of land in connection with the addition of Unit to the Community; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the property, and provided further that any person exercising such rights shall use reasonable efforts, without additional cost to the Declarant and consistent with maintaining the progress of the design, development, construction, completion and sale of the additional Unit, to minimize interference with the Owners' use and enjoyment of the property. Declarant further reserves the right to grant, for the benefit of the Owner or Owners from time to time of all or any portion of each of the other Units, and without the consent or joinder of, or notice to, any party having any interest in the Community, easements over, under, across, along, upon and through the Common Elements of the Community for ingress and egress purposes, access purposes, electrical, gas, communications and other utility purposes, private sanitary sewer drainage and drainline, waterline, and flowage purposes, and all other purposes, to the State of Hawaii, the County, the County Board of Water Supply, any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, provided that such easements and rights-of-way do not materially impair or interfere with the use of any Unit in the Community or the Common Elements of the Community.

b. In order to effect the rights of Declarant reserved by this Section, Declarant shall have the right to file or cause to be filed an amendment to the Declaration describing (a) the revised description of Units and/or buildings that comprise the Community; and (b) the undivided percentage common interest appurtenant to the Units resulting from the reduction or increase in the total number of Units. The common interest appurtenant to each Unit shall be calculated generally by assigning a prorata equal share to each resulting Unit (e.g., 1/total number of Units); provided, however, that the Declarant shall have the right, in its sole and absolute discretion, to round the result of such calculations so that the sum of the percentages equals exactly one hundred percent (100%).

**15. Declarant's Reserved Right to Reconfigure, Delete or Withdraw Land**. Declarant or its authorized representatives shall have the right, in their respective sole and absolute discretion and without being required to obtain the consent or joinder of, or provide notice to, any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, any Unit purchaser, or any other person who may have an interest in the Community or in any Unit, to reconfigure, delete or withdraw land from the property that has been made subject to the Declaration as permitted pursuant to Section S of the Declaration in order to create the Community Land. Declarant has further reserved the right to reconfigure and adjust the boundaries of the Community such that the boundaries vary from that reflected on the Condominium Map provided not less than thirty-eight (38) acres remain Community land and subject to the Declaration. In addition to the rights reserved to Declarant pursuant to Section S of the Declaration, Declarant hereby reserves the further an additional and a present easement over the whole of the Common Elements or such portion thereof as may be designated by Declarant in a Supplemental Declaration, together with the right for itself and its successors and assigns, to designate, grant, convey, transfer, cancel, relocate, reserve or otherwise deal with such easement or easement areas, for agricultural purposes and related maintenance, driveways, parking areas, access roadways and other similar purposes, on, over, across, under and through the Common Elements of the Community. In the furtherance of this reserved right, Declarant may license, lease, or otherwise engage or enter into operation agreements permitting agricultural endeavors on the designated easement areas, all proceeds attributable to which shall inure to the benefit of Declarant. No member shall have any entitlement to control or share in the activities undertaken on the easement areas or proceeds therefrom. Without limiting the generality of the foregoing, Declarant reserves the right to utilize any common roadway and utility facilities (including without limitation water, private sewer system, electrical, telephone, and cable) described in this Section (such as, but not limited to, waterlines, sewer lines, access roadways and the like) whether located in designated easement areas or otherwise, together with the right of entry

to construct, reconstruct, operate, maintain, repair and relocate such, access roadways and the like) whether located in designated easement areas or otherwise.

**16.** **No Limitation to Right to Construct Units**. Nothing in the Declaration shall be deemed to or otherwise limit or inhibit the Declarant's ability to construct all Units in the Community in accordance with the Declaration and the Condominium Map, as the same may be amended.

**17.** **Nonexclusive Easements.** Each Unit shall have appurtenant thereto nonexclusive easements in the Common Elements designed for such purposes for ingress to, egress from, utility services for and support of, maintenance and repair of each such Unit and for use of the other Common Elements according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided herein.

**18.** **Encroachments**. If any part of the Common Elements now or hereafter encroaches upon a Unit or Limited Common Element appurtenant to a Unit, or if a Unit or any Improvement thereon now or hereafter encroaches upon another Unit, the Limited Common Element appurtenant to another Unit or upon a portion of the Common Elements, an easement shall exist for such encroachment and its maintenance for so long as the encroachment continues. If any Improvements of the Community are partially or totally destroyed and then rebuilt, or if a minor shift or settlement of an Improvement occurs, easements shall exist for minor encroachments by parts of the Common Elements upon a Unit or Limited Common Element or by a Unit or Limited Common Element upon parts of the Common Elements and for their maintenance for so long as the encroachments continue.

**19.** **Access to Units and/or Limited Common Elements**. The Association shall have the irrevocable right, exercisable by the Board of Directors or the Managing Agent, to have access to and enter each Unit and/or the Limited Common Elements from time to time during normal hours as may be necessary for the operation of the Community or for the installation, repair, maintenance or replacement of any Common Elements, or at any time for making emergency repairs which may be necessary to prevent damage to any Unit or the Common Elements.

**20.** **Easements in Common**. Each Owner shall have an easement in common with the Owners of all of the other Units to use all pipes, wires, ducts, cables, conduits and public utility lines and other Common Elements located in another Unit and serving such Owner's Unit. Each Unit shall be subject to an easement for necessary and reasonable access to any Common Elements located in the Unit in favor of the Owners of all other Units served by such Common Elements.

**21.** **Community Access Road(s)**. Each Owner shall have a non-exclusive right to enter upon and use for ingress and egress purposes the Community Access Road(s) serving the Community. Declarant hereby discloses and each Owner acknowledges that (i) Owners shall only have a license to use any portion of the Community Access Roads that may be removed or withdrawn from the Community Land, (ii) the Community Access Roads will serve the Master Association Community Improvements and agricultural endeavors on adjacent lands, and (iii) the Declarant intends and shall have the reserved right to use the Community Access Road(s) to conduct and perform its construction and sales activities within the Community and within the Master Association Community until all of the Units have been completed and sold and (iv) the Community Access Road(s) will be used for access and utilities purposes by other Owners in the Community. These activities may result in noise, vibration and other nuisances and hazards, including traffic congestion and temporary impairment of access to portions of the Community, and each Owner covenants that such Owner assumes all risks associated with the Owner's use of the road(s). The provisions of the Declaration and the Master Declaration shall apply to and govern each Owner's use of the road(s) unless and until such time as it is dedicated to the County and/or State and removed from the Community Land by amendment to the Declaration. However, notwithstanding the Declarant's reservation of the right to dedicate such roads, such road(s) may not be dedicated and the road(s) may not be constructed with the intent to dedicate. Each Owner shall indemnify and hold harmless Declarant, its successors and assigns, from and against any and all claims and demands for damages made by, through or under such Owner in connection with the right of entry granted by Declarant to such Owner.

22. **Reciprocal Easements of Encroachment**. There shall be reciprocal appurtenant easements of encroachment as between adjacent Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (either initially by Declarant or subsequently in accordance with the terms of the Declaration) to a distance of not more than one foot, as measured from any point on the common boundary between said adjacent Units, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct or negligence (e.g. failure to have a survey done prior to construction) on the part of an Owner, occupant or the Association. Any such easements for encroachment shall be for the encroachment and for the maintenance thereof (including access to and from the encroachment).

23. **Enforcement**. If any one or more of the provisions of this Section shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of this Section and shall in no way affect the enforceability of any other provision hereof.

24. **Assignment of Declarant's Rights**. The rights of the Declarant under this Section shall extend to the Declarant and its respective successors and assigns. Without limitation of the foregoing, Declarant may, by Recorded instruments or by Supplemental Declaration, assign or partially assign, while retaining equivalent rights to Declarant, to any assignee, including without limitation the Association, any one of more of the rights and easements reserved to Declarant under Section E of the Declaration and its subparts (or otherwise reserved to Declarant in the Declaration).

25. **Amendment by Declarant**. Declarant reserves and shall have each of those rights to amend the Declaration and Condominium Map specified in Section E of the Declaration. Further, Declarant shall have the absolute right, notwithstanding the lease, sale, or conveyance of any Unit and without being required to obtain the consent or joinder of or provide notice to any Unit Owner, lien holder, or other persons, to amend the Declaration and the Condominium Map as necessary or convenient to describe any new Improvements constructed on the Property in accordance with the Declaration and to make such amendments to the Declaration as are appropriate in accordance with Section E of the Declaration

26. **No Amendment by Others**. The Declaration cannot be amended to modify or eliminate the easements or other rights reserved to Declarant by this or any other Section without the prior written consent of Declarant, and any attempt to do so shall have no effect and shall be void ab initio.

27. **Reservation To Reconfigure, Delete And Annex Land.**

(1) Any other provision in the Declaration to the contrary notwithstanding, Declarant shall have the right, at its sole discretion and without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, Unit purchaser or any other person who may have an interest in the Community, to effect or participate (on one or more occasions unilaterally or jointly with the owner or owners of adjacent parcels of land) in a subdivision of the Community land or a consolidation and resubdivison of the Community land with adjacent parcels of land, the result of which may be to adjust the boundaries of the Community land and delete from the Community (the land to be removed includes both those lands labeled "Removable Lands" on the Condominium Map and those lands not covered by the Declaration but shown on the Condominium Map as "Excluded To Be Removed", all of which lands are described as the "Removable Land" in Section S to the Declaration): (i) all of the land covered by the Declaration consisting of the roads (the Community Access Road) and a portion of the property, as shown on the Condominium Map, or (ii) all of the Land excluding a minimum of than thirty-eight (38) acres or such greater area as is required by County ordinance and regulation to support the number of Units included in the Community. Any such adjustment of boundaries may reconfigure the Community land: (a) such that it actually conforms to the configuration of the Community land as depicted on the Condominium Map and, consequently, will not affect the layout, location, dimensions of any of the Units or other phases of the Community as shown on

the Condominium Map, in a manner that and will not change or reapportion the common interests appurtenant to the Units, all as set forth and described in the Declaration; or (b) such that it no longer conforms to the configuration of the Community land as depicted on the Condominium Map and, consequently, may affect the layout, location, dimensions of the Units, the Community Land, or other phases of the Community as shown on the Condominium Map, but in a manner that and will not change or reapportion the common interests appurtenant to the Units, all as set forth and described in the Declaration. Upon removal and deletion of the Removable Land as set forth in the Section S of the Declaration, and with no further action required, the Removable Land shall cease to be a part of the Community or subject to the Declaration or the Act, and no Unit Owner, mortgagee, lien holder, Unit purchaser or any other person (other than Declarant and the holder of any blanket mortgage affecting the Removable Land prior to the Declaration) who may have an interest in the Community or any Unit shall have any legal or equitable interest in the Removable Land (or in any other land adjacent to the Community land which may have been consolidated with the Community land pursuant to this Section) and shall be deemed to have quitclaimed and/or released to Declarant any and all interest each person may have had in the Removable Land or in any other land which may have been consolidated with the Community land pursuant to this section. If deemed necessary to effect the intent of this Section, each Unit Owner, mortgagee, lien holder and any other person who may have an interest in the Community or any Unit shall, if requested by Declarant, unconditionally quitclaim and/or release its interest, if any, in the Removable Land (and in any other land adjacent to the Community Land which may have been consolidated with the Community land pursuant to this Section) to Declarant or to Declarant's designee. Declarant shall also have the right, at its sole discretion and without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, any Unit purchaser, or any other person who may have an interest in the Community or in any Unit, to consolidate and resubdivide or subdivide the Community Land, relocate and subsequently grant the roadways, driveways and easements.

(2) In the exercise of the foregoing rights, Declarant may at any time and multiple times (i) file and process to final approval an application with the County of Kauai for a legal subdivision of the Removable Land from the land covered by the Declaration (or for a consolidation and resubdivision resulting in the legal subdivision of the Removable Land from the land covered by the Declaration), (ii) file and process any procedure required to fully and legally effect such subdivision or consolidation and resubdivision, designation, granting, conveyance, transfer, cancellation, relocation and reservation of easements and/or rights of way, (iii) Record one or more amendments to the Declaration which shall contain an amended description of the land covered by the Declaration deleting therefrom the Removable Land, (iv) if deemed necessary by Declarant, Record one or more amendments to the Condominium Map showing any changes to the Community, and (v) if deemed necessary by Declarant, apply for and obtain from the Real Estate Commission of the State of Hawaii an amended public report describing the changes made to the Community pursuant to Section S of the Declaration. The Removable Land shall be deemed deleted from the Community for all purposes upon the Recordation of the amendment(s) to the Declaration referenced herein.

(3) In the exercise of the rights in Sections S.1 and S.2 in the Declaration and in exercise of the Declarant's reserved rights in Section E.14 of the Declaration to increase the number of Units in the Community, Declarant shall have the right at any time and multiple times, at its sole discretion and without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, Unit purchaser or any other person who may have an interest in the Community, (i) to create or relocate Spatial Units including and encompassing all or portions of the Removable Land; (ii) to seek County re-zoning and/or a State district boundary adjustment of such Spatial Units; (iii) to connect any such Spatial Units to the roads and utility installations of the Community; and (iv) to retain such Spatial Units or sell such Spatial Units to Owners; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the property, and provided further that Declarant in exercising such rights shall use reasonable efforts, and consistent with maintaining the progress of the design, development, construction, completion and sale of the additional Spatial Unit, to minimize interference with the Owners' use and enjoyment of the property. Notwithstanding anything to the contrary contained in the Declaration, so long as Declarant retains ownership of a Spatial Unit(s) consisting of all or some

portion of the Removable Land Declarant should have the same rights in such Spatial Unit(s) as if the area encompassed by such Spatial Unit had been removed from the Community in accordance with Section S of the Declaration, provided, however, such unit should remain subject to common expense assessment as provided in the Declaration. Declarant may exercise rights reserved to it under Section S of the Declaration without the requirement that it satisfy conditions applicable to the exercise of any right available to the Association. Declarant further reserves a present easement over the whole of the Common Elements, together with the right for itself and its successors and assigns, to designate, grant, convey, transfer, cancel, relocate, reserve or otherwise deal with any easements, licenses, and rights of way at any time, for the benefit of the Owner or Owners from time to time of all or any portion of the Spatial Unit(s), and without the consent or joinder of, or notice to, any party having any interest in the Community, for private sanitary and storm sewers, cable television transmission facilities, party walls (including the creation of the same on the Community boundaries, refuse disposal, landscape, maintenance, driveways, parking areas, access roadways and other similar purposes, on, over, across, under and through the Common Elements of the Community and the Private Yard Areas, ingress and egress purposes, access purposes, electrical, gas, communications and other utility purposes, private sanitary sewer drainage and drainline, waterline, and flowage purposes, all other purposes, to the State of Hawaii, the County, the County Board of Water Supply, any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, utilities, any public-type facility (mailboxes and the like), provided that such easements and rights-of-way do not materially impair or interfere with the use of any Unit in the Community or the Common Elements of the Community. Without limiting the generality of the foregoing, Declarant reserves the right to utilize any common roadway and utility facilities (including without limitation water, private sewer, electrical, telephone, and cable) described in the prior sentence (such as, but not limited to, waterlines, private sewer lines access roadways and the like) whether located in designated easement areas or otherwise, together with the right of entry to construct, reconstruct, operate, maintain, repair and relocate such lines, access roadways and the like) and to grant any such easements or rights of way to governmental or quasi-governmental authorities, utility or service companies, homeowner's associations or other entities and the right to grant, dedicate, designate, use and enjoy easements and/or rights-of-way for access purposes (including for vehicular and pedestrian access) for the benefit of such Spatial Units. In order to effect the rights of Declarant reserved by Section S of the Declaration, Declarant shall have the right file or cause to be filed an amendment to the Declaration describing (a) the revised description of Units and/or buildings that comprise the Community; and (b) the undivided percentage common interest appurtenant to the Units resulting from the reduction or increase in the total number of Units. The common interest appurtenant to each Unit shall be calculated generally by assigning a prorata equal share to each resulting Unit (e.g., 1/total number of Units); provided, however, that the Declarant shall have the right, in its sole and absolute discretion, to round the result of such calculations so that the sum of the percentages equals exactly one hundred percent (100%).

(3) Declarant shall have the absolute right, notwithstanding the lease, sale or conveyance of any Unit and without being required to obtain the consent or joinder of any Unit Owner, lien holder or other persons, to effect the removal and deletion of the Removable Land in accordance with Section S of the Declaration, and to execute, Record and/or file the herein described applications, petitions, amendments, quitclaims, releases and any and all other instruments necessary or appropriate for the purpose of effecting the removal and deletion of the Removable Land as contemplated in Section S of the Declaration. Any such action shall be deemed taken by Declarant as the true and lawful attorney-in-fact of the respective Unit Owners and lien holders. Each and every party acquiring an interest in any Unit, the Community or the land covered by the Declaration, by such acquisition, consents to such deletion and removal and to the filing or Recordation of such documents as may be necessary or convenient to effect the same, agrees to execute such documents and do such other things on its behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party.

(4) Declarant shall have the absolute right, notwithstanding the lease, sale, or conveyance of any Unit and without being required to obtain the consent or joinder of any Unit Owner, lien holder, or other persons, but not the obligation, from time to time and at any time, to annex by Supplemental Declaration additional real property, whether in fee simple or leasehold, to the Declaration

in phases of any size whatsoever or containing any number of Units whatsoever, or to annex more than one such phase at any given time and in any given order. Any such property not specifically annexed by Supplemental Declaration properly Recorded shall not become subject to the Declaration. Supplemental Declarations may contain such complementary or supplementary additions and modifications of the provisions of the Declaration as may be necessary to reflect the different character, if any, of the property being annexed and may add, delete, or modify provisions of the Declaration as it applies to the property being annexed. The Recordation of such Supplemental Declaration shall constitute and effectuate the annexation of the property described therein, unless a later effective date is specified in the Supplemental Declaration, making such real property subject to the Declaration and subject to the functions, powers, and jurisdiction of the Association, and thereafter said real property shall be part of the Community and Property for all intents and purposes of the Declaration, and all of the owners of apartment units in the annexed property shall automatically be Owners hereunder.

(5) Each Owner hereby acknowledges and agrees that their voting power as a member may be altered (diminished or increased) attributable to Declarant's exercise of rights reserved under Section S of the Declaration.

(6) In furtherance of the rights reserved to Declarant under the terms of Section S of the Declaration, all Unit Owners (current and future) and their respective mortgagees, by accepting an interest in the Property, consent to all such applications, permits authorizations, agreements, petitions and other instruments and all such other actions, and shall be deemed to have given the Declarant a power of attorney to execute any and all such instruments and to take all such other actions solely for the purposes described herein. All Unit Owners agree, if requested by the Declarant, to sign and deliver a separate written power of attorney in Recordable form consistent with the terms of this paragraph. If, despite the provisions of this paragraph, any governmental agency shall require a Unit Owner to sign any necessary instruments, then the Unit Owner shall be required to sign such instruments as may be necessary or desirable to allow Declarant to obtain any governmental permit or approval authorized by Section S of the Declaration. If an Owner wrongfully refuses to sign such permits, petitions or related instruments, or provide the Declarant with the necessary authorization, the Unit Owner shall be liable to the Declarant for all damages (including costs and attorneys fees) incurred by the Declarant as a result of such refusal and shall be subject to such other legal and/or equitable remedies as may be available to the Declarant.

(7) The rights reserved to Declarant under Section S of the Declaration shall extend to Declarant and its successors and assigns.

(8) The rights reserved to Declarant in Section S of the Declaration are subject to the following conditions:

(a) The deletion and removal of the Removable Land or the annexation of additional land shall not adversely affect the layout, location, dimensions of any structure or any buildings or Units in the Community as shown on the Condominium Map, excepting the Community Access Roads or as otherwise permitted by the Declaration.

(b) The subdivision or consolidation and resubdivision pursuant to Section S of the Declaration shall be ordered and effected on or before December 31, 2025.

**28. <u>Consent, Power of Attorney, Waiver</u>.** By acceptance of a deed, lease or other conveyance of an interest in a Unit, each and every Owner or other person or entity acquiring such interest, including the holders of mortgage liens on individual Units, consents to the rights reserved to Declarant in the Declaration, including but not limited to, the right to prepare, execute, file, process and Record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of the Declaration pursuant to Section S of the Declaration, the Condominium Map and the Bylaws. By such acceptance, each and every Owner or party acquiring such interest, including the holders of mortgage liens on individual Units, agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same;

and such acceptance shall be deemed an appointment of Declarant, with full right of substitution, as the attorney-in-fact of such Owner or acquiring party to execute such documents and to do such things on such Owner's or acquiring party's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period(s) of Declarant's reserved rights as set forth in the Declaration and shall not be affected by the disability of any such Owner or acquiring party.

**29. Reserved Right to Modify Community to Comply with Law**. Declarant shall have the reserved right, to effect such modifications to the Units and Common Elements in the Community and/or to execute, record and deliver any amendments to the Declaration, the Condominium Map as well as the Bylaws and rules and regulations promulgated thereunder, as may be necessary or required to effect compliance by the Community, the Association, or by Declarant with laws which apply to the Community, including, without limitation, State and County land use laws, the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder. The rights of Declarant under the Section may be assigned to the Association, without the consent of joinder of the Board.

**30. Declarant's Reserved Right to Remove the Community From the Act**. Declarant reserves and shall have the right, or its authorized representatives shall have the right, in their respective sole and absolute discretion and without being required to obtain the consent or joinder of, or provide notice to, any person or group of persons, except a Unit purchaser(s) to remove this Community from the purview of the Act and terminate the condominium property regime, by Recording an instrument to that effect at any time prior to the Recording of the first Unit conveyance.

**31. Community Access Roads**. Each Owner acknowledges that the Declarant has the sole and absolute right as set forth in the Master Declaration to dedicate the Community Access Roads, or any portion thereof, to County, the State of Hawaii or any other governmental authority. Owner's non-exclusive right to enter and use the Community Access Roads shall automatically terminate upon dedication of the Community Access Roads with respect to all or any portion or portions to the County, the State of Hawaii or any other governmental authority. The Community Access Roads shall not be dedicated to the County unless and until they are constructed in compliance with applicable County and governmental laws, ordinances, rules, regulations and standards which are required as a condition of the acceptance by the County of the dedication of public roads. The minimum right-of-way for the Community Access Roads as required by the County may not be reduced without the County's prior written consent. The Association and/or Owners may not alter the Community Access Roads and/or the planting strips adjacent to the sidewalks (e.g. Owners may not remove trees, alter existing landscaping or install any ground cover such as gravel and/or concrete) or in any way affect or impede Declarant's right to dedicate the roads and/or easements to the County, the State of Hawaii, or any other governmental authority. Should the Association or an Owner make any alterations to the Community Access Roads or right of way (including without limitation the roads or the planting strip and sidewalk), Declarant may demand the removal of the alteration. If the Association or an Owner fails to remove and restore the altered area to its original condition, the Declarant, the Association or their respective designee shall have the right to enter the Unit, remove the violation and restore the area to substantially the same condition as existed prior to the nonconforming alteration. The Owner shall be liable for all costs thereof (including attorneys fees, notwithstanding any other provision to the contrary herein contained) together with interest thereon at the maximum rate then allowed by law. Any reimbursable sum not paid by Owner to Declarant following demand therefor, shall constitute a lien on the Owner's Unit, enforceable as a mortgage lien through foreclosure. Although Declarant may exercise rights under this provision, Declarant shall have no obligation or responsibility to enforce this provision or any other of the Declarant. The Declarant may fully or partially assign its rights under this provision to the Master Association. Until the Community Access Roads are dedicated as aforesaid, (a) the provisions of the Declaration and Master Declaration shall apply to and govern each Owner's use of the Community Access Roads, and (b) each Owner shall indemnify and hold harmless the Declarant, its successors and assigns, from and against any and all claims and demands for damages made by, through or under such Owner in connection with the right of entry granted by Declarant to such Owner pending dedication as aforesaid.

**END OF EXHIBIT L**

**EXHIBIT M**

Section 4.2 -- Estimate of the Initial Maintenance Fees

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE ESTIMATE OF THE INITIAL MAINTENANCE FEES CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE

The Estimated Maintenance Fee Disbursements for Kahu'aina Farms, which include the assessments for the Master Association, have been compiled by Hawaiiana Management Company, Ltd., a licensed property manager, assuming that all units in the Community as reflected on the Condominium Map are constructed. The budget numbers are preliminary in nature and may increase substantially with the addition of expanded landscape and agricultural activities undertaken within the common area of the Master Association or the common elements of the Community Association. Given that the budget numbers are preliminary in nature, and despite the property manager's every effort to estimate the actual cost of operation, certain budget items, especially insurance in today's insurance market, may change.

Consequently, Purchaser is aware that such amounts are only estimates and may change for reasons beyond the control of Developer, and Purchaser hereby specifically accepts and approves any such changes. Purchaser is also aware that such estimates do not include Purchaser's obligation for payment of real property taxes. Purchaser understands that such estimates are not intended to be and do not constitute any representation or warranty by Developer, including but not limited to any representation or warranty as to the accuracy of such estimates. Purchaser understands that Developer has not independently confirmed the accuracy or content of the estimates prepared by the licensed independent managing agent. Further, Developer advises that costs and expenses of maintenance and operation of a condominium community are very difficult to estimate initially and even if such maintenance charges have been accurately estimated, such charges will tend to increase in an inflationary economy and as the improvements age. Maintenance charges can vary depending on services desired by unit owners and may increase significantly depending on the level of services eventually selected by the Association's Board of Directors. Purchaser should examine the maintenance charges schedule to see what services are included in the schedule and address these issues with its Board upon its formation. Purchasers should also be aware that the estimates provided are as of the date reflected in the Managing Agent's certification and do not reflect the actual charges that may be incurred upon the formation of the Association and the actual contracting for such services such as insurance and maintenance, etc.

Developer intends to pay all of the actual common expenses for the Units and the Unit Owner shall not be obligated for the payment of the Owner's share of the Common Expenses until such time as Developer causes a thirty (30) day advance written notice to be sent to the Owners that, after a specified date, the Unit Owners shall be obligated to pay for the portion of Common Expenses that is allocated to their respective Units. Developer shall mail the written notice to the Owners, the Association, and the Managing Agent, if any, at least thirty (30) days before the specified date.

The estimate of the initial annual maintenance fees and monthly estimated Maintenance fees is attached hereto.

**ESTIMATED ANNUAL MAINTENANCE FEES AND MONTHLY ESTIMATED MAINTENANCE FEES**

The Estimate of Annual Maintenance Fees contained in this Exhibit "M" covers all 13 Units, including the 3 Units designated herein.

**EXHIBIT N**

Section 5.1 -- Summary of Pertinent Provisions of Sales Contract

THIS SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE PURCHASE AGREEMENT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF PURCHASER'S RIGHTS AND OBLIGATIONS UNDER THE PURCHASE AGREEMENT, PURCHASER MUST REFER TO THE PURCHASE AGREEMENT TO DETERMINE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE PURCHASE AGREEMENT, THE PURCHASE AGREEMENT WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

The form Purchase Contract (formerly known as the Deposit, Receipt, Offer and Acceptance) approved by the Hawaii Association of Realtors will be used for the sale of Units in the Community. The Purchase Contract contains the price and other terms and conditions under which a purchaser will agree to buy a Unit in the Community. 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) The agency disclosure in Section A.

(c) The Closing conditions and escrow in paragraphs C-5 through C-11A. The Purchase Contract provides that time is of the essence.

(d) The financing contingencies in paragraphs C-24 through C-26. Purchaser's obligation to buy the Unit is contingent upon Purchaser obtaining the loan described in the Purchase Contract. Purchaser shall act in good faith to obtain the loan as described in this Purchase Contract. Should Purchaser fail to satisfy any financing obligation within the time period specified, Seller shall have the right to terminate the Purchase Contract. A Purchaser's failure to meet financing obligations is not grounds for extending the closing date.

(e) The termination provisions in paragraphs C-28 through 31. If a matter arises that had not been previously known, and the parties are unable to reach an agreement on a remedy, then the Purchase Contract may be terminated with neither party being "at fault." This allows the parties to terminate the contract without any further liability.

(f) If any dispute or claim arises out of the agreement, the parties agree to non-binding mediate and arbitration, as specified in paragraphs C-32 through 34.

(g) That a Preliminary Title Report will be delivered to Purchaser by Seller, as specified in paragraphs C-35 through 37.

(h) That Seller will make required disclosures about the Unit and the Community, pursuant to paragraphs C-44 through C-50.

(i) That the Seller will provide Purchaser with all applicable documents listed in paragraph C-64.

(j) The Purchase Contract contains a separate Purchase Contract Addendum, describing the condition of the Community land and any changes to the Purchase Contract.

The Purchase Contract contains various other important provisions relating to the purchase of a Unit in the Community. Purchasers and prospective purchasers should carefully read the specimen Purchase Contract on file with the Real Estate Commission. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings given them under the Purchase Contract.

**END OF EXHIBIT N**

## EXHIBIT O

Section 5.1 -- Summary of Pertinent Provisions of Escrow Agreement

THIS SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE ESCROW AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE ESCROW AGREEMENT, ONE MUST REFER TO THE ACTUAL ESCROW AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE ESCROW AGREEMENT, THE ESCROW AGREEMENT WILL CONTROL AND NOT THIS SUMMARY. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

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) Developer will give Escrow a signed copy of the Sales Contract and Purchaser's deposit towards the purchase price of a Unit. If the Purchaser gets a mortgage loan, the money from the loan will be paid to Escrow, along with the lender's mortgage for recording, and Escrow shall follow the lender's instructions.

(b) Developer will notify Escrow each time the Sales Contract requires a payment. Escrow will then contact each Purchaser and ask for that payment to be made to Escrow. Purchaser will be asked to make all payments to Escrow on the date designated in the written notice or not later than five (5) business days after Purchaser has received Escrow's written notice.

(C) Escrow will set the time (in accordance with Sales Contract and Developer's instruction to pre-close) for taking in all money from each Purchaser and for the signing of all of the documents that each Purchaser must sign to complete the purchase, except for the mortgage documents, which may be signed at the lender's place of business.

(d) Unless any of the Sales Contracts show different instructions, Developer will get all of the interest earned on Purchaser's deposits. Escrow will deposit the payments it gets from Purchaser into an interest bearing account one or more times each week.

(e) The Sales Contract states when refunds of deposits may be made to Purchaser. In the case where Purchaser requests a refund, Escrow shall notify Developer of such request. Refunds to Purchaser will be made without any interest unless the Sales Contract contains different instructions.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a purchaser's funds and says what will happen to the funds upon a default under the Sales Contract. The Escrow Agreement contains various other important provisions and establishes certain charges with which a Purchaser should be familiar. Purchasers and prospective purchasers should carefully read the signed Escrow Agreement on file with the Real Estate Commission. A copy is available at Developer's sales office. The Escrow Agreement contains the following provisions (which may be modified or otherwise limited by provisions not set forth below):

1. As and when Developer enters into a Sales Contract, Developer will give Escrow a signed copy of the Sales Contract and Purchaser's deposit towards the purchase price of a Unit. The Sales Contract

will require Purchaser to pay to Escrow all other payments of the purchase price required under the Sales Contract. If Purchaser gets a mortgage loan, the money from the loan will be paid to Escrow, along with the lender's mortgage for recording, and Escrow shall follow the lender's instructions. The Sales Contract will show the correct name and address of each Purchaser. If a Sales Contract is signed and the sale occurs in a state other than Hawaii, the Sales Contract will show the place where the sale occurs.

2. Escrow will put all of the money it gets from Purchaser in one or more special accounts (the "Escrow Deposit Account"). The Escrow Deposit Account will be deposited only at a depository designated by Developer or in banks or savings and loan institutions in Hawaii that are insured by the federal government as directed by Developer. The place, or places, where the Escrow Deposit Account is set up will be chosen by Escrow, unless otherwise selected or directed by Developer. Unless any of the Sales Contracts show different instructions, Developer will get all of the interest earned on the Escrow Deposit Account. Escrow will deposit the payments it gets from Purchaser into the Escrow Deposit Account one or more times each week, so that the funds may earn the maximum interest.

3. Notwithstanding anything in the Escrow Agreement to the contrary, if Developer has submitted to the Real Estate Commission a material house bond securing the construction of improvements in the Community, the following provision shall apply:

(i) Purchaser's money shall not be disbursed to pay for construction costs or other expenses of the Community until the Unit to be conveyed has been completed and the Deed to Purchaser has been recorded; and

(ii) If closing is to occur prior to the expiration of the applicable mechanic's lien period, Seller shall provide Buyer with a mechanic's lien endorsement to Buyer's owner's title insurance policy that protects Buyer against all future mechanic's and materialmen's liens. Further, Seller shall confirm to Escrow that Seller has provided the Real Estate Commission with a release by the general contractor of the contractor's lien rights and shall further provide to Escrow all applicable indemnities required by the title insurance company that protects against all future mechanic's and materialmen's liens.

4. The Sales Contract states when refunds of deposits may be made to Purchaser. In the case where Purchaser requests a refund, Escrow shall notify Developer of such request. Escrow may refund the deposit to Purchaser, less any cancellation or other fees to which Escrow is entitled, only after receiving written approval from Developer. In all other cases, Escrow shall not make any refund to a Purchaser who asks for it unless Escrow receives written approval from Developer or from a court of competent jurisdiction. The words "cancellation fees" mean Escrow's cancellation fees which are described in the Sales Contract and are described later in the Escrow Agreement. Fees for cancellation may also be charged by the lender who has agreed to lend Purchaser money to buy the Unit. The Sales Contract states the instances when Escrow is to subtract cancellation fees from the amount to be refunded unless Developer tells Escrow not to charge the cancellation fees.

5. Escrow shall give each Purchaser who is to get a refund written notice of the refund. Escrow will send this notice by registered or certified mail to Purchaser at the address shown on Purchaser's Sales Contract or to the last address which Purchaser may have given to Escrow.

6. Developer shall give notice in writing to Escrow of the occurrence of each event that initiates an obligation of a Purchaser to make a payment to Escrow pursuant to the sales contract as well as notice of the amount and due date of such payment. If the Purchaser fails to make such payment to Escrow on or before the due date thereof or if the Purchaser fails to perform in any matter that is being handled by Escrow, Escrow shall promptly notify Developer of any such failure on the part of the Purchaser. If Developer subsequently certifies in writing to Escrow that Developer has terminated the sales contract in accordance with the terms thereof and provides to Escrow copies of all such notices of termination sent to the Purchaser, Escrow shall thereafter treat all funds of the Purchaser paid on account of such Purchaser's sales contract as funds of Developer and not as funds of the Purchaser. Thereafter, such funds shall be free of the escrow established by this Agreement and shall be held by Escrow for the account of Developer. Upon written request by Developer, Escrow shall pay such funds to Developer,

less any escrow cancellation fee. Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such Purchaser.

6. Escrow will set the time (in accordance with Sales Contract and Developer's interest to pre-close) for taking in all money from each Purchaser and for the signing of all of the documents that each Purchaser must sign to complete the purchase, except for the mortgage documents, which may be signed at the lender's place of business. The conveyance tax certificates, preliminary closing statements, escrow instructions and final closing statements will be prepared by Escrow, and Escrow will do all of the escrow acts required under the Escrow Agreement or any other written agreements between Developer, Purchaser and Escrow. Escrow will give Purchaser and Developer copies of HARPTA and FIRPTA forms, or provide the online link to obtain copies of those forms, with a recommendation that the parties seek appropriate counsel to complete the forms. Escrow will coordinate with Purchaser's lender, the title companies and all others who are a part of the purchase so that closing will occur at a suitable time. Escrow agrees to close all of the sales at the same time or individually from time to time, as directed by Developer. "Closing" is complete when all necessary conveyance and financing documents to complete a purchase are recorded in the appropriate Hawaii recording office. After all documents have been signed, Escrow will close on the closing date as agreed to in the Sales Contract only if:

(i) The required money has been paid to Escrow;

(ii) All necessary documents can be recorded, as appropriate;

(iii) All mortgages having to do with the purchase can be recorded and/or filed, following the lender's instructions; and

(iv) All necessary releases can be recorded so that the Unit is conveyed free and clear of all blanket liens in accordance with the Condominium Law.

**END OF EXHIBIT O**

## EXHIBIT P

Section 5.3 -- Blanket Liens

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE BLANKET LIENS CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

None

## END OF EXHIBIT P

## EXHIBIT Q

Section 6 -- Miscellaneous Information Not Covered Elsewhere in This Report

THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF THE MISCELLANEOUS INFORMATION NOT COVERED IN ELSEWHERE IN THIS REPORT CONTAINED IN THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES AND OTHER CONDOMINIUM DOCUMENTS. WHILE A PURCHASER CAN USE THIS AS A GENERAL SUMMARY, PURCHASERS SHOULD REFER TO THE CONSTITUENT DOCUMENTS OF THE COMMUNITY. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS EXHIBIT AND THE DECLARATION, BYLAWS, CONDOMINIUM MAP, COMMUNITY RULES OR OTHER DOCUMENTS OF THE COMMUNITY, SUCH DOCUMENTS WILL CONTROL. CAPITALIZED TERMS USED HEREIN, UNLESS OTHERWISE DEFINED HEREIN, SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE DECLARATION.

Certain capitalized terms used in this Exhibit Q shall have the same meanings given them in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Kahu'aina Plantation, if expressly defined therein.

1. All buyers should be aware that the Community is within and a part of the master planned community known as Kahu'aina Plantation, and is subject to certain conditions and restrictions contained in various documents that affect the Community, including but not limited to: (i) the covenants, conditions, restrictions, reservations, agreements, obligations and other provisions contained in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Kahu'aina Plantation, as the same may be amended and/or supplemented ("Master Declaration"); (ii) any Bylaws of the Kahu'aina Plantation Community Association; (iii) Design Guidelines; (iv) Agricultural Master Plan; (v) Master Association Rules, if any. Developer has not proposed or adopted any Master Association Rules, but reserves the right to do so in the Master Declaration.

2. The entire condominium project contains 13 Units. This Amended Developer's Public Report covers Units 11-13. Developer has obtained a separate Developer's Public Reports for the remaining 10 Units, Registration Number 6428. For purposes of this Amended Developer's Public Report, each group of condominiums subject to a Developer's Public Report shall be referred to as a "Sales Phase." Although separate Developer's Public Reports will be issued, all 13 Units comprise a single condominium project. In other words, the act of separating the various Units into different Sales Phases does not create separate and distinct condominium projects. Accordingly, the common elements described in Exhibit "E" of this Amended Developer's Public Report serve each of the 13 Units.

3. It is the intent of the Declarant under the Master Declaration to subdivide the Property and adjacent properties into multiple subdivided lots of record, with and subject to the approval of the County of Kauai Planning Commission and possibly to develop or permit the development of additional dwelling or Farm Dwelling Units on some or all of the subdivided Lots. The Declarant is hereby authorized, without the consent or joinder of any other person, to file, execute, record, pursue and obtain such applications, permits authorizations, agreements, petitions and other instruments, and to take any and all other actions, in furtherance of such intended subdivision and development, provided that such actions are consistent with all applicable governmental laws, ordinances, rules, regulations and agreements, and are consistent with the terms and conditions of the Declaration and the Community Documents. In furtherance of the foregoing, all future Unit Owners and their respective Mortgagees, by accepting an interest in the Property, consent to all such applications, permits authorizations, agreements petitions and other instruments and all such other actions, and shall be deemed to have given the Declarant a power of attorney to execute any and all such instruments and to take all such other actions solely for the purposes described herein. All Unit Owners agree, if requested by the Declarant, to sign and deliver a separate

written power of attorney in recordable form consistent with the terms of this paragraph. If, despite the provisions of this paragraph, any governmental agency shall require a Unit Owner to sign any necessary instruments, then the Unit Owner shall be required to sign such instruments as may be necessary or desirable to allow Declarant to obtain any governmental permit or approval authorized by this Section. If an Owner wrongfully refuses to sign such permits, petitions or related instruments, or provide the Declarant with the necessary authorization the Unit Owner shall be liable to the Declarant for all damages (including costs and attorneys fees) incurred by the Declarant as a result of such refusal and shall be subject to such other legal and/or equitable remedies as may be available to the Declarant.

4. Buyers shall acknowledge a Farm Dwelling Agreement with respect to restrictions for agricultural use for each unit which shall be recorded as an encumbrance on the Unit in the Community.

5. Additionally, if required by the County of Kauai, each Owner shall be bound by an Agricultural Subdivision Agreement (which draft agreement is attached to the Master Declaration as Exhibit "C"). The Agricultural Subdivision Agreement provides that each Owner acknowledges and agrees that each Owner shall indemnify, defend and hold the County of Kauai, the Developer and the Master Association harmless from and against any and all claims arising out of the failure of the Owner to comply with the Agricultural Master Plan and/or Hawaii Revised Statutes, Chapter 205 as determined by the County of Kauai Planning Department, and that the County of Kauai and the State of Hawaii shall have the right to refuse to grant any permits or approvals for uses or development on any Unit affected by such noncompliance unless and until the noncompliance is cured, as determined by the County of Kauai Planning Department.

6. Developer may revise the specimen deed and sales contract for the Community to conform with any future amendments that may be made to the Declaration of Condominium Property Regime for the Community and/or the Master Declaration.

7. Pursuant to the Master Declaration, Declarant shall have the right and reserves the right to unilaterally at any time annex additional real property or remove and release any portion of the Property from coverage of the Master Declaration, provided that: (i) Declarant, or an affiliate of Declarant, is the owner of such portion of the property to be so removed and released; and (ii) a Notice of Withdrawal of Property, executed by Declarant, is recorded. Declarant intends to remove that certain portion of the Community as shown as on the Condominium Map.

8. Pursuant to the Master Declaration, there is hereby created a blanket perpetual easement in the favor of Declarant and its designees (which may include, without limitation, the County, the State of Hawaii and any entity providing utility services) upon, across, over and under the Property for ingress and egress for installing, constructing, replacing, repairing, maintaining and operating all roadways, utilities (whether public or private) or facilities of a public use nature, including but not limited to water, gas, telephone, electricity, cable (including without limitation television cable), mailboxes and access thereto, landscaping, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for Declarant and its contractors and/or the providing utility company to construct (including without limitation underground installation) and maintain (including inspect, alter, repair, refurbish and the like) the necessary facilities, wires, circuits, conduits, cables, mailbox pads and stanchions, and related appurtenances, facilities and equipment on the Property, including without limitation the Lots, and to enter upon the Property, including without limitation the Lots, to accomplish the foregoing. The easement reserved by this Section may be assigned by Declarant to the Master Association by written instrument, and the Master Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant, including reservations of rights in favor of Declarant. If the easement is assigned to the Master Association, the Board shall, upon written request, grant such limited term or perpetual easements as may be reasonably necessary for the development of the Property and/or, in the sole and absolute discretion of the Declarant, for any adjacent property. Any utility company using this blanket easement shall use its best efforts to install and maintain the roadway or utilities in a manner that will cause the least practicable interference with the uses of the Owners, Occupants, the Master Association and Declarant, except on a temporary basis; shall proceed with its installation and

maintenance activities as promptly and expeditiously as reasonably possible; and shall restore the surface of the land to its original condition as soon as possible after completion of its work. Should any utility company furnish a service covered by the blanket easement request a specific easement by separate Recordable document, either Declarant or the Master Association shall have, and are hereby given, the right and authority to grant such limited term or perpetual easement upon, across, over, or under any part of the Common Area or any part of any Lot, without the joinder of the Owner thereof or the Owner's Mortgagee. Without limitation of the foregoing, Declarant reserves unto itself and its successors the right to grant, create, designate, delete, cancel, relocate, realign and reserve limited term and/or perpetual easements and rights of way over, across, under and through the Property, including Lots, for electrical power and communication utilities, electromagnetic and optical transmission facilities, landscaping, mail delivery and other similar public service purposes, as Declarant in its discretion may from time to time designate, for the benefit of the Property, other property in the vicinity of the Property or Surrounding Uses (as defined in Article XVIII of the Master Declaration) and the right to grant any such easements to any governmental agencies, public utility or service companies as determined by Declarant without the joinder or consent of or notice to the Owner or the Owner's mortgagee. Furthermore, the rights reserved to Declarant include specifically without limitation the right to utilize utility service to the Community on any portion thereof to serve adjacent and separate developments outside of the Community provided Declarant sub-meters such use and the right to use Roadways in the Community to serve adjacent developments provided the such adjacent development shares pro rata for the cost of maintenance and repair of the Roadways. The easements provided for in this Section shall in no way affect, void, extinguish, or modify any other Recorded easement on the Common Area or any Lot. Each Owner consents to any such creation, designation, granting, deletion, cancellation, relocation, reassignment, conveyance, transfer, and reservation of easements and/or rights of way as provided above without the necessity of the joinder or consent of the Owner or the Owner's mortgagee, or those claiming by, through or under an Owner, entering into any further agreement respecting such action or document; provided, however, that such Owner and those claiming by, through or under an Owner, agrees to join in an execute such documents and instruments and do such other things as may be necessary or convenient to effect the same promptly at the request of Declarant without payment of additional consideration. Upon request by an Owner, Declarant shall execute and Record an estoppel certificate that shall limit the rights provided in this Section so that easements hereunder may only be taken through certain utility corridors as set forth in the estoppel certificate. The rights reserved in this Section shall continue until December 31, 2030 (which date may be extended to the extent that Declarant shall experience delays in development of any additional phase or increment of the Community, for reasons beyond Declarant's reasonable control, but in no event beyond December 31, 2040).

9. Pursuant to the Master Declaration, easements are hereby reserved over, across, under and through the Property, and each Lot therein, for the benefit of the owners of the "Agricultural and Farming Areas" (as defined in Article XVIII of the Master Declaration) and other property in the vicinity of the Community, and their successors in title, for the commencement, continuation and resulting effect of the Surrounding Uses (as defined in Article XVIII of the Master Declaration), and all activities related or incidental thereto.

10. Pursuant to the Master Declaration, Declarant, and its agents, employees, contractors, licensees, successors, mortgagees and assigns, shall have and there is hereby created an easement over, under and upon the Property, including the Lots therein, to create and cause noise, dust, vibration and other nuisances or annoyances created by or resulting from any work connected with or incidental to the development, construction and/or sale of any Lot or other Improvement to the Property, including the Annexation Property, or any other community which Declarant, its successors or assigns, may develop on property adjacent to in the vicinity of the Community. Each and every Owner or other person acquiring any interest in the Community waives any and all rights, claims or actions that might otherwise be asserted against Declarant, its agents, employees, licensees, successors, mortgagees and assigns, based on any such noise, dust, vibration and other nuisances or annoyances.

11. Each subdivided lot shall be subject to all easements shown on any recorded subdivision map or file plan affecting such lot, and to any easement of record or of use, which shall include without limitation,

use for construction, installation and repair of utilities, maintenance, encroachment, drainage and ingress and egress.

12. Declarant hereby reserves to itself and the Master Association, and their respective officers, agents, employees, and assigns, an easement upon, across, over, in, and under all and any portion of the Property, including the Lots, and a right to make such use of such property as may be necessary or appropriate to perform the rights, duties and functions which the Master Association is obligated or permitted to perform pursuant to the Master Declaration, any Supplemental Declaration or the Master Association Rules, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot as required or permitted by this Master Declaration, any Supplemental Declaration or the Master Association Rules.

13. Declarant hereby reserves to itself and the Master Association, and their respective officers, agents, employees, successors, and assigns, an easement to enter upon, across, over, in, and under any portion of the Property, including Lots, for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels or patterns of any portion of the Property so as to improve the drainage of water on the Property for the benefit of the Property and, at Declarant's sole and absolute discretion, adjacent properties. Reasonable efforts shall be made to use this easement so as to disturb as little as possible the uses of the Owners, the Master Association and Declarant, as applicable, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a neat and usable condition as soon as reasonably possible following such work. The rights reserved herein shall continue until December 31, 2030 (which date may be extended to the extent that Declarant shall experience delays in development of any additional phase or increment of the Community, for reasons beyond Declarant's reasonable control, but in no event beyond December 31, 2040).

14. There shall be reciprocal appurtenant easements of encroachment as between adjacent Lots due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon to a distance of not more than one foot, as measured from any point on the common boundary between said adjacent Lots, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, Occupant or the Master Association. Any such easements for encroachment shall be for the encroachment and for the maintenance thereof.

15. Declarant, and its agents, successors, mortgagees and assigns, shall have the right and an easement to conduct extensive sales activities on and at the Community relating to the sale of any Lot including the use of any Lot owned by Declarant for displays, sales and management offices, parking and extensive sales displays and activities and the posting and maintenance of signs and other advertisements relating to such sales activities; provided Declarant shall pay and be liable for expenses, if any, attributable to the maintenance of such units used for the foregoing purpose. The rights reserved in this Section shall continue until December 31, 2030 (which date may be extended to the extent that Declarant shall experience delays in development of any additional phase or increment of the Community or any Annexation Property, for reasons beyond Declarant's reasonable control, but in no event beyond December 31, 2040).

16. Declarant reserves unto itself and its successors a perpetual and non-exclusive easement for landscape maintenance purposes and rights of way over, across, under and through those certain easements affecting the units in the Community which are designated in the Declaration or Supplemental Declaration, for the purposes of planting, replanting, installing, re-installing, maintaining, using, and removing landscaping plants, shrubs and trees, any applicable sign monument or entry feature and the installation and use of general landscape structures, machinery and equipment.

17. Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon any portion of the Community, including the Common Area and any Lot, as may be reasonably necessary for the completion of improvements to and correction of defects and other items in the Community. The rights reserved in this Section shall continue

until ten (10) years after the "date of completion" of the improvements as evidenced by the filing of a Notice of Completion.

18. Declarant hereby reserves the right to encumber the Common Areas with an Agreement in favor of the County, State of Hawaii or adjacent landowners in respect of the various improvements to be installed in the Common Area.

19. The Declarant, its contractors, subcontractors, licensees, mortgagees and assigns, and their respective employees and agents, shall have the right and an easement in favor of the Declarant and its successors and assigns is hereby granted at any time and from time to time prior to the thirtieth (30th) anniversary date of this Master Declaration, to enter upon, use, remove, replace, add to, or otherwise alter the improvements in the Common Areas of the Community and to do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing the Community, and selling the Lots; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the Property, and provided further that any person exercising such rights shall use reasonable efforts, without additional cost to the Declarant and consistent with maintaining the progress of the design, development, construction, completion and sale of the additional increment, to minimize interference with the Owners' use and enjoyment of the Property.

20. Declarant for itself and the Master Association hereby reserves the right to create limited access easements to burial sites located in the Community in favor of any person recognized by the Kauai Island Burial Council as a cultural descendant of the Kahu'aina area, which may include access for ingress and egress upon, across and over the Community. Such access may be reasonably restricted as determined by the Declarant and/or the Master Association, including but not limited to reasonable restrictions as to hours, days and location of such access.

21. The rights, reservations and easements of Declarant set forth in the Master Declaration shall be deemed excepted and reserved in each Recorded Supplemental Declaration, in each conveyance of any interest in property by Declarant to the Master Association and in each deed or other instrument by which any portion of the Property is conveyed by Declarant or any other Owner, whether or not specifically stated therein. The rights, reservations and easements of Declarant set forth in the Master Declaration shall be prior and superior to any other provisions of this Master Declaration and any Supplemental Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of the Master Declaration or any Supplemental Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment. The rights, reservations and easements of Declarant set forth in Article XX of the Master Declaration are in addition to, and shall in no way affect or otherwise be interpreted to limit or restrict any of the rights, reservations and easements of Declarant contained elsewhere in this Master Declaration or in any Supplemental Declaration.

22. No provision of the Master Declaration shall be construed to prevent or limit Declarant's rights to complete the development, subdivision, consolidation, construction, promotion, marketing, sale and/or leasing of all or any portion of the Property, the Annexation Property; to construct or alter Improvements on any property owned by Declarant within such properties; to maintain units, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Master Association within such properties; to post signs incidental to the development, subdivision, consolidation, construction, promotion, marketing, sale, leasing and/or use of such properties; or to apply for, process and receive zoning or changes in zoning or to uses of, or changes in, density of, or other changes in any land use restrictions affecting all or any portion of the Property, the Annexation Property, so long as Declarant is the owner of the property affected. Nothing contained in this Master Declaration shall limit the foregoing rights of Declarant, including specifically, but not limited to the provisions contained in Article V of the Master Declaration, which provisions shall not apply to Lots owned by Declarant or to any Improvements proposed or made by Declarant in connection with its development, construction, promotion, marketing, sale or leasing of any Lot or Farm Dwelling Unit or any other portion of the Property.

23. Each Owner, in purchasing or otherwise taking title to any Lot, shall do so with the express understanding and acknowledgment that construction activity by Declarant and other third parties or other Owners or Occupants may continue in the Community area and adjacent areas after such Owner has occupied the Lot and that this activity may result in noise, dust, or other annoyances to the Owner and may limit the Owner's access to portions of such Lot or other areas adjacent thereto, and each Owner shall thereby accept any such inconvenience or annoyance and expressly waive any rights, claims, or actions which the Owner might otherwise have against Declarant or third parties (including various contractors who may be involved in such construction activity) as a result of such circumstances.

24. Any or all of the rights, reservations and easements of Declarant may be transferred to any other Person, provided that the transfer shall not enlarge a right or reservation beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by Declarant and Recorded.

25. All buyers, in purchasing or otherwise taking title to any Unit, shall do so with the express understanding that the flow and quantity of water is not guaranteed and that disruptions in the water delivery system may occur. Each Owner may at its own cost implement a water storage system or water well as a back up water system. Declarant reserves the right to collect by drilling or other methods, use and appropriate all underground and percolating water, both tributary and non-tributary, within and under the Property, including but not limited to water sources such as wells and ponds. Declarant reserves the right to create and grant easements in favor of the Master Association or to third-parties, including but not limited to the Water Company, to (i) reserve water sources, such as ponds and wells for the benefit of the Owners; and (ii) construct, maintain, replace and repair any water system servicing the Property, including but not limited to drains, lines and pipes at appropriate locations for collecting and carrying underground percolating water or irrigation water.

26. Pursuant to the Master Declaration, Declarant shall have the right to designate one or more easements for Beach Access in locations to be determined by Declarant in its sole discretion, or as required by government action. One or more Beach Access Easements may be adjacent to a Unit.

27. Owners shall comply with the Agricultural Master Plan submitted to the County of Kauai describing the planned agricultural uses for the Property, the marketing and business plans associated with such activities and the manner in which the agricultural and related uses on the Property will comply with Hawaii Revised Statutes Chapter 205, as may be amended from time to time. The Agricultural Master Plan may not be amended without the prior written approval of the County.

28. Declarant reserves the right, pursuant to the Master Declaration, to grant easements, including, but not limited to, an easement for agricultural purposes, over the Agricultural Easement Areas, as defined by the Master Declaration, without the joinder or consent of any Owner.

**END OF EXHIBIT Q**