

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer Patrick D. Bachtell and Linda R. Bachtell
Address P.O. Box 1280, Kilauea, Hawaii 96754

Project Name (*): KE ALA O KE AHE
Address: Being portions of Lot 5 Pu'u Pane Subdivision, Phase 1, Por. of L.P. 8323, L.C. Aw.8559-B, Ap. 38 to Wm. C. Lunalilo, Kahili, Hanalei, Kauai, Hawaii
Registration No. 4876 Effective date: July 16, 2002 Expiration date: August 16, 2003

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the:
And [] Supersedes all prior public reports.

(*) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

[] Required and attached to this report Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.

[] Changes made are as follows:

SPECIAL ATTENTION

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

1. There is presently TWO AGRICULTURAL SHEDS ON THIS PROPERTY, each of which may be defined as an "apartment", under the condominium property act.
2. This public report does not constitute an approval of the project by the Real Estate Commission or any other government agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a LIMITED COMMON ELEMENT and is not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

SPECIAL ATTENTION (CONCLUDED):

4. Facilities and improvements normally associated with County-approved subdivision, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc. may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

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EXHIBIT A: ESTIMATE OF INITIAL MAINTENANCE FEES AND DISBURSEMENTS

EXHIBIT B: ENCUMBRANCES AGAINST TITLE

EXHIBIT C: COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

EXHIBIT D: SUMMARY OF SALES CONTRACT

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EXHIBIT F: METES AND BOUNDS DESCRIPTION OF EACH LIMITED COMMON ELEMENT

EXHIBIT G: RESTRICTIVE COVENANTS AND CONDITIONS FOR PU'U PANE SUBDIVISION

General Information On Condominiums

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

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

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

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

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

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

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

Operation of the Condominium Project

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Patrick D. Bachtell Phone: (808) 828-1948
 Name* 258 Aina Lani Place (Business)
 Business Address Kapaa, Hawaii 96746

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

N/A

Real Estate Broker*: Na Pali Properties, Inc. Phone: (808) 826-7272
 Name P.O. Box 475 (Business)
 Business Address Hanalei, Hawaii 96714

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211
 Name 235 Queen Street (Business)
 Business Address Honolulu, Hawaii 96813

General Contractor*: Mark Cauthier Construction Phone: (808) 826-6693
 Name 4174 Kekuaaoa Lane (Business)
 Business Address Princeville, Hawaii 96754

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

Attorney for Developer: Patrick J. Childs Phone: (808) 245-2863
 Name 4365 Kukui Grove Street #104 (Business)
 Business Address Lihue, Hawaii 96766

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

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

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

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

The Declaration for this condominium is:

Proposed
 Recorded - Bureau of Conveyances: Document No. 2002-083666
Book _____ Page _____
 Filed - Land Court: Document No. _____

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

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

The Condominium Map for this condominium project is:

Proposed
 Recorded - Bureau of Conveyances Condo Map No. 3435
 Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

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

The Bylaws for this condominium are:

Proposed
 Recorded - Bureau of Conveyances: Document No. 2002-083667
Book _____ Page _____
 Filed - Land Court: Document No. _____

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

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

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>100%</u>
Bylaws	65%	<u>65%</u>
House Rules	—	<u>N/A</u>

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

2. **Developer:**

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

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

The Developer may amend the Declaration (and, when applicable, any exhibits to the Declaration and the Condominium Map) (a) as may be provided in the Declaration and (b) to file the “as built” statement required by Section 514A-12 of the Act (i) so long as such verified statement is a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers and the dimensions of the apartments as built, or (ii) so long as the plans filed therewith involve only minor changes to the layout, location or dimensions on the apartments, as built, or any change in any apartment number.

[] Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: Being portions of Lot 5 Pu'u Pane Subdivision, Phase I, Por. of L.P. 8323, L.C. Aw.8559-B, Ap. 38 to Wm. C. Lunailo, Kahili, Hanalei, Kauai, Hawaii Tax Map Key (TMK): (4) 5-1-005:104

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

Land Area: 5.529 [] square feet [X] acre(s) Zoning: Agricultural

Fee Owner: Patrick D. Bachtell and Linda R. Bachtell

Name
P.O. Box 1280
Address
Kilauea, Hawaii 96754

Lessor: N/A
Name

Address

C. Buildings and Other Improvements:

1. New Building(s)
 Conversion of Existing Building(s)
 Both New Building(s) and Conversion
2. Number of Buildings: 2 Floors Per Building: _____
 Exhibit _____ contains further explanations.
3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other Metal fence posts and shade cloth

4. Uses Permitted by Zoning:

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

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?
 Yes No

5. Special Use Restrictions:

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

Pets: Types and numbers of animals limited by Bylaws: Article v, Section 3

Number of Occupants: _____

Other: _____

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: - Trash Chutes: -

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
<u>Apartment A</u>	<u>1</u>	<u>-----</u>	<u>-----</u>	<u>20</u>	<u>Shed</u>
<u>Apartment B</u>	<u>1</u>	<u>-----</u>	<u>-----</u>	<u>20</u>	<u>Shed</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 2

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

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

Boundaries of Each Apartment:

Perimeter wall to perimeter wall, floor to exterior of roof.

Permitted Alterations to Apartments:

Any alterations permitted by law.

Apartments Designated for Owner-Occupants Only:

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

7. Parking Stalls:

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

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

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool Storage Area Recreation Area

Laundry Area Tennis Court Trash Chute/Enclosure(s)

Other: _____

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

There are no violations. Violations will not be cured.

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

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

N/A

11. Conformance to Present Zoning Code

a.] No variances to zoning code have been granted.

[] Variance(s) to zoning code was/were granted as follows:

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

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

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

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

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

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

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

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

[X] described in Exhibit 'C' _____.

[] as follows:

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

There are no limited common elements in this project.

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

described in Exhibit c.

as follows:

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

described in Exhibit _____.

as follows:

Apartment A: 50% appurtenant common interest
Apartment B: 50% appurtenant common interest

Common Interest is derived by apportion of the same on a per capital basis.

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

Exhibit B describes the encumbrances against the title contained in the title report dated May 17, 2002 and issued by Title Guaranty of Hawaii, Inc.

Blanket Liens:

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

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
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F. **Construction Warranties:**

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

1. Building and Other Improvements:

2. Appliances:

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

Apartments A & B, sheds, were completed January 30, 2002.

H. **Project Phases:**

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

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

IV. CONDOMINIUM MANAGEMENT

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

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

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

- not affiliated with the Developer
- self-managed by the Association of Apartment Owners
- the Developer or Developer's affiliate
- Other: _____

B. Estimate of Initial Maintenance Fees:

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

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

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

*Note: Developer has not conducted a reserve study in accordance with 514A-83.6, HRS and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

C. Utility Charges for Apartments:

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

- None
- Electricity (___ Common Elements only ___ Common Elements & Apartments)
- Gas (___ Common Elements only ___ Common Elements & Apartments)
- Water
- Sewer
- Television Cable
- Other _____

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract
Exhibit D contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated May 9, 2002
Exhibit E contains a summary of the pertinent provisions of the escrow agreement.
- Other _____

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners, as amended.
- D) House Rules, if any.
- E) Condominium Map, as amended.
- F) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other Declaration of Covenants, Conditions and Restrictions for the Pu'u Pane Subdivision.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 4876 filed with the Real Estate Commission on June 17, 2002.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

1. This project is subject to the terms and conditions of the Declaration of Restrictive Covenants and Conditions for the Pu'u Pane Subdivision recorded as Document No. 99-181819. See Exhibit G for a copy of this agreement.
2. This project is subject to the Elevation Agreement with the Department of Water, County of Kauai, dated June 28, 2001 and recorded as Document No. 2000-103002.
3. The project currently qualifies for one water meter, although a second meter will be allowed when the subdivision receives final approval of its water system from the Kauai County Department of Water. The Purchaser of Unit A will be required to pay for cost of the second water meter with an estimated charge of \$580.00 plus an estimated facilities reserve charge of \$2,600.00 prior to the construction of a residence. Until then a purchaser, at their expense, could sub meter off the existing meter until the second meter is available.
4. Maintenance fees. All costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective owners. Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners purchase fire insurance to cover the improvements of the Project, and that premiums be common expenses. Developer anticipates that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses. Developer estimates such annual premium expense to be about \$600.00 per year for Unit A and \$600.00 per year for Unit B. This estimate was prepared in accordance with generally accepted accounting principles.
5. This project is subject to the terms and conditions of the Declaration of Grant and Reservation of Easements for the Pu'u Pane Subdivision dated Nov. 1, 1999 and recorded at the Bureau of Conveyances as Document No. 99-181820 and corrected by instrument dated December 10, 1999, recorded as Document No. 99-197185.
6. This project is subject to the terms and provisions of the Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance dated Nov. 1, 1999 and recorded as Document No. 99-181822.
7. It is the Developers' intent not to sell Unit B. This Public Report shall not bind a purchaser of Unit B to the sale of Unit B until the Developers submit to the Real Estate Commission a duly executed disclosure abstract identifying the designated sales agent, a copy of which shall be attached to this Public Report, and a duly

C. Additional Information Not Covered Above

1. This project is subject to the terms and conditions of the Declaration of Restrictive Covenants and Conditions for the Pu'u Pane Subdivision recorded as Document No. 99-181819. See Exhibit G for a copy of this agreement.
2. This project is subject to the Elevation Agreement with the Department of Water, County of Kauai, dated June 28, 2001 and recorded as Document No. 2000-103002.
3. The project currently qualifies for one water meter, although a second meter will be allowed when the subdivision receives final approval of its water system from the Kauai County Department of Water. The Purchaser of Unit A will be required to pay for cost of the second water meter with an estimated charge of \$580.00 plus an estimated facilities reserve charge of \$2,600.00 prior to the construction of a residence. Until then a purchaser, at their expense, could sub meter off the existing meter until the second meter is available.
4. Maintenance fees. All costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective owners. Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners purchase fire insurance to cover the improvements of the Project, and that premiums be common expenses. Developer anticipates that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses. Developer estimates such annual premium expense to be about \$600.00 per year for Unit A and \$600.00 per year for Unit B. This estimate was prepared in accordance with generally accepted accounting principles.
5. This project is subject to the terms and conditions of the Declaration of Grant and Reservation of Easements for the Pu'u Pane Subdivision dated Nov. 1, 1999 and recorded at the Bureau of Conveyances as Document No. 99-181820 and corrected by instrument dated December 10, 1999, recorded as Document No. 99-197185.
6. This project is subject to the terms and provisions of the Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance dated Nov. 1, 1999 and recorded as Document No. 99-181822.
7. It is the Developers' intent not to sell Unit B. This Public Report shall not bind a purchaser of Unit B to the sale of Unit B until the Developers submit to the Real Estate Commission a duly executed disclosure abstract identifying the designated sales agent, a copy of which shall be attached to this Public Report, and a duly

executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, as applicable.

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

Patrick D. Bachtell and Linda R. Bachtell

Printed Name of Developer

By: Patrick D. Bachtell Linda R. Bachtell 6-3-02
 Duly Authorized Signatory* Date

Patrick D. Bachtell and Linda R. Bachtell, Developers

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

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

EXHIBIT A

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
Apartment A	\$50.00 X 12 = \$600.00
Apartment B	\$50.00 X 12 = \$600.00

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

Estimate of Maintenance Fee Disbursements:

Monthly Fee x 12 months = Yearly Total

Utilities and Services

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

Maintenance, Repairs and Supplies

- Building
- Grounds

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance

\$100.00 X 12 = \$1200.00

Reserves(*)

Taxes and Government Assessments

Audit Fees

Other

TOTAL

\$1200.00

Patrick D. & Linda R. Bachtell, as agent for/and/or employed by _____, the
 condominium managing agent/developer for the KE ALA O KE AHE
 condominium project, hereby certify that the above estimates of initial maintenance fee assessments and
 maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Patrick D. Bachtell 6-3-02
 Signature Date

Linda R. Bachtell 6-3-02
 Signature Date

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

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

Developer discloses no reserve study was done in accordance with Chapter 514A-83.6, HRS, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules.

EXHIBIT 'B'
Encumbrances Against Title

1. For real property taxes that may be due and owing, reference is made to County of Kauai Department of Finance for more information.

2. DESIGNATION OF EASEMENT "6"

PURPOSE : irrigation
SHOWN : on survey map prepared by Wayne T. Wada, Licensed Professional Land Surveyor, with W. Esaki Surveying and Mapping, Inc., dated September 17, 1999, revised October 15, 1999, and being more particularly described as follows:

Beginning at the northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAMOKU" being 3,787.53 feet north and 2,902.90 feet west, thence running by azimuths measured clockwise from true South:

1. 268° 58" 10.00 feet along the remainder of L.C. Award 8559-B, Apana 38 to Wm. C. Lunalilo (Lot 4);

2. 358° 58" 417.02 feet along the remainder of L.C. Award 8559-B, Apana 38 to Wm. C. Lunalilo (Lot 5);

thence along the remainder of L.C. Award 8559-B, Apana 38 to Wm. C. Lunalilo (Lot 5) on a curve to the left with a radius of 30.00 feet, the direct azimuth and distance being:

3. 339° 22' 09" 20.12 feet;

thence along the remainder of L.C. Award 8559-B, Apana 38 to Wm. C. Lunalilo (Lot 5) on a curve to the right with a radius of 50.00 feet, the direct azimuth and distance being:

4. 15° 38' 25.5" 82.78 feet;

5. 178° 58" 10.62 feet along the remainder of L.C. Award 8559-B, Apana 38 to Wm. C. Lunailo (Lot 6);
- thence along the remainder of L.C. Award 8559-B, Apana 38 to Wm. C. Lunailo (Lot 15) on a curve to the left with a radius of 50.00 feet, the direct azimuth and distance being:
6. 193° 21' 25" 64.38 feet;
- thence along the remainder of L.C. Award 8559-B, Apana 38 to Wm. C. Lunailo (Lot 15) on a curve to the right with a radius of 40.00 feet, the direct azimuth and distance being:
7. 159° 22' 09" 26.83 feet;
8. 178° 58' 417.02 feet along the remainder of L.C. Award 8559-B, Apana 38 to Wm. C. Lunailo (Lot 15), to the point of beginning and containing an area of 5,271 square feet, more or less.

3. The following matters as described in metes and bounds description prepared by Wayne T. Wada, Licensed Professional Land Surveyor, with Esaki Surveying and Mapping, Inc., dated October 1999: (1) Flood lines; (2) No new structures permitted within the floodway, new structures shall be setback from the floodway line; and (3) Obstructing the flow of drainage within the Building Setback Line and Drainage way is prohibited.
4. The right in favor of the Owners, their successors and assigns, to relocate and/or widen their vehicle access into and from Kauai Belt Road, provided that such relocation and/or widening shall be subject to the approval of the State of Hawaii.

5. GRANT

TO : CITIZENS UTILITIES COMPANY and VERIZON HAWAII INC.
DATED : December 14, 1987
RECORDED : Liber 21742 Page 306
GRANTING : a perpetual right and easement for utility purposes
over, under, upon, across and through easement area
of which being more particularly described in
Exhibit "A" attached thereto

6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
DATED : ----- (acknowledged September 30, 1996)
RECORDED : Document No. 96-149955

7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE PU'U PANE SUBDIVISION
DATED : November 1, 1999
RECORDED : Document No. 99-181819

8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION OF GRANT AND RESERVATION OF EASEMENTS
FOR THE PU'U PANE SUBDIVISION
DATED : November 1, 1999
RECORDED : Document No. 99-181820

Said Declaration was corrected by instrument dated December 10, 1999, recorded as Document No. 99-197185.

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : AGREEMENT TO INCORPORATE AGRICULTURAL RESTRICTIONS INTO INSTRUMENTS OF CONVEYANCE

DATED : November 1, 1999

RECORDED : Document No. 99-181822

PARTIES : DAVID HASSENMILLER and NANCY J. HASSENMILLER, husband and wife, PU'U PANE ASSOCIATES LLC, a Hawaii limited liability company, and the COUNTY OF KAUAI, through its Planning Department

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : AGREEMENT TO RELEASE RIGHTS TO THREE-PHASE POWER INSTALLATION

DATED : October 8, 1999

RECORDED : Document No. 99-181824

PARTIES : DAVID HASSENMILLER and NANCY J. HASSENMILLER, husband and wife, PU'U PANE ASSOCIATES LLC, a Hawaii limited liability company, and CITIZENS UTILITIES COMPANY, a Delaware corporation

Said Agreement was corrected by instrument dated December 10, 1999, recorded as Document No. 99-197186.

11. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : RIGHT-OF-ENTRY AGREEMENT

DATED : --- (acknowledged May 17, 2000)

RECORDED : Document No. 2000-103002

PARTIES : DAVID HASSENMILLER and NANCY J. HASSENMILLER, husband and wife, PU'U PANE ASSOCIATES LLC, a Hawaii limited liability company, and the BOARD OF WATER SUPPLY, COUNTY OF KAUAI, a political subdivision of the State of Hawaii

12. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : WARRANTY DEED
DATED : January 18, 2000
RECORDED : Document No. 2000-008865

13. RIGHT-OF-ENTRY

TO : BOARD OF WATER SUPPLY, COUNTY OF KAUAI, a political subdivision of the State of Hawaii
DATED : --- (acknowledged May 17, 2000, June 13, 2000, and July 20, 2000)
RECORDED : Document No. 2000-103002
GRANTING : a right-of-entry over and across the subject property for the purposes of conducting all necessary inspections

14. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : ELEVATION AGREEMENT
DATED : June 28, 2001
RECORDED : Document No. 2001-109760
PARTIES : PATRICK DEAN BACHTTELL, LINDA R. BACHTTELL, and DEPARTMENT OF WATER, COUNTY OF KAUAI
RE : to hold the said Department of Water, County of Kauai, free and harmless from any claim or suit for damages by reason of any inadequacy in the system or water supply

15. RIGHT-OF-ENTRY

TO : CITIZENS UTILITIES COMPANY, a Delaware corporation
DATED : October 3, 2000
RECORDED : Document No. 2001-128714
GRANTING : a right-of-entry for utility purposes

16. WAIVER AND RELEASE

DATED : December 13, 2001
RECORDED : Document No. 2001-200444
BY : PATRICK D. BACHTELL and LINDA R. BACHTELL
WITH : BUILDING DIVISION OF THE DEPARTMENT OF PUBLIC WORKS
OF THE COUNTY OF KAUAI
RE : building permit

17. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR KE
ALA O KE AHE CONDOMINIUM PROJECT

DATED : April 30, 2002
RECORDED : Document No. 2002-083666
MAP : 3435 and any amendments thereto

18. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS

DATED : April 30, 2002
RECORDED : Document No. 2002-083667

19. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described in Schedule C herein.

Exhibit 'C'

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

1. Common Elements. The common elements of the Project consist only of the following:

- (i) All the land in fee simple.
- (ii) The limited common elements hereinafter described.
- (iii) All pipes, wires, conduits, or other utility or service lines, drainage ditches or appurtenant drainage structures retaining walls (if any) and yard fences, which are located outside the apartments and which are utilized for or serve more than one apartment.

2. Limited Common Elements. The limited common elements of the Project consist only of the following:

- (i) That portion of the Land which is designated as Limited Common Element A, being 3.064 acres in area, on the Condominium Map, is reserved for the exclusive use of Apartment A for the support of the building and other improvements comprising Apartment A, or attendant thereto, and for parking, yard, driveway, agricultural and residential purposes.
- (ii) That portion of the Land which is designated as Limited Common Element B, being 2.122 acres in area, on the Condominium Map, is reserved for the exclusive use of Apartment B for the support of the building and other improvements comprising Apartment B, or attendant thereto, and for parking, yard, driveway, agricultural and residential purposes.

Each apartment owner, at his expense, shall maintain the limited common elements appurtenant to his apartment in good order and in a neat and attractive condition. All limited common elements costs and expenses shall be borne by the apartment owners in the following equitable manner: All limited common elements costs and expenses, including, but not limited to, maintenance, repair, replacement, additions and improvements of or to the limited common elements, shall be borne by and charged to the owner of the apartment to which the limited common element is appurtenant.

NOTICE: This is not a subdivision. The Limited Common Elements that are reserved for the exclusive use of individual units are not subdivided parcels. As such they do not fall within the ordinances of the County of Kauai as the same pertain to subdivision nor do they derive any benefits there from.

EXHIBIT 'D'

SUMMARY OF SALES CONTRACT:

The Seller intends to use a current Hawaii Association of Realtors' form of Deposit Receipt, Offer and Acceptance ("DROA") as the sales contract for the sale of apartments in the Project. The sales contract contains the purchase price, description and location of the apartment and other terms and conditions under which a Buyer will agree to buy an apartment.

Among other things, the sale contract and addendum:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Buyer will pay the purchase price.
2. Identifies the escrow agent and states that Buyer's deposit will be held in escrow until the sale contract is closed or cancelled.
3. Requires that Buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
4. Provides the following remedies, in the event of default under the sale contract:

By Buyer:

- a. Seller may bring an action against Buyer for breach of contract;
- b. Seller may retain Buyer's initial deposit;
- c. Buyer shall be responsible for expenses incurred.

By Seller:

- a. Buyer may bring an action against Seller for breach of contract;
- b. Buyer may bring an action compelling Seller to perform under contract;
- c. Seller shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

5. Allocation of payment of closing costs.

EXHIBIT "E"

SUMMARY OF ESCROW AGREEMENT:

An escrow Agreement allows the Condominium Buyers' money to be held by a neutral party, the Escrow Agent, until the Seller can deliver good and marketable title to the Condominium. The Escrow Agreement for this project provides for, among other things:

1. That TITLE GUARANTY ESCROW SERVICES, INC. is the Escrow Agent.
2. That, upon execution of a Sales Contract, the Developer shall deliver all money received over to the Escrow Agent.
3. That there shall be no disbursement of the purchaser's deposit until: [a] Escrow receives a copy of "Receipt for Public Report(s) and Notice of Right to Cancel", in the form specified by Section 514A-62 of the Condominium Act for the Final and any Supplementary Public Reports, executed by the purchaser; [b] Escrow has received a certification that the requirements of Section 514A-39 and 514A-63 have been met and [c] until the purchaser's apartment deed is filed in the Bureau of Conveyances of the State of Hawaii.
4. That the Buyer shall receive all public documents relating to the project.
5. That a Buyer's money shall be returned to him under the following conditions: [a] Escrow receives a written request from the Developer and purchaser for the return of purchaser's funds or [b] Developer and purchaser notify Escrow of a rescission or [c] Developer and purchaser notify Escrow that the conditions for a refund under Sections 514A-62 and 514A-63 of the Condominium Act have been met.
6. That, upon the Seller providing good title to the Condominium, the Buyer's money shall be turned over to the Seller.
7. That the Escrow Agent will record with the State of Hawaii all documents requiring such.
8. That, if the Buyer is unable to perform and has money on deposit in escrow, these monies will be turned over to the Seller.

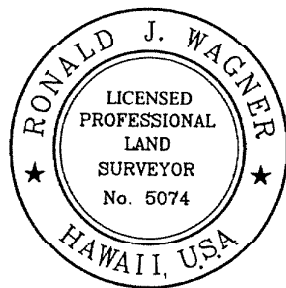
Unit A
Limited Common Element

All of that certain parcel of land being the Limited Common Element containing Unit A, "Ke Ala O Ke Ahe" Condominium, being a portion of Lot 5, Pu'u Pane Subdivision – Phase I at Kahili, Hanalei, Kauai, Hawaii;

Being a portion of L.P. 8323, L.C. Aw. 8559-B, Apana 38 to William C. Lunalilo, and more particularly described as follows:

Beginning at the Northwest corner of this parcel of land, at the Southwest corner of Lot 4, Pu'u Pane Subdivision, Phase I, on the East side of Huli Road, the coordinates of which referred to Government Survey Triangulation Station "KAMOKU" being 3,787.53 feet North and 2,902.90 feet West and running by azimuths measured clockwise from True South:

- | | | | |
|----|-----------|--------|---|
| 1. | 268 ° 58' | 363.18 | feet along Lot 4, Pu'u Pane Subdivision, Phase I; |
| 2. | 13 ° 30' | 494.81 | feet along Lot 31, West Waiakalu Subdivision; |
| 3. | 103 ° 30' | 246.91 | feet along the remainder of Lot 5, Pu'u Pane Subdivision, Phase I, (Limited Common Element containing Unit B, "Ke Ala O Ke Ahe" Condominium); |
| 4. | 178 ° 58' | 417.02 | feet along Huli Road to the point of beginning and containing an AREA of 3.141 Acres. |



January 17, 2002
P.O. Box 851
Hanalei, Hawaii 96714

WAGNER ENGINEERING SERVICES INC.

Ronald J. Wagner
Licensed Professional Land Surveyor
Certificate No. 5074

Unit B Limited Common Element

All of that certain parcel of land being the Limited Common Element containing Unit B, “Ke Ala O Ke Ahe” Condominium, being a portion of Lot 5, Pu’u Pane Subdivision – Phase I at Kahili, Hanalei, Kauai, Hawaii;

Being a portion of L.P. 8323, L.C. Aw. 8559-B, Apana 38 to William C. Lunailo, and more particularly described as follows:

Beginning at a Northwest corner of this parcel of land, on the Northeast corner of Lot 6, Pu’u Pane Subdivision, Phase I, at the South end of Huli Road, the coordinates of which referred to Government Survey Triangulation Station “KAMOKU” being 3,282.83 feet North and 2,900.80 feet West and running by azimuths measured clockwise from True South:

1. Thence along Huli Road on a curve to the left, with a radius of 40.00 feet, the chord azimuth and distance being:

193 ° 21' 25"	64.38 feet;
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2. Thence along Huli Road on a curve to the right, with a radius of 40.00 feet, the chord azimuth and distance being:

159 ° 22' 09"	26.83 feet;
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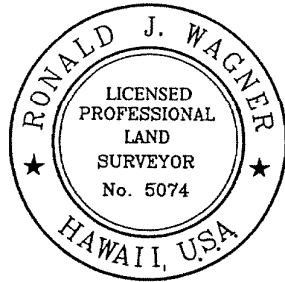
3. 283 ° 30' 246.91 feet along the remainder of Lot 5, Pu’u Pane Subdivision, Phase I, (Limited Common Element containing Unit A, “Ke Ala O Ke Ahe” Condominium);

4. 13 ° 30' 596.73 feet along Lot 31 and Lot 30, West Waiakalua Subdivision;

5. 103 ° 30' 99.45 feet along Lot 6, Pu’u Pane Subdivision, Phase I;

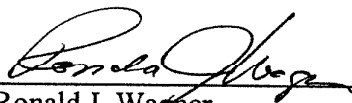


6. 178° 58' 527.00 feet along Lot 6, Pu'u Pane Subdivision, Phase I, to the point of beginning and containing an AREA of 2.388 Acres.



WAGNER ENGINEERING SERVICES INC.

January 17, 2002
P.O. Box 851
Hanalei, Hawaii 96714



Ronald J. Wagner
Licensed Professional Land Surveyor
Certificate No. 5074

EXHIBIT "G"

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

NOV 15, 1999 08:01 AM

Doc No(s) 99-181819

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

✶

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail (X) Pickup ()
BELLES GRAHAM PROUDFOOT & WILSON (MWG)
4334 RICE STREET SUITE 202
LIHUE HI 96766
Telephone: (808) 245-4705

Accom
TG-281515-C
RIS

1

This Document Contains 35 Pages

TYPE OF DOCUMENT:

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE PU'U PANE SUBDIVISION

PARTIES TO DOCUMENT:

DECLARANT: PU'U PANE ASSOCIATES LLC, a Hawaii limited liability company
P. O. Box 518
Anahola, Kauai, Hawaii 96703

DAVID HASSENMILLER and NANCY J. HASSENMILLER,
husband and wife
238 Meadowlake Drive
Marble Falls, Texas 78654

TAX MAP KEY FOR PROPERTY:

(4) 5-1-05:52

Bess @ 828 2880

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE PU'U PANE SUBDIVISION**

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EXHIBIT "A" Description of Property

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE PU'U PANE SUBDIVISION**

This Declaration Of Covenants, Conditions And Restrictions For The Pu'u Pane Subdivision ("Declaration") is made this 9th day of June, 1999, by DAVID HASSENMILLER and NANCY J. HASSENMILLER, husband and wife, whose mailing address is 238 Meadowlake Drive, Marble Falls, Texas 78654, and PU'U PANE ASSOCIATES LLC, a Hawaii limited liability company, whose mailing address is P. O. Box 518, Anahola, Kauai, Hawaii 96703, hereinafter collectively called the "Declarant".

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall otherwise provide) shall have the following meanings:

"Additional Dwelling Unit" shall have the same meaning as contained in Article 26 of the CZO, as amended from time to time.

"Adjacent Property" refers to that certain property adjacent to, and located to the east of, the Subject Property, identified by Kauai Tax Map Key No. (4) 5-1-05:03.

"Agricultural Water" means water used by any Owner for agricultural activities on any Lot.

"Agricultural Water System" means any system which provides Agricultural Water to the Lots, but does not include the public water system of the County of Kauai.

"Building" shall mean buildings, garages, residences, or enclosed structures higher than six (6) feet above finished grade.

"Bureau of Conveyances" shall mean the Bureau of Conveyances of the State of Hawaii, and any successor thereto.

"Condominium Project" shall mean a condominium property regime established pursuant to HRS, Chapter 514A.

"Condominium Unit" or "Unit" shall mean an apartment used for residential purposes (including transient occupancy) within the Condominium Project together with its appurtenant limited common element.

"Construction" shall mean exterior construction, alterations, repairs, replacements, additions, demolition, excavation, grading, paving, filling in, landscaping, seeding, sodding, planting and similar activities.

"County" shall mean the County of Kauai.

"CZO" shall mean the Comprehensive Zoning Ordinance of the County of Kauai as codified in Chapter 8 of the Kauai County Code, 1987, as amended from time to time.

"Declarant" shall mean David Hassenmiller, Nancy J. Hassenmiller and Pu'u Pane Associates LLC, a Hawaii limited liability company, and their successors and assigns, or such other Person to whom Declarant, their successors or assigns, may assign their rights as the Declarant pursuant to this Declaration. (For purposes of this definition of "Declarant", the Declarant's "successors and assigns" shall not include any Person to whom Declarant conveys or leases a Lot or unit, unless the rights of the "Declarant" expressly have been assigned to such Person).

"Declaration" shall mean this Declaration Of Covenants, Conditions And Restrictions For The Pu'u Pane Subdivision, as amended from time to time.

"Design Committee" shall mean the Design Committee established by this Declaration.

"Design Committee Rules" shall mean those rules adopted by the Declarant pursuant to this Declaration, as may be amended from time to time.

"Design Consultant" shall mean an architect or landscape architect licensed in the State of Hawaii and retained by the Design Committee to assist it with its duties.

"Design Guidelines" shall mean the Design Guidelines contained herein.

"Drainage" shall mean surface water flows and "Drainage Improvements" shall mean improvements and activities designed to control surface water flows, including the grading and grubbing of property, the creation of ditches or swales, and the installation of improvements in order to collect, direct, redirect, concentrate, and discharge surface water flows.

"Enforcing Person" shall mean any of the Enforcing Persons identified in this Declaration.

"Fiscal Year" shall mean January 1 through December 31 of each year, or such other Fiscal Year as may be adopted by the Board.

"Government Entity" shall mean any governmental body or agency, or any department thereof.

"Guest House" shall have the same meaning as contained in Section 8-1.5 of the CZO, as amended from time to time.

"HRS" shall mean the Hawaii Revised Statutes, as amended from time to time.

"Improvement" shall mean and include all buildings, outbuildings, roads, driveways, parking areas, swimming pools, fences, screens, retaining walls, stairs, decks, hedges, windbreaks, plants, trash enclosures, utilities, excavation, grading, landscaping, poles, signs, sewers, culverts and other drainage structures, and any and all other structures, facilities and amenities of any type or kind whatsoever.

"Interest in the Lot" shall mean and include any legal or equitable interest, leasehold interest, the interest or lien of the holder of any encumbrance (such as a mortgage), or any other interest in, to or upon any Lot (or any portion thereof).

"Laws" shall mean all applicable laws, ordinances, rules and regulations (state, federal or county or any agency thereof).

"Long-Term Lease" shall mean a lease having a term (exclusive of all options to extend the term) of thirty (30) years or more.

"Lot" shall mean any one of Lots 1-14 of the Pu'u Pane Subdivision.

"Morita Reservoir Agreement" shall mean that certain agreement dated November 7, 1988, recorded in the Bureau of Conveyances of the State of Hawaii in Book 20573 at Page 20.

"Owner" shall mean the record owner (including Declarant) whether one or more persons, of a fee simple title to any Lot and any property hereafter annexed and made subject to this Declaration.

"Permit" and "County Permit" shall mean the Planning Commission approval of the subdivision of the Subject Property (Subdivision S-97-23).

"Person" shall mean any person, individual or entity, including, without limitation, any trustee, mortgagee, personal representative, corporation (profit or nonprofit), partnership (general or limited), joint venture, association of apartment owners established pursuant to Chapter 514A, HRS, unincorporated Association or trust.

"Planning Commission" shall mean the Planning Commission of the County of Kauai.

"Planning Department" shall mean the Planning Department of the County of Kauai.

"Project" shall mean all of the property described in Exhibit "A".

"Public Records" shall mean the Bureau of Conveyances, the Office of the Assistant Registrar, or the Land Court, and each of their respective successors.

"Pu'u Pane Subdivision" and "Subdivision" shall mean Lots 1-14 created by the subdivision of the Subject Property described in Exhibit "A", attached hereto and incorporated herein.

"Record" shall mean to file or record a document in the Public Records.

"Recorded Instrument" shall mean: (i) any recorded instrument conveying any interest in a Lot (including a deed, agreement of sale or lease), other than security instruments (such as mortgages); (ii) any additional declaration; (iii) any supplemental declaration; and (iv) any amendments to the instruments described in (i), (ii) and (iii) above.

"Reservoir" and "Morita Reservoir" refers to the man-made reservoir which has as its source of water the Wailapa Stream and which is located on portions of the Reservoir Lots.

"Reservoir Lot" and "Morita Reservoir Lot" shall mean Lot 8, Lot 9, Lot 10, Lot 11, and/or Lot 12.

"Reservoir Lot Owners" means an Owner who owns a Reservoir Lot.

"Residence" means one single family dwelling unit as defined in the CZO, together with appurtenant outbuildings as may be approved by the Design Committee.

"Residential Use" means residential occupation and use of a residence by a single household (including servants) in conformity with this Declaration and the requirements imposed by the CZO and any other applicable zoning laws or other state or county rules and regulations.

"Restrictions" means this Declaration of Covenants, Conditions and Restrictions for the Pu'u Pane Subdivision.

"Single Family" shall mean an individual or a group of two (2) or more persons related by blood, adoption or marriage living together in a single housekeeping unit as a dwelling unit. For purposes of this Declaration, family shall also include a group of not more than five (5) individuals unrelated by blood, adoption or marriage.

"Subdivision Map" shall mean the final subdivision map for the Pu'u Pane Subdivision, Phase I, approved by the Planning Commission in Subdivision Application No. S-92-52.

"Subject Property" shall mean that certain parcel of land situated at West Waiakalua and Kahili, Kilauea, Hanalei, Island and County of Kauai, State of Hawaii, identified by Kauai Tax Map Key No. (4) 5-1-05:52 containing an area of 89.606 acres as described in Exhibit "A".

"Utilities" shall mean drainage improvements as well as services for: sewer and wastewater disposal; gas; water (including potable water and/or irrigation water); and telephone, electric, cable television and other services for communications employing electrical or electronic means of transmission.

All references in this Declaration to any particular Government Entity, statute, ordinance or governmental approval or permit shall mean any successor thereto or replacement thereof or most nearly comparable substitution therefor.

ARTICLE II

RECITALS

Section 1. Subject Property. The Declarant is the owner in fee simple of the Subject Property, which is situated at West Waiakalua and Kahili, Kilauea, Hanalei, Halelea, Island and County of Kauai, State of Hawaii, containing an area of 89.606 acres, more or less, as more particularly described in Exhibit "A", attached hereto and incorporated herein.

Section 2. Pu'u Pane Subdivision. The Declarant has developed the Subject Property into a subdivision known as the "Pu'u Pane Subdivision" containing fourteen (14) agricultural lots ("Lots").

Section 3. Permit Conditions. As a condition of approval of the Pu'u Pane Subdivision, the Planning Commission has required that the Subject Property and the Pu'u Pane Subdivision be subject to certain restrictions and conditions. The Permit further provides that such restrictions and conditions are to be recorded with the Bureau as conditions running with the Subject Property.

Section 4. Declarant's Intention. The Declarant intends by this Declaration to impose the Permit conditions and certain additional restrictions upon the Subject Property and the Project in order to comply with the requirements of the County of Kauai and for the benefit of Declarant and the owners of Lots in the Project for the purpose of enhancing and maintaining the value and appearance of the Project.

ARTICLE III

PROPERTY SUBJECT TO DECLARATION: ANNEXATION

Section 1. Subject Property. The Subject Property (and the Pu'u Pane Subdivision developed thereon), being all of the land described in Exhibit "A" attached hereto, shall be subject to this Declaration. Declarant hereby declares that such land shall be held, sold, conveyed, leased, encumbered, occupied, used and improved subject to this Declaration.

Section 2. Covenants Running with the Land. All of the Pu'u Pane Subdivision shall be held, sold, conveyed, encumbered, leased, occupied, used and improved subject to the covenants, conditions, restrictions and limitations set forth in this declaration, which shall be known and referred to as the Restrictions, all of which are established and declared and agreed to be for the purpose of enhancing, protecting and preserving the desirability, attractiveness, aesthetics and environment of the Project. Said covenants, conditions, restrictions and limitations shall constitute covenants running with the land, binding according to the terms hereof and upon all Persons having or acquiring any right, title or interest or estate in the Project or any part thereof. Each Person, upon acquiring title to or any other interest, right or estate in a Lot, or by occupying any portion of the Project, shall be deemed to covenant and agree to observe, perform and comply with each and every provision of this Declaration, whether or not it shall be so expressed in the instrument by which such Person acquired such title, interest, right or estate or commenced such occupancy. Each Owner shall be fully responsible for ensuring that all guests, tenants, invitees, employees, agents and customers of the Owner strictly comply with the provisions of this Declaration, and shall be personally liable for any non-compliance.

Section 3. Design Guidelines/Design Committee Rules. All Lots, except as otherwise specifically provided, shall be subject to the Design Guidelines and to the Design Committee Rules.

Section 4. Supplemental Restrictions and Limitations Established by Declarant. Declarant shall have the right to supplement the provisions of this Declaration by including supplemental covenants, conditions, restrictions and limitations in any recorded instrument applicable to property owned by Declarant.

ARTICLE IV

CONDOMINIUM PROPERTY REGIMES

The Owner of any Lot may establish a condominium property regime on such Lot pursuant to the provisions of HRS Chapter 514A. The condominium association and the owners of units within such condominium project shall all be subject to the terms and conditions of these Restrictions.

ARTICLE V

DESIGN GUIDELINES AND RESTRICTIVE COVENANTS

Section 1. Design Guidelines. All Lots shall be subject to the Design Guidelines and restrictions contained herein.

Section 2. Use and Development Restrictions. The following provisions are standards, covenants, conditions, restrictions and requirements which apply to and govern the use of, and construction and development on, each Lot. These restrictions supplement any other provision, restriction, covenant or condition applicable to the Lot under Law or by separate instrument or agreement (including any Recorded Instrument), but in the event of any conflict, the strictest provision, restriction, covenant or condition shall apply and control, except that any conflict between the provisions of any Recorded Instrument applicable to a particular Owner or Lot and the provisions of this Declaration as to such Owner or Lot only, the provisions of the Recorded Instrument shall control. The provisions of any Recorded Instrument shall apply only to the person subject to such Recorded Instrument, and shall not be deemed to relieve any person not subject to such Recorded Instrument from having to comply with all of the provisions of this Declaration.

No excavation, fill, landscaping, construction or other work shall be undertaken, nor shall any Building or Improvement be placed or constructed, on any portion of any Lot except in strict compliance with the following provisions.

a. General Provisions. Each Lot shall be subject to, and the Owner of each Lot shall strictly comply with, the following provisions:

1. Submission of Plans to Design Committee. No Building, Improvement, architectural wall or other structure, except as otherwise provided in this Declaration, shall be constructed, erected or maintained on any Lot, nor shall any addition thereto or change or alteration therein be made until the complete plans and specifications therefor (including, but not limited to: floor, elevation, plot and grading plans; the specifications of principal exterior materials and color schemes; the location, character and method of utilization of all utilities; landscape plans if requested by the Design Committee; automobile parking provisions; outside lighting plan), prepared by or under the supervision of a registered architect or professional engineer licensed in the State of Hawaii and consistent with the Design Guidelines have been submitted to the Design Committee.

2. Construction Consistent with Plans. Each building and other structure shall be constructed, erected and maintained in strict accordance with the Design Guidelines and approved plans and specifications.

3. Design Committee Approval. In passing upon all such plans and specifications, the Committee shall take into consideration the Design Guidelines and the suitability of the proposed building or other structure and the materials of which it is to be built to the Lot upon which it is to be erected, its harmony with the surroundings and the effect of the building on other structures, as planned, as viewed from adjacent or neighboring Lots.

4. Good Repair. The Owner of each structure constructed on the Lot shall maintain the structure in good repair at all times and shall cause all external surfaces that are stained or painted to be restained or repainted at sufficient intervals as to prevent the structure from detracting from the beauty of the Project.

5. Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved to the Declarant or its assignee. Within these easement areas no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in the easement areas.

6. Temporary Structures. No temporary buildings, structures, outhouses, sheds, tents or trailers of any kind shall be erected, altered, placed or permitted to remain on any land in the Project, except as expressly otherwise provided herein. Temporary structures or trailers may be erected or placed on any land during a reasonable period of Construction for use as a construction office and supply shelter, but in no event as a residence. The temporary construction structures or trailers shall remain upon the land only during the period of construction of permanent improvements thereon and must be removed within 30 days after completion of such construction. Any surplus materials from construction must be removed within that 30 days.

7. Lien. Each Owner grants to Declarant, and there is excepted and reserved to Declarant, a lien upon the Lot of the Owner to secure the faithful performance by the Owner of the requirements of the terms of these Restrictions. If any Owner shall fail to comply with the terms of these Restrictions within ten (10) days after Declarant shall have deposited in the United States postal system a notice to the Owner of the failure to comply, Declarant shall have the right to cause the necessary work to be done and to have a lien upon the land of the noncomplying owner for the reasonable cost of such work plus an additional amount equal to 12% of the cost of such work. If within 30 days the noncomplying owner does not pay to Declarant the sum secured by the lien, then Declarant may foreclose the lien in compliance with the mortgage foreclosure Laws of the State of Hawaii.

8. Compliance with Laws. No use, construction or occupation of any Lot, Building or Improvement shall take place which is in violation of applicable Laws.

9. Condition of Lot. Each Lot shall at all times be maintained in a strictly clean, sanitary and orderly condition. No owner shall commit, suffer or permit any waste, nuisance, strip or unlawful, improper or offensive use of the Lot; or permit any tall weeds, litter, debris or tall grass to be grown on or remain upon the Lot; or create or allow any fire, safety or health hazard.

10. Soil Shifting and Erosion. All vegetation shall be planted and maintained in good condition and in such a manner as to prevent shifting or erosion of soil.

11. Offensive Activities. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause embarrassment, disturbance or annoyance to other Owners in the Project. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the improvements, shall be placed or used without the Design Committee's prior approval. Any planting or vegetation which cannot be effectively limited from encroaching upon or infesting neighboring Lot or property shall be deemed a noxious activity, and each Owner shall take positive steps to eliminate such planting or vegetation from his Lot. Owners shall not allow any unreasonable odor, smoke, dust, light, electronic wave emissions, or noise which is noxious or offensive to any other Owners to emit or emanate from their Lot.

12. Animals. No more than two (2) pigs may be kept on any Lot. The Design Committee may adopt rules controlling the number and types of other animals allowed on Lots. All animals kept or maintained on any Lot shall be kept and maintained only in numbers and at a density compatible with neighboring uses within the Project and shall receive care in conformance with practices of good animal husbandry, including but not limited to:

- a. prompt removal of excess amounts of manure and other waste;
- b. control of flies, insects, worms, and other pests and parasites;
- c. adequate fencing and animal housing or shelter facilities, sufficient to restrict and confine such animals to the lot upon which they are kept and maintained; and
- d. control of noise and of noxious or offensive odors to levels which are customary under practices of good animal husbandry and which

are compatible with neighboring residential uses.

The Design Committee may require any Owner who fails to keep animals in accordance with the provisions herein to remove any such animals from the Owner's Lot.

13. Vehicles. Except for construction trailers, no mobile home, travel trailer, truck camper, house trailer, or stripped down, wrecked or junk motor vehicle, shall be kept, parked, stored or maintained on any Lot.

14. Garbage. All garbage, rubbish and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring properties or roads.

15. Clotheslines. Outside clotheslines or other outside clothes washing, drying or airing facilities shall be screened or maintained in such a manner and in such location as not to be visible from neighboring properties or roads.

16. Destroyed Improvements. All Buildings or Improvements which have been partially or totally destroyed shall be fully repaired, reconstructed or removed within six (6) months from the date of destruction or such reasonably longer period of time as may be necessary to complete any repair or reconstruction with due diligence and continuity; provided, however, that the time for completion of such repair, reconstruction or removal shall be extended for the period of actual delay encountered due to reasons beyond the Owner's control (other than the Owner's financial inability), such as strikes, lockouts, embargoes, shortage of labor and materials, wars, riots and acts of God. In the event of removal, the land shall be cleared of all debris and restored to the grade which existed prior to the destruction of the Building or Improvement thereon (provided, however, that all basements and similar excavations shall be restored to the level of the surrounding grade), and shall be landscaped promptly in accordance with landscaping plans first approved in writing by the Design Committee.

17. Hunting, Firearms. There shall be no hunting or discharge of firearms on any Lot.

18. Toilet Facilities. No outside toilet facilities, other than self-contained portable toilet units used during Construction or for special events shall be constructed or placed on any Lot. All permanent plumbing fixtures (other than fixtures for incoming water), dishwashers, garbage disposal, toilets or sewage disposal system shall be connected to a sewage system approved by the appropriate governmental authorities.

19. Towers, etc. No towers or windmills shall be installed or maintained on any Lot. No satellite dishes or similar facilities for the reception or transmission

of radio or television signals, and no exterior antennae of any sort, shall be installed or maintained on any Lot without the Design Committee's prior approval. No activity shall be conducted within any Lot which interferes with television or radio reception in the Project.

20. Occupancy. No structure shall be occupied until the same has been completed substantially in accordance with plans and specifications previously approved by the Design Committee in accordance with this Declaration.

21. New Materials. All improvements shall be constructed with new materials (except for used materials incorporated into the improvements for decorative or aesthetic effect), and no used structure shall be relocated to or placed upon any Unit (except for temporary use in construction or sales).

22. Explosives. There shall be no blasting or discharge of explosives upon any Lot except with the Design Committee's prior approval.

23. Fires. No Owner shall engage in burning activities on any Lot unless it is done in strict compliance with governmental rules, regulations and laws. No Owner shall permit any condition which creates a fire hazard or is in violation of any fire prevention regulations.

24. Agricultural/Construction Activity. Agricultural, farming and construction activities by the Declarant and by other Lot owners and/or contractors may take place after the Owner has occupied his Lot. This activity may result in noise, dust and other annoyances to Owner. The Owner accepts the foregoing conditions set forth as well as any inconvenience or annoyance which Owner may experience as a result of such conditions and Owner expressly waives any rights, claims or actions which Owner may otherwise have against Declarant and other Lot owners and/or contractors as a result of such circumstances.

25. Unsightliness. No unsightly structure or condition which may substantially diminish the value or the quiet enjoyment of other Lots shall be caused or permitted on any Lot. Without limiting the generality of the foregoing, all unsightly structures, facilities, equipment, objects and conditions shall be reasonably screened from the view from Kuhio Highway and from the view of other Lots. No Lot shall be used or maintained as a dumping ground or landfill area for rubbish, trash, garbage or other waste (with the exception of well and sanitarly maintained compost piles). All equipment for the storage or disposal of such material shall be kept in clean and sanitary condition and containers. Rubbish, trash, garbage or other waste, including their containers, shall not be left for refuse pickup or disposal more than 24 hours prior to any scheduled pickup.

26. Noise. No sound shall be permitted to emit or emanate from any Lot which is unreasonably loud or annoying or which violates any applicable

governmental rule, law or ordinance. Security devices used exclusively for the protection of persons or property are permitted.

27. **Lighting.** Exterior lighting on any Lot may be installed with the prior approval of the Design Committee. All exterior lighting which is unreasonably bright or causes unreasonable glare must be shielded from the view of other Lots or from the view from Kuhio Highway. High intensity discharge exterior lights, including, without limitation, mercury or sodium vapor lamps or lamps which emit light of a similar nature and character, strobe lights, and neon lamps and tubing, are not permitted. All exterior lights either shall have shields to deflect the light or shall be recessed.

28. **Resubdivision.** No Lot may be resubdivided unless: it is first transferred into the State Land Use Commission Urban District and into a CZO Use District other than the CZO Agriculture District or the CZO Open District; or the CZO is amended to allow the resubdivision of CZO Agriculture District and/or Open District lands.

29. **Prohibited Uses.** The following uses and activities are prohibited on any Lot, unless the owner of the Lot on which such use or activity is proposed shall have first obtained written authorization to commence such use or activity from no less than 75% of the owners of Lots, and all necessary governmental authority or permission:

- a. animal hospitals;
- b. cemeteries;
- c. churches and monasteries;
- d. commercial recreation;
- e. construction and worker temporary housing;
- f. development campgrounds;
- g. mineral extraction and quarries;
- h. private and public utility facilities;
- i. transportation terminals;
- j. communications facilities;
- k. slaughter houses.

b. Design Guidelines. Each Lot shall be subject to, and the Owner of each Lot shall strictly comply with, the following specific provisions:

1. Kuhio Highway Setback/Access. No buildings may be located on any Lot closer than one hundred (100) feet from the Kuhio Highway right-of-way. No Lot shall be permitted to have direct access onto Kuhio Highway.

2. Wailapa Stream Setback. All buildings shall be set back at least fifty (50) feet from the boundary of the Wailapa Stream. Provided that, with appropriate governmental and Design Committee approvals, Buildings and Improvements may be constructed adjacent to or within the Morita Reservoir as provided in Article IX.

3. CZO Open District Restriction. No Residence or Guest House may be located within any portion of any lot located within the CZO Open District.

4. Setbacks. Except as provided herein, all buildings shall be subject to the following setbacks:

(i) Side Setbacks. Setbacks from side boundary lines shall be thirty (30) feet.

(ii) Front Setbacks. Setbacks from front boundary lines shall be twenty-five (25) feet.

(iii) Rear Setbacks. Setbacks from the rear boundary lines shall be twenty-five (25) feet.

Kenneling or interior fencing for any animals shall be setback twenty-five (25) feet from any boundary unless there is a written agreement by the current owner of the contiguous property, in which case the kenneling or fencing may be placed at the legal setback for same determined by County ordinance.

5. Utilities. All utilities on the Lots shall be installed underground. The Developer or any public or private utility authorized to do so by the Declarant may maintain utility poles and overhead utility lines on the Subject Property along Kuhio Highway. No wind generators shall be erected, installed, constructed or maintained on any Lot. No antennae, aerials, satellite discs or dishes or other devices for the reception or transmission of radio or television broadcast signals or other means of communication shall be erected, installed, constructed or maintained on any Lot unless such devices are screened from the view from public roads and from other Lots and have first been approved by the Design Committee.

6. Certain Buildings Prohibited. Domes, structures which incorporate geodesic dome shapes in their external design, quonset hut structures, A-frame

structures or such other architectural shapes that the Design Committee may determine to be inappropriate shall be prohibited.

7. County Permit. All Buildings on, and uses of, the Subject Property, or any Lot, shall be subject to the restrictions, conditions, and requirements set forth in the County Permit.

8. Roofs. With the exception of sky lights and roof windows, the roofs of every structure, including accessory structures, buildings or other improvements, shall have a pitch of no less than one foot vertical to three feet horizontal and no more than one foot vertical to one foot horizontal, and shall be constructed or made of wood shake or shingle, clay tile, composition shingle or other material of minimum reflectivity. The use of any roofing material which is highly reflective, such as corrugated iron, tiles with smooth shiny finishes and the like, or which is inappropriately colored, shall be prohibited. No farm dwelling, guest house, or agricultural building may be erected, constructed or maintained which has a height exceeding the maximum height for buildings allowed by applicable County laws and regulations on the Lot. No other accessory building or improvement may be erected, constructed or maintained which has a height exceeding eighteen (18) feet measured vertically from finished grade.

9. Materials/Colors. Colors for Buildings shall be warm-toned, earth colors. The use of mirrored glass, reflective sunscreens, or other highly reflective materials for exterior surfaces and roofs shall be prohibited. Color and material boards shall be submitted prior to Building Permit application or construction of buildings to the Design Committee for its prior approval. Except when utilized on solar panels, no highly reflective finish, other than glass, shall be used on exterior surfaces for Buildings or Improvements. Windows may not be mirrored to reflectivity in excess of thirty percent (30%).

10. Residential Design. Each residence (farm dwelling) which consists of more than a single-story which is erected, constructed or maintained on any lot shall have a total first (ground) floor living area containing not less than 1,000 square feet, exclusive of lanais, patios, guest house, attached facility, garage, carport, storage space and workshop areas. The first (ground) floor of any residence (farm dwelling) shall not be placed, erected, constructed or maintained at a level higher than three (3) feet above the highest finished grade or ground elevation of the lands immediately below said structure. A two story straight vertical plane of more than ten (10) feet in horizontal width shall be broken by roof eyebrows or covered by plantings which shall obscure at least 40% of said vertical plane.

11. Guest House. Notwithstanding any other provisions contained herein, a Lot owner may erect, construct or maintain one Guest House on each Lot.

Section 3. State Land Use Commission Restrictions. All of the Lots are presently located within the State Land Use Commission ("SLUC") Agricultural District. Uses within the SLUC Agricultural District shall be primarily in pursuit of agricultural activities as set forth in HRS Chapter 205, as amended from time to time. In addition, lands within the SLUC Agricultural District which also have soils classified by the Land Study Bureau's Detailed Land Classification Overall (Master) Productivity Rating Class A or B shall be restricted to the uses contained in HRS Section 205-4.5, as amended from time to time. Residential uses within the SLUC Agricultural District are restricted to "Farm Dwellings". The term "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. The SLUC Agricultural District restrictions shall automatically terminate as to any Lot or portion thereof which is transferred into the SLUC Urban District.

Section 4. Water Restrictions. The following water restrictions shall apply to the Lots as indicated:

a. Domestic water service will not be available until the required construction improvements for the Pu'u Pane Subdivision, Phase I, are completed and accepted by the Board of Water Supply, County of Kauai and/or the Department of Water, County of Kauai.

b. Due to the high elevations of this property, a dependable supply of water cannot be assured for Lots or portions of Lots which are at elevations greater than 360 feet above mean sea level, including Lots 4, 5, 6, 7, 8, 9, 10 and 11. The Lot Owners will be required to sign an elevation agreement with the Department of Water of the County of Kauai upon application for water service, agreeing to accept such water service as the Department of Water of the County of Kauai is able to render and agreeing to install and maintain suitable booster pumps and storage tanks, if necessary.

c. No water meters will be installed by the Department of Water of the County of Kauai at locations on any Lot boundary line which has an elevation greater than 400 feet above mean sea level, which includes portion of Lots 5, 6 and 7.

d. The Department of Water of the County of Kauai's water service to the Lots shall be limited to 5/8 inch water meters until such time, if ever, as adequate water capacity is available in the County's public water system.

e. As required by the Department of Water of the County of Kauai: all Lots must hook-up to an irrigation water system for irrigation use, if such irrigation water system becomes available in the future; and these Lots that hook-up to the irrigation water system shall be either owners or customers of the entity that owns and operates that system.

Section 5. Design Committee. Within sixty (60) days of the transfer of title of any Lot to any person, other than the Declarant, the Declarant shall appoint a Design Committee composed of no more than three (3) persons to review all plans and proposals for any and all landscaping of, or uses or construction in, the Project. Declarant may appoint Declarant or any other person Declarant in his sole discretion shall chose to sit on the Design Committee. The Design Committee shall be responsible for administering the Design Guidelines. The Design Committee may adopt such reasonable rules, consistent with this Declaration and the Design Guidelines, as may be necessary to regulate its own procedures and to regulate and implement the provisions of this Declaration and the Design Guidelines. The Design Committee may from time to time select an architect and/or a landscape architect licensed by the State of Hawaii to act as a Design Consultant to review plans and proposals for the landscaping of, or the construction in, the Project. The Design Consultant shall serve as an advisor to the Design Committee. The Design Committee may delegate all such tasks and responsibilities as it deems appropriate to the Design Consultant, provided that the Design Committee shall be responsible for making all final decisions as to any proposed development within the Project.

Each Owner so required to present construction and/or landscaping plans to the Design Committee shall be responsible for the payment of any and all such reasonable fees and costs incurred for such design review and assessed by the Design Committee, including but not limited to, the fees charged by the Design Consultant.

Section 6. Design Committee Approval: Enforcement. No person shall develop, use, modify, alter, construct, erect, install, place or maintain any building, structure, facility, utility, improvement, landscaping element, or other object on any Lot, or grade, fill, excavate or grub any Lot, except in strict accordance with the approved plans and specifications previously submitted to and approved by the Design Committee. The Design Committee shall either deny, approve or approve with modifications and/or conditions such plans presented within thirty (30) calendar days of the final submittal of all materials requested by the Design Committee, in the absence of which such plans shall be deemed to be approved. Such plans and specifications shall contain such information, diagrams, maps and drawings as may be required by the Design Committee including, but not limited to: floor, elevation, plot and grading plans; specifications of construction materials and techniques and color schemes; the location, character and method of utilization of all utilities; landscape plans; all driveways and automobile or other parking provisions; any outside lighting plans; a construction schedule for any such work; and any other information requested by the Design Committee. The Design Committee may require that any or all of such plans and specifications be prepared by a registered architect or professional engineer licensed in the State of Hawaii. The Design Committee may grant such departures from the requirements of this Declaration as it deems necessary and appropriate, provided that it shall not have the power to grant variances as to any requirements or conditions imposed by the County or any other governmental entity. No person may occupy or use any Building, Improvement, structure, facility or development within the Project unless and until the Owner has fully completed such construction or development, has submitted "as-built" plans to the Design Committee, has obtained all required governmental permits or approvals, has obtained a certificate

of occupancy from the County (as to any Building designed to be occupied by people), and has obtained the approval of the Design Committee to so occupy and/or use such Building, Improvement, structure, facility or development. If any person shall fail to obtain such approval or to follow such approved plans or specifications, the Declarant, any Owners of any other Lot in the Project, and/or the County may bring suit, as provided in Article VII herein, to enforce this provision.

Section 7. Design Committee Standards. In passing upon all such plans and specifications presented, the Design Committee shall take into consideration: the size, configuration, location and natural features of the Lot in question; the location of the proposed Buildings or Improvements on the Lot; the effect the Buildings or Improvements will have on other existing or planned Buildings or Improvements on other Lots; and the visual impact the proposed Buildings or Improvements will have when viewed from other Lots or from public roads. The Design Committee and Design Consultant shall use reasonable judgment in reviewing all such plans and specifications and in determining whether plans and specifications should be denied, approved, or approved with specifications, but shall not be liable to any person for their actions in connection with submitted plans and specifications, unless it can be shown that the Design Committee or the Design Consultant acted with the actual intent to commit a wrongful act.

Section 8. Grading. Prior to commencing any site improvements in the nature of grading or grubbing, the Owner shall first submit plans for such grading or grubbing to, and obtain the approval of, the Design Committee. In addition, such Owner shall obtain a grading or grubbing permit, as the case may be, from the County or any other governmental authority if the same is required by any governmental rule, regulation, law or ordinance. The Design Committee shall only approve the minimum amount of grading, filling, tree removal, or tree cutting necessary for the reasonable use and enjoyment of any Lot. In no case shall any Owner be allowed to increase the elevation of any portion of a Lot upon which any Building or Improvement is to be located by more than one five (5) feet greater than the elevation of the finished grade as approved by the County for the Project. In the event of any excavation on a Lot, the owner doing or causing such excavation to be done shall provide such artificial lateral support as may be necessary to support adjacent Lots. Each Owner shall control dust during the grading or grubbing process to minimize damage, annoyance or inconvenience to other Owners.

Section 9. Flooding/Erosion/Drainage.

a. Drainage Improvements. No drainage improvements or flooding or erosion control measures shall be implemented or constructed without the prior approval of the Design Committee. In addition, each Owner shall comply with the drainage control ordinances of the County or any other governmental entity. No Owner shall permit or cause to be constructed on his Lot any Buildings or Improvements which interfere with the drainage system for the Project, or which create a problem of flooding, erosion or interference with the natural flow of water, or which will damage his Lot or other properties, nor shall any Owner fail to act reasonably to minimize runoff damage or interference with the natural flow of

storm waters and surface runoff. Owners shall maintain existing drainage patterns to the extent reasonably possible and shall be solely responsible for resolving any offsite drainage or flooding problems caused by the owner's development or use of his Lot. The Final Subdivision Map designates certain areas within the Project as Drainage Ways. The Drainage Ways are delineated by flood setback lines. No improvements may be constructed within the Drainage Ways, nor may any Lot Owner do anything that would obstruct the flow of water within such Drainage Ways.

b. Maintenance of Drainage System. Surface runoff and storm waters for the Project are handled through a system of open ditches, drainage inlets, culverts and outlets. In order for the designed system to function properly, this system must be kept free from obstructions or impeding of the water flow. As such, all of the Lots are subject to the following restrictions and covenants:

i. Each Owner is responsible to maintain the drainage ditches, inlets, culverts, and outlets upon his Lot for the free flowage of storm water.

ii. The Owner will accept full responsibility and liabilities of the drainage ditch and culvert system, such as persons falling or driving into the ditch, and the effects of ditch flowage such as erosion or the volume of water.

iii. All Owners must construct driveways or other accesses either that completely bridge any drainage systems, or that are paved at the grade level of the drainage system, so that there are no obstructions to flow of waters therein.

iv. The Owners shall indemnify and hold the County harmless from any responsibility and liabilities which result from the drainage system and any damages or injuries that may result therefrom.

Section 10. Signs. No signs or advertising devices of any nature or kind shall be erected, placed, installed, constructed or maintained on any Lot, except as provided herein. The Owners shall obtain Design Committee approval, as well as all necessary governmental permits, prior to the installation of any such signs. The types of permitted signs are as follows:

a. Such signs as may be required to be posted by order of any court of competent jurisdiction;

b. Signs which have a combined total face area of not more than 1½ square feet, necessary to identify the Owner or occupant of any Lot and his address;

c. A maximum of one (1) sign not exceeding 1½ feet by 2 feet in size, indicating or advising that the Lot on which it has been installed, placed or situated is for sale or for rent;

d. Signs which are necessary or desirable to give direction, advise of rules or regulations, or caution or warn of hazard or danger;

e. A maximum of one (1) job identification sign per contractor or subcontractor having a maximum face area of six (6) square feet, during the period of actual construction on a Lot; and

f. Temporary signs not exceeding 1 ½ feet by 2 feet in size.

Notwithstanding the above, the Declarant reserves the right to erect one or more entryways and one or more entryway signs for this Project.

Section 11. Maintenance of Lots and Landscaping. Each Lot, whether occupied or unoccupied, and all landscaping, Improvements or Buildings placed, erected, constructed, installed or maintained thereon, shall at all time be kept and maintained in good, clean and attractive condition and in such manner as to prevent the Lot and its landscaping, Improvements or Buildings from becoming unsightly, unsanitary, or a hazard to health. Each Owner shall, at his own expense, trim and maintain all trees, shrubs and plantings to prevent overhang or other encroachment above or upon any adjoining Lot or roadway. Within six (6) months of purchase of an owner's Lot, such owner shall plant screening vegetation along any property boundary which fronts a public highway, to screen his or her Lot so that (upon the maturation of said vegetation) passersby on such highway are not able to see into the Lot. If the Lot currently has natural vegetation screening, the owner shall replace said screening within three (3) months of its future removal (should he/she decide to remove any existing vegetation screening). This vegetation will be grown to a height of at least six (6) feet, and shall be maintained at a height of at least six (6) feet high at the grade of the highway at all times, barring unforeseen circumstances.

ARTICLE VI

WATER

Section 1. County Water. The Lots in the Subdivision all have access to the public water system owned and operated by the County.

Section 2. Agricultural Water Availability. The sources of Agricultural Water that might be made available to the Project are located on lands owned by other persons and/or may be subject to laws and regulations of the County and the State of Hawaii. As a result, the Declarant cannot guaranty that Agricultural Water will be available in any specific amounts, if at all, to the Lots. Nevertheless, the Declarant has established irrigation water easements throughout the Project. If either the Owners or a private irrigation water provider is able to develop an irrigation water system located within such easements, then the Owners shall be required to hook-up to this system for agricultural irrigation uses on each Owner's Lot. The Declarant represents that during the first twelve months after an irrigation water system becomes operational, the cost

for connection to the irrigation water system shall not exceed \$3,000.00 for a maximum three inch water meter. Rates for the sale of the irrigation water shall be subject to regulation by the Public Utilities Commission of the State of Hawaii.

ARTICLE VII

MORITA RESERVOIR LOTS

The Morita Reservoir Lots shall be subject to the terms, covenants and conditions of the Declaration Of Grant And Reservation Of Recreation Use Easement For The Morita Reservoir Lots (Pu'u Pane Subdivision) even dated herewith and recorded in the Bureau concurrently herewith, the Declaration Of Grant And Reservation Of Irrigation Water Easement For The Morita Reservoir Lots (Pu'u Pane Subdivision) even dated herewith and recorded in the Bureau concurrently herewith, and the Morita Reservoir Agreement, all of which are incorporated herein by reference.

ARTICLE VIII

ENFORCEMENT OF THIS DECLARATION

Section 1. Persons Entitled to Enforce this Declaration. The following persons (the "Enforcing Persons") shall have the right to exercise any remedy at law or in equity for the enforcement of this Declaration:

- a. Any Lot Owner.
- b. The Declarant.
- c. The County of Kauai (as to all conditions imposed by the County Permit).

Section 2. Breach. If any Owner or other person subject to this Declaration shall breach or fail to comply with any provision of this Declaration, and such breach or non-compliance shall not be fully remedied within fifteen (15) days after notice of the breach or non-compliance is sent to or received by the Owner or, if such breach or non-compliance cannot reasonably be remedied within said 15-day period, such Owner shall have failed to begin to remedy such non-compliance within said 15-day period and shall have failed to exercise good faith and due diligence to remedy such breach or non-compliance as soon as reasonably possible, then each Enforcing Person (except as otherwise stated) shall have the following rights and remedies:

- a. Without liability to the Owner or any other person for trespass or damages, and upon not less than five (5) days prior written notice to the Owner, to enter upon the Lot or any improvements thereon (but not into any Building on a Lot used for residential

purposes) and to perform, or require the Owner to perform immediately, in either case at the Owner's cost and expense, all work (including the planting, watering, fertilizing, cutting and trimming of trees, shrubbery and other vegetation) necessary or desirable to remedy such breach or non-compliance, and/or to abate summarily and remove any improvement or anything else or any condition which is not in compliance, and or

b. To commence and maintain actions and suits to require the Owner to remedy such breach or non-compliance or for specific performance, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration, or to restrain or enjoin any breach or threatened breach of this Declaration, or to recover damages, and/or

c. To pursue all other rights and remedies available at law or in equity.

In any action for the enforcement of the provisions of this Declaration or for damages or any other form of relief, the prevailing party in such action shall be entitled to recover from the losing party all of the prevailing party's costs, expenses and reasonable attorneys' fees.

No remedy herein reserved is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to any remedy given hereunder or now or hereafter existing at law or in equity. The Enforcing Person shall have the right to hire contractors and agents in performing any work to be performed by the Enforcing Person.

No Enforcing Person, nor any other person, shall have any liability whatsoever if it or any other Enforcing Person elects not to enforce any of the provisions of this Declaration or if it or any other Enforcing Person undertakes such enforcement and thereafter terminates enforcement activities or does not succeed in such enforcement activities.

ARTICLE IX

INDEMNITY

Section 1. Owner's Indemnification for Breach. Each Owner shall indemnify, defend and hold harmless the Declarant and all other Owners from and against any and all claims arising from any breach or default in the performance of any of such Owner's obligations under, or such Owner's non-compliance with any of the provisions of, this Declaration.

Section 2. Agricultural Use/Waiver and Indemnification. The Owners acknowledge and understand that portions of the Subject Property were used for agricultural activities and other commercial uses. The Owners hereby waive any and all claims they may now have, or which may in the future may accrue, against the Declarant, and agree to indemnify and hold the Declarant harmless from any claims of any persons or entities, relating to the present or

future condition of the Subject Property and arising out of the past use of the Subject Property, including but not limited to, the following: the past use of portions of the Subject Property for agricultural and other commercial purposes; any past non-compliance with any applicable laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements ("Regulations") concerning the use or development of the Subject Property, including but not limited to, Regulations related to zoning, land use, development plan, subdivision, building, construction, Hazardous Materials (as defined below), archaeological, historical, environmental, endangered or threatened species, or other such Regulations and any Regulations governing the maintenance, operation, nonuse or closing of groundwater wells, the diversion, discharge or runoff of water, or any other matters relating to water use, consumption and development on or affecting the Subject Property; any surface, soil, subsoil, geologic, drainage or groundwater conditions or other physical conditions and characteristics of or affecting the Subject Property; the identity of the Subject Property as a habitat for endangered or threatened species of fauna or flora; the existence on or under the Subject Property of any Hazardous Materials (which shall include any and all substances regulated by, or defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" under, any and all federal, state or local environmental, water pollution, hazardous substance, toxic material or waste law, ordinance or regulation applicable to the Subject Property, including without limitation the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1251, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and the Hawaii Environmental Response Law, Hawaii Revised Statutes, Chapter 128D); the existence or condition of any surface or underground storage tanks on or under the Subject Property; the availability of Agricultural Water for the Lots; and all other matters concerning the present condition or past use of the Subject Property.

Section 3. Acknowledgment of Agricultural Operations and Waiver. Each Lot Owner acknowledges that the Owner's Lot may periodically be affected by noise, dust, smoke, soot, ash, odor, or other adverse environmental conditions of any other kind created by surrounding agricultural activities, including specifically but not limited to burning, harvesting, tending, and processing on other Lots or on the Adjacent Property. Each Owner assumes all risks associated with the location of the Owner's Lot, including, but not limited to, the occurrence of any nuisance, personal injury, illness or any other loss or damage, incidental to such use and operation of the agricultural activities, and expressly waives any and all claims related thereto against the owners of other Lots or of the surrounding Adjacent Property. This provision will run with the land and be binding on each Owner's heirs, personal representative, successors, successors in trust and permitted assigns.

ARTICLE X

ARBITRATION

Whenever this Declaration requires or permits a dispute or disagreement to be submitted to arbitration, such arbitration shall be conducted in accordance with Chapter 658, HRS and the following provisions. The dispute or disagreement shall be submitted to one arbitrator selected by the disputing parties, or if they cannot agree, from the panels of arbitrators of the American Arbitration Associations, and the decision of the arbitrator shall be final, conclusive and binding upon the parties. The losing party in such arbitration (as determined by the arbitrator) shall pay for all costs and expenses of the arbitration, including the prevailing party's reasonable attorneys' fees, unless the arbitrator determines that there is no losing party, in which event each party shall pay the costs of its own witnesses and attorneys and the costs of the arbitrator shall be paid equally by the parties. The arbitrator's award shall be arrived at expeditiously, in writing, and final, conclusive and binding upon all parties to the arbitration, and may be entered as an order or judgment of the Fifth Circuit Court, State of Hawaii, unless such award is vacated, modified or corrected pursuant to Chapter 658, HRS. Except as set forth above (and in the event of any conflict, the provisions of this Article shall control), the arbitration shall be conducted in accordance with the then applicable Rules of the American Arbitration Association unless otherwise mutually agreed by the parties.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 1. Assignment of Rights and Duties. Declarant, its successors and assigns, shall have the right to assign, delegate, convey or transfer in any manner, to any Person(s), without limitation, all or any part of its rights, privileges, powers, interests and obligations hereunder; provided, however, that there shall at all times be only one "Declarant" who shall be the sole person authorized to give any consents or approvals required or requested of the "Declarant" under this Declaration as Declarant, or to enforce this Declaration as Declarant or take any other action as Declarant hereunder.

Section 2. Dedication. If any Lot should be dedicated in fee simple or leased to any government entity, the government entity need not comply with the provisions of this Declaration; provided, however, that should such government entity thereafter convey, license, lease, sublease, assign or transfer its interest or rights in such Lot to any person who is not a government entity, such Lot and conveyance, license, lease, sublease, assignment or transfer automatically shall be subject to and governed by this Declaration, whether or not such conveyance, license, lease, sublease, assignment or transfer expressly refers to or is made subject to this Declaration.

Section 3. Notices. Whenever any notices are sent to an owner, such notices shall be sent to the address of the Owner as listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kauai, and shall be deemed to be received by the owner on the earlier of actual date of delivery or three business days after postmark (whether or not actually received by the Owner). If a Lot is owned by more than one person, notice to any one person shall be deemed to be notice to all such persons.

Section 4. Joint and Several Liability. If an Owner consists of more than one person, all of the obligations of the Owner under this Declaration shall constitute the joint and several obligation of all such persons. The obligations of more than one Owner under this Declaration shall constitute the joint and several obligation of all such Owners. Each Owner shall be liable for all acts and omissions of such Owner's guests, invitees, agents, employees, customers and contractors, and their failure to comply with the provisions of this Declaration.

Section 5. Inspection. The Design Committee and its authorized agents shall have the right at all reasonable times and pursuant to five (5) days prior written notice to enter upon the Owner's Lot (but not into any Residential Structure), for purposes of inspecting the same and determining whether the same is in compliance with this Declaration, without liability for trespass or damages. Each Owner promptly shall produce all documents which the Design Committee reasonably may request to evaluate whether such Owner is in compliance with the provisions of this Declaration.

Section 6. Duration. Subject to prior termination as provided herein, the provisions of this Declaration shall be valid and shall run with and bind the land for a term of fifty-five (55) years from the date this Declaration is recorded in the Public Records. After such 55-year period, they automatically shall be extended for successive periods of ten (10) years each unless terminated in accordance with the provisions of Section 9 below; provided, however, that in the event that the application of this Section 6 to any of the provisions of this Declaration, would violate the Rule Against Perpetuities or any other limitation on duration imposed by Law, then such provisions of this Declaration shall be deemed to remain in effect only for the maximum period permitted by Law. Provided, however, that any Restrictions imposed as a result of conditions required by the County Ordinances and Permits shall remain in full force and effect until and unless waived or removed by the County.

Section 7. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability or any other provisions hereof.

Section 8. Interpretation: No Waiver. The provisions hereof shall be construed and enforced under the Laws of the State of Hawaii and shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Project. The headings of paragraphs, sections and Articles herein are inserted only for ease of reference and

shall not define or limit the scope or intent of any provision of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce thereafter said provision or to enforce any other provision hereof. No acceptance of any assessment paid by any owner shall be deemed to be a waiver of any breach by such Owner of any provision of this Declaration or a waiver of any rights of any Enforcing Person or any other Person under this Declaration, or be construed as any agreement or representation by any Enforcing Person that such Owner is in compliance with the provisions of this Declaration.

Section 9. Amendment. The Design Committee shall have the right to alter, amend and repeal the Design Committee Rules or adopt new Design Committee Rules. The Restrictions may be amended by the vote of Owners by ballot or proxy representing not less than seventy-five (75%) percent of the fourteen (14) Lots in the Project approving the proposed amendment or amendments or the repeal of the Restrictions at a meeting of the Owners called or held for that purpose. The notice of the meeting shall state that the purpose of the meeting is to consider the amendment or repeal of the Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be.

Section 10. Liberal Construction. All the limitations, restrictions, covenants and conditions of Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of the Project.

Section 11. Invalidity. In the event any limitation, covenant, restriction, or reservation of the Restrictions is held to be invalid or unenforceable in whole or in part, by an order, judgment or decree of any court, then such decision shall in no way affect the validity of the other limitations, covenants, restrictions or reservations therein contained, and they shall remain in full force and effect.

Section 12. Public Regulations. The Owner of each Lot is responsible for being informed of and complying with any and all appropriate Federal, State and County laws, rules, regulations, codes and ordinances which are applicable to the Owner's Lot. No Owner, nor the Owner's invitees, guests, tenants or lessees, shall commit any acts or cause or keep, nor suffer to be caused or kept, any thing or object which would constitute a violation of any law, rule, regulation, code or ordinance of any governmental agency or body. If a standard set forth in the Restrictions differs from a standard established by a governmental agency, and the standard contained in these Restrictions is stricter, then the stricter standard as contained herein shall apply.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed on the day and year first above written.

DECLARANT:

DAVID HASSENMILLER

By Michael M. Dyer
MICHAEL M. DYER
His Attorney-In-Fact

NANCY J. HASSENMILLER

By Michael M. Dyer
MICHAEL M. DYER
Her Attorney-In-Fact

PU'U PANE ASSOCIATES LLC,
a Hawaii limited liability company

By Jeffrey S. Lindner
JEFFREY S. LINDNER
Its Member

STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On this 9th day of June, 1999, before me personally appeared MICHAEL M. DYER, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of DAVID HASSENMILLER, duly appointed under the unrecorded Special Power of Attorney dated August 8, 1998, and that the foregoing instrument was executed in the name and behalf of DAVID HASSENMILLER by said person as his Attorney-In-Fact, and acknowledged the instrument to be the free act and deed of said DAVID HASSENMILLER.

L.S.

Shari E. Ogata
Name of Notary Public: Shari E. Ogata
NOTARY PUBLIC, State of Hawaii.
My commission expires: 10/05/2000

STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On this 9th day of June, 1999, before me personally appeared MICHAEL M. DYER, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of NANCY J. HASSENMILLER, duly appointed under the unrecorded Special Power of Attorney dated August 8, 1998, and that the foregoing instrument was executed in the name and behalf of NANCY J. HASSENMILLER, by said person as her Attorney-In-Fact, and acknowledged the instrument to be the free act and deed of said NANCY J. HASSENMILLER.

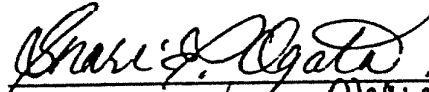
L.S.

Shari E. Ogata
Name of Notary Public: Shari E. Ogata
NOTARY PUBLIC, State of Hawaii.
My commission expires: 10/05/2000

STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On this 4th day of June, 1999, before me appeared JEFFREY S. LINDNER, to me personally known, who, being by me duly sworn, did say that he is a Member of PU'U PANE ASSOCIATES LLC, a Hawaii limited liability company ("Company"), and that said instrument was signed on behalf of said Company by authority of its Board of Directors, and the said Officer acknowledged said instrument to be the free act and deed of said Company.

L.S.


Name of Notary Public: Shari E. Ogata
NOTARY PUBLIC, State of Hawaii.

My commission expires: 10/05/2000

EXHIBIT "A"

All of that certain parcel of land (being a portion of the lands described in and covered by Land Patent Number 8323, Land Commission Award Number 8559-B, Apana 38 to Wm. C. Lunalilo and also being a portion of 4th Taxation Division TMK: 5-1-05-52), situate, lying and being on the south side of Kuhio Highway at Kahili, Hanalei, Island and County of Kauai, State of Hawaii, bounded by Kuhio Highway, the boundary between Kahili and west Waiakalua and the center of Wailapa Stream, containing an area of 89.606 acres more or less.

Said above described parcel of land having been acquired by the following manner:

1. By Michael M. Dyer and Charlene Dyer, husband and wife, as Tenants by the Entirety, as to an undivided 5/6 interest, by the following Deeds of James B. Hechim, husband of Gloria J. Hechim:

(a) Deed dated March 4, 1988, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21797 at Page 642; and

(b) Deed dated October 19, 1993, and recorded in said Bureau as Document No. 93-186127.

(Note: The interest of Michael M. Dyer and Charlene G. Dyer subsequently was reduced to an undivided one-half (1/2) interest as a result of their transfer of a one-third (1/3) interest to Jeffrey S. Lindner as indicated below)

2. By David Hassenmiller and Nancy J. Hassenmiller, husband and wife, as Tenants by the Entirety, as to an undivided 1/6 interest, by the following Deeds of James B. Hechim, husband of Gloria J. Hechim:

(a) Deed dated March 8, 1989, recorded in said Bureau in Liber 22943 at Page 28; and

(b) Correction Deed dated September 25, 1989, and recorded in said Bureau in Liber 23763 at Page 88.

3. By Jeffrey S. Lindner, as Tenant in Severalty, as to an undivided 1/3 interest, by Warranty Deed of Michael M. Dyer and Charlene G. Dyer, husband and wife, dated October 7, 1996, recorded in said Bureau as Document No. 96-149956.

SUBJECT, HOWEVER, to the following:

1. Abutter's rights of vehicle access in favor of the State of Hawaii to and from Kauai Belt Road.

2. The right in favor of the Owners, their successors and assigns, to relocate and/or widen their vehicle access into and from Kauai Belt Road, provided that such relocation and/or widening shall be subject to the approval of the State of Hawaii.

3. Existing roadway as shown on tax maps.

4. Free flowage of Wailapa Stream as shown on tax map.

5. Morita Reservoir Agreement dated November 17, 1986, recorded in said Bureau in Liber 20573 at Page 20, made by and between the Trustees Under the Will and of the Estate of Mary N. Lucas, Deceased, and Edwin V. Doty and Joyce H. Doty, husband and wife, and David Hassenmiller and Nancy J. Hassenmiller, husband and wife.

(A) Morita Reservoir Sub-Agreement dated July 10, 1987, recorded in Liber 21300 at Page 434, by and between Edwin V. Doty, Joyce H. Doty, David Hassenmiller and Nancy J. Hassenmiller, "Grantor", and Kerry Walton, "Grantee".

(B) Assignment of Morita Reservoir Agreement dated July 17, 1989, recorded in Liber 23420 at Page 778, by and between Edwin V. Doty and Joyce H. Doty, husband and wife, "Assignor", and Joyce Halverson Doty, as Trustee of the Joyce H. Doty Living Trust under unrecorded Trust Agreement dated June 6, 1989, "Assignee".

6. Purchase Money Mortgage, Security Agreement and Financing Statement dated January 27, 1988, by and between James B. Hechim, husband of Gloria J. Hechim, as Mortgagor, and Paul R. Cassidy and James H. Pflueger, Trustees under the Will and of the Estate of Mary N. Lucas, deceased, recorded in Liber 21600 at Page 105.

Assumption Agreement dated June 1, 1994, recorded as Document No. 94-155343, by and between Paul R. Cassidy and James H. Pflueger, Trustees under the Will and of the Estate of Mary N. Lucas, deceased, and Michael M. Dyer and Charlene Dyer, husband and wife, re: Dyer's hereby assume and agreement to pay the indebtedness as evidenced by the Note dated June 9, 1987, in accordance with the terms thereof, and as security for the payment of the indebtedness evidenced by said Note.

Amendment To Purchase Money Mortgage, Security Agreement And Financing Statement And Promissory Note dated October 7, 1996, recorded in said Bureau as Document No. 96-149957.

7. Grant to Citizens Utilities and GTE Hawaiian Telephone Company Incorporated dated December 14, 1987, and recorded in said Bureau in Liber 21742 at Page 306, granting a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines and/or underground lines, etc., for the transmission and distribution, etc.

8. Agreement to Subdivide and Develop Real Estate dated March 14, 1988, recorded as Document No. 90-107572, by and between Victor V. Pedone, "Party of the First Part" and James B. Hechim, "Party of the Second Part".

9. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct boundary and improvement survey or archaeological study would disclose, including, without limitation, trails, rights of way, historic property and burial sites.

10. Claims arising out of rights customarily and traditionally exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or Section s 1-1 or 7-1 of the Hawaii Revised Statutes.

11. Declaration of Covenants, Conditions and Restrictions acknowledged October 3, 1996, and September 30, 1996, recorded in said Bureau as Document No. 96-149955.

12. Any lien (or claim of lien) for services, labor or material arising from any improvement or work related to the land described herein.

END OF EXHIBIT "A"