

R-662

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

MAY 24, 2000 09:00 AM

Doc No(s) 2000-071620

/s/ CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

LAND COURT SYSTEM

AFTER RECORDATION, RETURN TO: BY: MAIL  PICKUP

Moloaa Valley One, LLC  
P.O. Box 672  
Kilauea, HI 96754  
Attention: Leo Joseph



105875

*Abpauer*

Tax Map Key No.: (4) 4-9-11-13

CO-TENANCY AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of **HAY 18, 2000**, 2000, by and among MOLOAA VALLEY ONE, LLC, a Hawaii limited liability company ("MVO"), whose mailing address is P.O. Box 672, Kilauea, HI 96754, RUSSELL SCOTT BRAND and MICHELLE LEIGH BRAND husband and wife, ("Brand") whose mailing address is P.O. Box 286, Kapaa, Hawaii **96746**, MICHAEL M. BLATT, unmarried \_\_\_\_\_ ("Blatt"), whose mailing address is 243 Codsell Downsview, Ontario M383H8 Canada CRAIG H. MAAS, Trustee of the Craig H. Maas-Revocable Trust dated December 24, 1998 ("Maas") whose mailing address is P.O. Box 3500-138, Princeville, Hawaii 96722, and CARL L. WRIGHT and SANDRA E. WRIGHT, husband and wife ("Wright"), whose mailing address is P.O. Box 728, Kilauea, Hawaii 96754 (collectively referred to in this Agreement as the "Parties" or the "owners").

WITNESSETH:

WHEREAS, MVO is the owner of the property situated at Moloaa and Kapaa, District of Hanalei, Island and County of Kauai, State of Hawaii and described in Exhibit "A" attached hereto and made a part hereof (the "Property"), which Property is identified as Tax Map Key No. 4: 4-9-011-13 and shown on the map ("Map R") attached hereto as Exhibit "B" and made a part hereof; and

WHEREAS, Brand, Maas, Blatt, and Wright, intend to purchase undivided interests (as stated below) in the Property; and

WHEREAS, the Parties wish to document their understandings and agreements as to their respective rights and liabilities regarding the use, occupancy and development of the Property.

WHEREAS, each of the Parties has executed an unrecorded Summary of the Declaration of Protective Covenants and House Rules for Moloa'a Valley Project (as the same may hereafter be amended from time to time, the CC&Rs") each in the form attached hereto as Exhibit "C" attached hereto and made a part hereof,

NOW, THEREFORE, in consideration of the foregoing and of the promises and agreements contained herein, the Parties agree as follows:

1. DEFINITIONS. AS USED HEREIN:

- A. "Unit" refers to an. apartment ("CPR Unit") in the condominium property regime contemplated hereby or, prior to the submission of the Property to a condominium property regime, the right to own a CPR Unit. The number of units contemplated hereby and the allocation of such units among the Parties are set forth below. Unless otherwise provided herein or required by law, one unit shall equal one share for the purpose of determining any and all shared costs hereunder.
- B. "Agricultural Use" shall mean those listed as permissible uses within the Agricultural Districts in the State Land Use Commission Rules and Regulations.
- C. "Dwelling" shall mean a single-family dwelling located on the Property as permitted by Hawaii State law and Kauai County ordinances and denned and limited by this document and the CC&Rs.
- D. Portion "A", "B" and "C" refers to the original portions listed below. The approximate locations of each such portion is snown on Map R.
- E. "Parties" or "owners" includes the original Parties named above and each and every person or entity who now owns or hereafter acquires an interest in the Property.

2. CONDOMINIUM PROPERTY REGIME.

The Parties confirm that they currently hold title or are in contract to purchase the Property as Tenants in Common, with their ownership being in the following percentages:

Owner	Percent of Land and Votine Percent	Acres
MVO	23.4%	44.5
Brand	32.0%	60.6
Maas		65.6
Blatt	5.4%	10.2
Wright	4.8 %	9.1

However, it is the Parties' intent to submit the Property to a condominium property regime ("CPR") pursuant to the Hawaii Condominium Property Act, Hawaii Revised Statutes Chapter 514A, at the earliest possible time, so that each of them will then own their agreed portion of the Property separately, and not as co-owners. The Parties understand and acknowledge that the condominiumization is subject to approval by the State of Hawaii, and that there is no guarantee that such approval will be obtained. The Parties agree that the preparation and filing of all required condominium documents shall be commenced no later than thirty (30) days after recordation of this Agreement, and the parties agree to take any action within their power immediately upon request to accomplish the condominiumization at the earliest possible time. Without limiting the obligation of each Party to cooperate and assist with the condominiumization process, the Agent named herein shall have the primary responsibility for coordinating all CPR legal paperwork, engineering, contracting and other actions required to complete the CPR process. This Agreement will be effective until such time as the condominiumization of the Property receives final State approval and all other steps have been taken to qualify the property for condominiumization under Hawaii law. Each Party agrees to execute a written, recordable cancellation of this Agreement as soon as the CPR requirements have been fully met. All Parties agree that all applicable terms and conditions contained in this Agreement shall be included in the Declaration of Condominium Property Regime (the "Declaration") and Bylaws (the "Bylaws") of the association of unit owners (the "Association") for the CPR contemplated hereby.

Upon submission of the Property to the CPR, the owners shall form and be members of the Association. Until the Property is submitted to the CPR, "Association" shall mean and consist of the owners.

Map R shows the approximate location of 20 of the 21 CPR Units, and limited common elements appurtenant thereto, contemplated hereby. Such CPR Units are designated on Map R as units 1 through 19 and as unit D. The twenty-first CPR Unit shall be located within Portion "B" as designated by the owner of Portion "B". Pending submission of the Property to the CPR, the owners shall have the right to use the portions of the Property allocated to them below.

### 3. UNITS

#### USE OF PROPERTY, ALLOTTED CPR UNITS AND FARM DWELLINGS (AKA. HOUSE SITES, RESIDENCES, HOMES)

Subject to the conditions contained herein, the Property shall be designated for use as follows:

There shall be no more than 24 Farm Dwellings (AKA. House sites, residences, and homes) and one Guest House constructed on the Property and there shall be no more than 21 CPR Units created on the Property, which CPR Units and Farm Dwellings shall be allocated as follows:

PORTION "A", allocated to MVO, may have created thereon up to 3 CPR Units and 5 Farm Dwellings and a Guest House. Portion "A" includes an approximately 2+ acre parcel referred to and labeled on said Map R as unit or portion "D".

PORTION "B", allocated to Brand, may have created thereon 7 CPR Units and 8 Farm Dwellings.

PORTION "C" allocated to Maas, may have created thereon 11 CPR units and 11 Farm Dwellings. CPR Units to be allocated to Blatt and Wright are included in Portion "C"

Provided that the same is in compliance with applicable governmental law, ordinance, rules and regulations and the provisions hereof, any owner of multiple CPR Units and multiple Farm Dwelling rights may reconfigure such CPR Units and allocate Farm Dwellings among such owner's CPR Units any way such owner chooses.

Any future buyers of portions or parts of portions shall be limited as to number of CPR Units they may create and Farm Dwellings (AKA. House sites, residences, homes), by whatever parts of portions they purchase from the sellers of above mentioned Portions "A", "B", or "C". All current and future owners, in signing this Agreement or by acquiring an interest in the Property, agree to the terms and conditions hereof, including, without limitation, the foregoing restrictions.

In addition, owners may be allowed agricultural buildings as allowed and permitted by the County as long as it is certain that said buildings will in no way jeopardize or restrict the ability of any of the owners of the remainder of the Property to build any buildings. In the event the existence and/or use of any out-building, farm shed or other structure in any manner prevents any other Party from constructing or using his or her own principal dwelling (i.e., if the County or of Kauai planning and building authorities deem such a structure to be a dwelling and for that reason deny a building permit to another Party for his or her principal dwelling), then the Party who has constructed the offending structure shall, at his or her sole expense, immediately modify, alter or, if necessary, remove the structure so that the other Party shall be allowed to construct and use his or her principal dwelling.

#### 4. CPR AND DEVELOPMENT COSTS.

Except as otherwise provided in this Agreement, the costs to develop infrastructure to serve the Property or any portion thereof, or to allow each owner to use his, her or their allocated area for agricultural and residential purposes, shall be the sole responsibility of each unit owner, with the exception of roadway costs which are described below, and the costs of submission of the Property to the CPR.

Each of MVO, Brand, Maas, Blatt and Wright, shall, within 21 days after closing, make a deposit of TWENTY THOUSAND DOLLARS (\$20,000.00) into an escrow account, to be applied towards infrastructure and CPR costs. Each additional purchaser of a unit shall deposit TWENTY THOUSAND DOLLARS (\$20,000.00) within 21 days of their closing for these expenses. Extra monies collected will be refunded and if additional monies are needed such additional monies shall be deposited by the owners, proportionately. Any units on the approximately 11 acres on the North side of the stream are not required to participate in costs of the project MVE-1 or others from which they do not benefit. All owners shall pay a proportionate share of costs of those projects from which they benefit. The cost of creating the CPR and related expenses will be shared equally by the total number of units.

Owners who choose to participate in the fire protection water requirements described below will make proportionate deposits to get this work done.

A. CPR All costs to create the CPR, including but not limited to survey, mapping, design, construction and permitting of agricultural condominium sheds, legal fees, engineering fees, filing fees and other related expenses, shall be paid by the Parties upon demand from the Agent designated below. Each Party shall pay such Party's share (as defined in 1.A, above) of the CPR costs and all other development costs detailed herein. It is understood and agreed that the costs to develop infrastructure to serve the Property, and to allow each Party to use his, her or their portion of the Property for agricultural and residential purposes, shall be the sole responsibility of each Party as to his or her separate Unit, with the exception of completion of the CPR and the roadway costs described herein.

All owners shall be part of the Association and shall contribute \$200 per year (or such greater amount as may be required by law or the Association) for the general maintenance of the common area lands and all shared projects. Owners not participating in certain projects will not be required to contribute to those projects.

B. ROADWAYS AND EASEMENTS

The Property, and each Party's unit(s) are subject to the easements shown on Map R and any reasonable easements necessary for providing and maintaining utilities to each part of the Property.

A cement "apron" is required from Moloa'a Road, across the "shoulder" to the property line where MVE-1 begins.

The area that is the existing roadway which is located along the general area described as MVE-1 on the attached map hereto as Map R, shall be designated for use as a common driveway as stated herein to serve all of the Property and CPR Units. The owners, shall be responsible for a portion of the improvement, construction, repair and nature maintenance costs (pro-rated based on the distance that they use the road) of said roadway as follows: each of the owners (not including the owners of units 1, 2, 3, 4, 16 and 17 and unit D unless they choose to use this driveway) shall each pay their proportionate use share determined as follows: 7.14 % of the total costs for the portion of the common roadway beginning at the entrance to the Property through Easement MVE-1 to the westernmost boundary of unit 6, (7.14% is derived by dividing 100% of the cost for that portion of the road by the number of CPR Units that will utilize that part of the road, in this case example, 14 shares. Each further share of expenses shall be determined in the same way.) From that point on, the owner of unit 6 does not pay anything and the remaining owners shall pay 7.7% of the total roadway costs up to the westernmost boundary of unit 7, from which point the owners of units 5 and 7 will pay nothing more and the remaining owners shall pay 9.09% and so forth until the road is only used by one owner and therefore is the sole responsibility of that owner. The roadway up to this point shall be designated on the CPR map as a common area. There will be one driveway to serve the "High Meadow" which includes units 11, 12, 19. There are 2 easements (MVE-2 and MVE-3 marked on Map R) for this purpose. The owners of units 11, 12, and 19 shall meet to determine which easement shall be used and the location of such easement, and the decision shall be made by majority rule of the

owners of these 3 units. Whichever easement is used shall be designated for use as a limited common element to serve units 11, 12 and 19, the owners of which shall share equally in all costs as described above.

All driveways accessing individual units off of the common roadway, MVE-1, shall be the sole responsibility of the owner of the unit served thereby. Costs of maintenance and repair of the MVE-1 common roadway shall be paid as detailed above. If any repairs are needed to MVE-1 due to the actions or neglect of any owner, then the repair cost shall be the sole responsibility of the owner causing the damage and the other owners shall not be required to contribute to that cost. Such repairs shall be undertaken and completed promptly by the owner responsible for the same.

Any units which do not use the common area driveway (as detailed above) shall be exempt from said expenses until such time as they choose to use it. At the time that any owner is ready to begin any of the development described herein, all other owners shall pay into a common escrow account to be controlled by the Agent, their respective portions of the amounts determined to be necessary for said development by the Agent, based upon written bids for the required work. The Agent shall provide regular written accounting to all of the Parties (not less than once every four months) of all CPR and development costs.

The main common element or easement driveway known as MVE-1 will be thirty (30) feet wide, allowing for adequate roadbed, shoulder, landscaping, and further development with the agreement of 100% of all owners.

MVE-1 shall be constructed with base coarse coral gravel, sixteen (16) feet wide from the road entrance to the most western end of the Property where it touches the boundary of Portion "A", with a turn around for the fire trucks and emergency vehicles, near the end of the road or as far as emergency vehicles are to go. This 'turn around' or cul-de-sac shall be gravel or better.

All units with a right to use a roadway shall have a vote as to improve it beyond coral gravel. A 100% vote will be required to share costs proportionately to upgrade the surface beyond coral gravel except where cement or asphalt will be needed to be used in steep or wet areas. An engineer's opinion will be used in conjunction with the preferences of the owners of units using said road to determine this.

Each unit owner will be responsible for clearing all vegetation and growth from his or her area to the extent it enters the area of the roadway improvements.

All owners shall pay for the costs to develop the roadway proportionate to the distance they use the roadway to access their property as mentioned above. Any and all maintenance shall be paid for in the same proportions except excessive damages incurred during construction or any other time, and shall be paid for by portion owner responsible for the damage.

No easement shall be moved or changed without the written agreement of all parties affected by / said easement. MVE-1 (the common area driveway) cannot be changed in any way without a ^ vote of 100% of the portion (unit) owners.

If it is not financially feasible to construct such a road in certain areas because of terrain than it shall be as wide as possible in those areas unless agreed upon by the owners of the affected units (namely Portions "A" and "B"). In this case, there shall be an 'EMERGENCY VEHICLE' Easement allotted for emergency only that shall go up the "High Meadow Road", through Portions "A", "B" and "C" and down the "back" way through Portion "A", to Portion "B". The location of which passes through Portion "A" shall be reasonable and designated by the owner of Portion "A". Owners of Portions "A" and "B" shall bear the cost of such 16-foot wide rough gravel road. Any costs for improvements beyond that shall be shared only upon agreement by the parties involved.

5. COMMON ELEMENT AND EASEMENT EXPENSES AND ENFORCEMENT

The Association shall provide for such common area expenses necessary or desirable to maintain and keep the Property common area(s) in acceptable condition. The Association shall have the power to enforce this Agreement, the Declaration, the Bylaws and any House Rules adopted in accordance with the Bylaws ("House Rules), including the assessment of the common expenses, adoption of a fire system and the filing and foreclosing of a lien against any unit owner failing to observe this Agreement, the Declaration, the Bylaws or any House Rules.

6. WATER SERVICE.

Each unit owner may make his or her own arrangement for water including, but not limited to, extending County of Kauai water service to his, her or their area or drilling and constructing a private water well. The cost of design, construction, repair or replacement of any water system designed to serve more than one unit, whether it be the County of Kauai or a private system, shall be prorated among those unit owners who elect to participate in that system and water usage shall be paid by them based upon each owner's volume of water usage, which shall be determined by private water meters which will be installed in each owner's line at their own expense. Any unit owner who wishes to participate in an existing private system which has previously been installed by any other unit owner(s) shall not be allowed to do so unless and until: (i) all of the already-participating owner(s) agree in writing that the owner wishing to participate shall be allowed to do so; (ii) the owner wishing to participate shall agree in writing to be liable for any and all costs to connect the existing system including, without limitation, all trenching, waterline connections, re-landscaping, legal fees (if any) to establish easements for the waterlines, and damages to the property of any other unit owner which may arise as a result of the connection of the existing water line, and shall obtain liability insurance in a reasonable amount, to be determined in the reasonable discretion of the already-participating owner(s), to insure against any damages, injuries or death resulting from the installation of the connecting water lines and related improvements; (iii) shall demonstrate to the extent reasonably requested by the already-participating owner(s) the current financial ability to complete in a timely manner the connection to the water system and all other related construction and improvement work; (iv) the owner wishing to participate shall deliver to the already-participating owner(s) his or her written indemnification against any and all claims, costs, liabilities, liens and other obligations arising from the connection to the existing system, such indemnification to be in a form reasonably acceptable to the already-participating owner(s) ; and (v) the owner wishing to participate shall reimburse his or her proportionate share of the original cost of installation and

development of the system to the owner(s) who initially paid for the system, together with interest of ten percent (10%) per annum on said amount.

- A. Each unit owner shall pay his or her share of the water costs in a timely manner so as to avoid interruption of the water service to the Property.
- B. Should the owners utilize a public utility water system, allowing separate meters for the units, then all rights of participants shall be governed by applicable regulations and enactment under State law or County of Kauai ordinances.
- C. All owners agree to provide easements for said water lines in convenient locations for the pipes as long as it does not interfere with building sites and easements, and the beneficiary of the water easement shall repair any damage to property, landscaping and crops. THIS SHALL ALSO APPLY TO ANY OTHER UTILITIES.
- D. Should capacity of any multi-unit private water system prove to be insufficient upon connection of any new participant(s), such new participant(s) shall cease use of the water in reverse chronological order of joining the system unless and until such new participant(s), at his, her or their expense, provides an alternate engineer-approved solution to capacity problems.
- E. In the event that water shortages or similar problems develop after joint use of a private system has been established, the following shall apply: as to domestic potable water usage, the original owners who installed the system shall have first priority to reasonable use for residential purposes, including maintenance of landscaping if agricultural water is not otherwise reasonably available; owners added subsequent to the initial installation shall retain rights according to chronological addition to the system; and agricultural water, if any, shall be fairly apportioned according to respective capital costs historically paid by the respective unit owners, with equitable adjustments for scope of then-current or previously-disclosed agricultural use of the land.
- F. Should any private water system become obsolete and/or substantially fail, all then-current users may become participants in reconstruction, and, upon payment of his, her or their respective contributions, shall acquire equal vested rights to future water in proportion to their participation in a new private water system.
- G. In the event that County of Kauai water service should ever become available to the Property at a reasonable cost, and if only a single water meter is permitted by the County of Kauai for the entire Property, each unit owner, at his or her own expense, shall install a secondary private water meter (if allowed by the County) to measure the amounts of water used on that owner's unit, and the cost of the water for the Property shall be shared by the owners in proportion to their respective uses as determined by the secondary meters. The determination of each unit owner's share of the water cost shall be based on the fraction where the



numerator is the number of gallons used as shown on the secondary water meter for that portion or units use,

H. The cost of maintenance of any private common water system shall be prorated among the Parties and paid by them based upon each Party's volume of water usage, which shall be determined by meters which will be installed in each owner's line at their own expense.

7. WATER FOR FIRE PROTECTION

The common element or easement MVE-1 must be at least sixteen (16) feet wide of gravel plus two (2) feet of shoulder on both sides or better, to accommodate the Fire Department.

The following, or whatever is required at the time of construction, will be constructed and paid for proportionately by all owners that share its use. All units are allowed to share this or some unit owners may choose private systems or, if permitted by law, none at all.

There must be a 15,000-gallon water storage tank for water for fire protection at or around the highest elevation of the Property, the location of which is to be determined at the discretion of the owner of Portion "A", as Portion "A" has been designated as the portion to provide a space for said tank.

If landscaping is required or desired to hide or screen this tank it will be provided out of the funds collected from all owners benefiting from this fire prevention water tank. Continued maintenance of landscaping to keep the tank screened or out of sight, if any is needed, shall be provided for out of Association fees.

The Fire Department may require some houses to have booster pumps to achieve the adequate required pressure and will pay for same by themselves.

8. UTILITIES.

Costs associated with bringing electric, telephone, cable and any other utilities and improvements (other than those described above) to any area shall be the responsibility of the owner of the unit being served by the same. When the first owner decides to develop his or her area all owners that desire to utilize these utilities shall contribute their share of actual costs. One share of cost equals one unit. Participation shall be optional with each unit owner. All utility lines and facilities shall be located within the roadway area except where the lines must cross another property and said property owner shall not unreasonably withhold utility easements.

Utility extensions from the county roadway to serve each area shall be installed, at the sole cost of the unit owner(s) served by the extensions. No above ground power or telephone poles shall be allowed unless agreed to by 100% of owners whose view would be affected thereby. If it is more practical or cost-effective to do so, utility Hues and/or facilities may be located at different locations than within the roadway, but only with the prior written consent of the unit owner(s) affected by the proposed location, which consent shall not be unreasonably withheld, and each

unit owner agrees to execute whatever easement or other such agreements as may be reasonably required to confirm the location of any utility lines.

9. USE OF PROPERTY.

Each Party may make such use of his or her unit as is permitted under the laws and ordinances of the State of Hawaii and County of Kauai, subject to the following restrictions:

- A. No Party shall allow any condition to arise or remain upon his or her unit which constitutes a public nuisance or which is a danger to the person or property of any other party.
- B. Any improvements made, or activities engaged in, by a Party on his or her unit shall be at the sole cost and expense of that Party, and no other Party shall bear any liability or responsibility of any nature whatsoever for such cost and expense, except as otherwise stated herein.
- C. No unit owner, and no lessee, tenant, guest or invitee of a unit owner, shall use or store, or allow the use or storage, of any toxic or hazardous materials, pollutants or contaminants upon the Property, the intent being that all owners and occupants of the Property shall, in their residential, agricultural and other allowed uses on the Property, be sensitive to and supportive of the need to preserve the quality of the earth and air on the Property. Owners are not restricted from keeping gas, oil and other usual lubricants and fuels for usual domestic and farm use.
- D. No unit owner or agent of a unit owner shall have the right to spray noxious chemicals or pesticides, and no aerial spraying of any kind shall be allowed. For the purposes of this paragraph, "noxious" shall be deemed to mean any chemical that presents a physical danger to humans, domestic pets and farm animals. This property is restricted to organic fertilizers, herbicides, pesticides only. Any use of potentially hazardous materials to the stream shall be restricted to at least 100 feet back from the stream.
- E. Except as otherwise provided herein, animals shall be permitted so long as the presence and ownership of such animals does not create or result in any unreasonable noise, smell or other nuisance or unreasonable inconvenience to any other unit owners. To the extent necessary to prevent a nuisance or inconvenience to the other unit owners, all animals shall be appropriately restrained or fenced so that the animals will not go upon any other owner's area. All owners shall practice and observe accepted standards of good husbandry with regard to farm animals.
- F. No unit owner and no lessee, tenant, guest or invitee of a unit owner shall be allowed to grow a hedge on his or her area, which blocks substantial amounts of any other unit owner's view of the ocean, and/or mountain. Border plantings along the "High Meadow" (as hereinafter defined) borders shared by Portions "A" and "B" shall be kept to six (6) feet and plantings along the borders of all other

units shall be kept to a height of no more than fifteen (15) feet unless agreed upon by the affected parties,

- G. No unit owner shall install or allow exterior lighting in such a way as to be intrusive to any other unit owner without the permission of that owner.
- H. No unsightliness shall be allowed, and no trash dumping or indefinite storage of construction or other materials shall be allowed, unless the same is completely screened from the view of the other unit owners.
- I. No unit owner shall allow any construction, hobbies, music or other activity upon his or her area to occur before 8:00 a.m. or after sunset, unless such activity does not produce unreasonable levels of noise that can be heard on any other unit. Exceptions to this includes parties, gatherings, small concerts as long there is 2 day advance notice to affected neighbors and are allowed by law.
- J. No subdivision of the Property shall ever be allowed without the written agreement of 100% of all the current owners at that time.
- K. 24 hour notice is required for fires larger than normal campfires.

#### 10. INSURANCE

Each owner will carry liability insurance on their own parcel of land and all buildings. Each Party shall keep his or her own improvements insured against fire and other casualty, and shall have no rights to any portion of the insurance proceeds resulting from loss to any other Party's improvements.

Each owner will pay one share of the required liability insurance for the common elements) or easements that they utilize.

If such single coverage is available, the Parties shall insure the entire Property under a single comprehensive public liability policy, Avith coverage of not less than \$300,000 for property damage and \$1,000,000 for injury to persons or death. The costs therefor shall be borne by the Parties according to their proportionate acreage and improvements. If such a single insurance policy is not available, each Party shall maintain for his or her unit(s) a comprehensive public liability policy with at least the same limits of coverage, which shall be evidenced by each Party to all the other Parties by a copy of the insurance policy or by certificates of insurance. Each Party's individual insurance pohcy(ies) shall name each other Party as an additional insured party on the policy, if allowable by law.

If, due to any Party's use of improvements on his or her unit, any common expense is increased (such as taxes, insurance or common water system, if applicable), the amotint of the increase, attributable to such action shall be payable solely by the Party causing the same.

11. PUBLIC REGULATIONS.

The owner of each portion 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 portion. No owner, nor the owner's invitees, guests, tenants or lessees shall commit any act or cause or keep, nor suffer to be caused or kept, anything 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 herein differs from standards established by a governmental agency, the stricter standard shall apply.

12. BUILDING SETBACKS AND PERMITS.

Building set-backs within the Property shall be thirty-three (33) feet from all unit boundary lines shared with other owners (unless agreed to in writing by the affected parties) except in the "High Meadow" (the cleared higher ground area that includes parts of Portions "A", "B" and "C", the approximate location of which is shown on Map R) where they shall be one hundred (100) feet. Set backs to the exterior boundaries shall be as set by the County. All owners agree to consult with neighbor affected parties as to location of buildings so as not to unreasonably interfere with view planes.

All owners agree to give his/her consent by signing this Agreement and, if needed, by providing additional signatures on a County of Kauai planning department form authorizing the owners of any other portions of the Property to obtain a building permit for anything allowed by the County and these covenants.

Any owner desiring to construct a single family farm dwelling on a unit will have to comply with County of Kauai building and zoning codes, as the same may be changed from time to time. The present County legal interpretation may require each owner to demonstrate the ability to obtain income from farming on his or her area before the County will enter into a Farm Dwelling Agreement. The actual requirements appear to vary from time to time, A representative of the County will likely inspect the area before a building permit is issued to ascertain that farming activities are taking place on the unit of the owner seeking to build.

Portions "A", "B" and "C" each have the right to build, erect, and conduct one (1) business as a church, monastery or healing or retreat center. By signing this agreement or by acquiring an interest in the Property all owners signify their approval. All owners will also sign an additional document stating the same for submission to the County if needed.

Although legal buildings and improvements may be seen from other units, each Party shall place improvements upon his or her unit in a manner and location which will not unreasonably interfere with or substantially impair the view planes toward the mountains and ocean from any other unit. All Parties agree to reasonably consult with each other on their improvement locations prior to construction and to place and construct improvements as inconspicuously as reasonably possible.

13. WASTEWATER TREATMENT.

There are no sewer lines and no sanitary sewer system. Each unit will be required to have its own wastewater treatment system, to be located within its own limited common element area.

14. PROHIBITED USES AND ACTIVITIES

The following does not prohibit the usual activities of the above mentioned church, monastery or healing or retreat centers. The following uses and activities are prohibited on any portion in, unless the owner of the portion on which such use or activity is proposed shall have first obtained written authorization to commence such use or activity from no less than 100% of the owners of the Property, and all necessary governmental authority or permission:

- (a) animal hospitals;
- (b) the raising of pigs, hogs or boars;
- (c) the keeping of any roosters;
- (d) public cemeteries;
- (e) commercial recreation;
- (\*) commercial campgrounds;
- (g) mineral extraction and quarries;
- <M private and public utility facilities;
- (0 transportation terminals;
- G) communications facilities;
- (k) more than 4 goats, 3 dogs or 5 cats;
- (l) slaughter houses; and
- (m) shooting of firearms for target practice or hunting or anything other than self-defense.

In addition:

- (aa) Any generators used must be quiet gas generators, and enclosures used if necessary to contain excessive noise; and
- (bb) Any wind generators that the noise can not be contained reasonably within the boundaries of wind generators owner's parcel.

With the exception of any Agreement of Sale or Sub-Agreement of Sale to the original Parties hereto, no Party shall commit any act or fail to take any action whereby the Property or any portion thereof or interest therein shall become liable to seizure, \* foreclosure, attachment on mesne or final process of law, in bankruptcy or otherwise. No Party shall, without the prior written consent of all of the other Parties, undertake any actions or fail to take any actions which may result in the creation of any lien or encumbrance, including materialmen's and/or mechanic's liens for improvements constructed by a Party upon his or her unit.

15. FARMING.

Each unit owner must engage in agricultural activity, as provided by law and as defined herein, as a condition precedent to the ability to build or occupy a "Farm Dwelling", as further set forth in the Comprehensive Zoning Ordinance ("CZO") of the County of Kauai. A unit owner may farm his/her own area and/or plant orchards and/or engage in any other farming activity not prohibited herein and as allowed by the CZO. Unit owners shall use materials and/or equipment that are maintained and kept in good working order and repair and will not allow any unused, inoperable and/or junk material and/or vehicles to be stored and kept in the area or in or on common elements or easements. Additionally, with the exception of reasonable seasonal harvesting activities and preparation of ground for crops, no unit owner shall create such levels of noise or dust that the peaceable use of other units is materially affected. The written complaint of two or more unit owners shall be prima facie evidence of the existence of conditions that violate this paragraph. If only one party is affected, arbitration and other means may be used. The party in violation will reimburse the prevailing party.

16. CONSTRUCTION

In the construction of a farm dwelling and/or any other accessory building, the unit owner shall not use materials that would create a nuisance on the unit owner's area, or be so to the owners of other units on the Property.

There is a limit of three (3) Farm Dwellings (AKA. House sites, residences, homes), on top of the area known as the "High Meadow", one (1) for each of the Portions "A", "B", and "C". Additional Farm Dwellings (AKA, House sites, residences, homes), may be built on the hillsides off the "High Meadow" as long as the roof line is at least twenty-five (25) feet below the generally considered relative flat area/view plane of the "High Meadow".

In addition, buyers may be allowed agricultural buildings as allowed and permitted by county as long as it is certain that said buildings will in no way jeopardize the ability of any of the owners of the remainder of the one hundred ninety (190) acres to build any buildings. These buildings may be built anywhere within the above mentioned setbacks.

Each unit owner shall place the improvements upon his or her area in a manner and location which will not unreasonably interfere with or substantially impair the view planes toward the mountains and ocean from any other unit's area. All unit owners shall reasonably consult with each other on their plans for improvement locations prior to construction, in an attempt to place

and construct improvements as inconspicuously as reasonably possible as a matter of respect for neighbors and "good neighbor" consideration.

17. TEMPORARY STRUCTURES.

No house trailer, mobile home, temporary building, structure of any kind shall be erected, constructed, placed or maintained on any portion, except as expressly provided herein. Temporary structures or trailers may be erected, constructed or placed on any portion during the period of construction of permanent improvements, in no case to exceed twenty-four (24) months. The temporary construction structures or trailers shall remain upon the portion only during the period of construction of permanent improvements thereon, and must be removed within thirty (30) days after completion of such construction. Any surplus material from construction shall be removed within said thirty-(30) day period of time. Any such structures including containers may be kept on the land for storage or other as long as such structure is not visible from the roads or any other unit.

18. GRADING.

Excessive cuts or filling shall be avoided. In the event of any excavation on a portion, the owner doing or causing such excavation to be done shall provide such artificial lateral support as may be necessary to support adjacent portions. Each owner shall control dust during the grading or grubbing process to minimize damage, annoyance or inconvenience to other portion owners.

19. FLOODING AND EROSION

The drainage control ordinances of the County of Kauai are explicit and each portion owner shall comply with the same. No owner shall permit or cause to be constructed on his portion any improvements which create a problem of flooding, erosion or interference with the natural flow of water, which will damage his portion or other properties, nor shall any owner fail to act to minimize runoff damage or interference with the natural flow of storm waters and surface runoff. Portion owners shall maintain to a reasonable extent and shall be solely responsible for resolving any offsite drainage or flooding problems caused by the owner's development or use of his portion.

20. MAINTENANCE OF PORTIONS AND LANDSCAPING

Each portion, whether occupied or unoccupied, and all improvements or structures 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 portion and its improvements or structures from becoming unsightly, unsanitary, or a hazard to Health. Each owner shall, at her/his own expense, trim and maintain all trees, shrubs and plantings to prevent overhang or other encroachment above or upon any adjoining property or roadway. "Windbreak plantings or vegetation, which are growing, planted, placed or aligned in a dense and linear trend shall be trimmed regularly and maintained at Heights not to exceed fifteen (15) feet, and not more than six (6) feet along borders where important view planes are to be protected.

Other than border hedges, owners may grow any crops or landscape in any way within the boundaries of their properties, being sensitive and respectful to neighbor's primary view planes.

21. SIGNS

No signs or advertising devices of any nature or kind shall be erected, placed, installed, constructed or maintained on any portion, except as listed below,

- (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 1 1/2 square feet, necessary to identify the owner or occupant of any portion and owners address;
- (c) a maximum of one (1) sign, not exceeding 2 feet by 3 feet in size, indicating or advising that the portion 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 obstruction on a portion;
- (f) not more than one (1) commercial sign having a maximum face area of six (6) square feet, and which can only refer to the sale of agricultural produce or related products or other activities on the portion on which the said sign is installed, placed or situated; and
- (g) Small unobtrusive signs, not larger than 1 foot by 2 feet, may be placed at the main entrance for identifying residence and allowable commercial activities. A vote of the holders of 75% or more of the interests in the Property may require these signs to be of a uniform nature to keep the entrance clean, neat and attractive looking.

22. COMMON AREA LAND

The Association shall determine and control the use of the common area lands, if any, including but not limited to use for any easements, roads, farming, raising of animals, landscaping, maintenance and/or any other use which may be decided upon by the Association from time to time.

23. REPEAL OR MODIFICATION

This Agreement may be repealed or modified by the Parties at any time by a vote of 100% of the X Parties, prior to issuance of an effective date for a Final Public Report with respect to the CPR by the State of Hawaii, Real Estate Commission. Thereafter, except as to modification of view planes, screening requirements and MVE-1 location, which shall require a one hundred percent (100%) vote, the Declaration and Bylaws may be modified by an affirmative vote of the holders of sixty percent (60%) of the interests in the Property, unless otherwise stated. Unless otherwise



provided herein, the vote of (he holders of sixty percent (60%) of the interests in the Property shall be the act of the owners and the Association.

24. ARBITRATION

At the request of any party, any dispute concerning or involving one or more unit owners and the Association, the Board of Directors of the Association, the Agent, the Managing Agent for the CPR, or one or more other unit owners relating to the interpretation, application or enforcement of the Coudominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended), or the Declaration, Bylaws or any House Rules, shall be submitted to arbitration. Arbitration shall be conducted, unless otherwise agreed by the parties, before a single arbitrator in accordance with the provisions of Chapter 514A, Part VII (Sections 514A-12I, et seq.), of the Hawaii Revised Statutes. Failure to agree on the identity of an arbitrator after fifteen (15) days of attempts to do so shall cause selection of an arbitrator to be referred to the American Arbitration Association pursuant to its then-current rules for selection of a single impartial arbitrator.

25. COUNTERPARTS

The parties hereto agree that this instrument may be executed hi counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

26. STATE LAND USE RESTRICTIONS.

As long as a portion shall remain in the State Land Use Agriculture District, then such portion shall be subject to the requirements with regard to the availability of potable water; the raising of livestock, domestic fowl and other animals; and nuisances related to odor, noise, rodents and insects or; if applicable, any more stringent requirements herein contained.

27. CO-TENANCY AND CPR - COST AND REQUIREMENTS

All owners agree that they shall cooperate in the submission of the Property to the CPR, the cost of which shall be borne by all portion owners prorated based on their shares of the actual cost. One share equals one Unit.

Upon recordation of this Agreement, the owners shall meet to elect and/or hire a representative to carry out and finalize CPR process. Should the owners for any reason not receive a final public report, ownership shall remain as co-tenants subject to land use agreement or as determined by a vote of the owners of 80% of the units. State law requires that a building (any structure pennitted by the County) be built and permitted for each coiidominium apartment unit. Such building will be a 2 feet wide, 2 feet long and 2 feet tall shade house, or the nvinimum required by the County. All owners shall keep the documentation for the CPR current to. among other things, reflect all construction and, until such time as all owners Parties agree in writing that the same is no longer necessary, shall comply with all requirements, including construction.

for the submission of the Property to the CPR. All construction shall be built under required County permits.

28. REAL ESTATE TAXES

Prior to completion of the CPR, property taxes for the Property shall be shared among the owners proportionate to the assessed value of the acreage of their units and of the improvements thereon. In the event the CPR is not completed, owners shall determine the appropriate allocation of property taxes among themselves based on annual county tax appraisal.

Each Party's share of property taxes shall be the sum of (1) that Party's pro rata share (acres and improvements) of the portion of the tax attributable to the land (including any roadway improvements), such share to be based upon the acreage in that Party's unit as compared to the total acreage in all units, and (2) the portion of the tax attributable to any improvements located on the Party's individual unit. The portion of the property taxes to be paid by each of the Parties shall be determined by the Agent and paid by each Party to the Agent not less ten (10) days before the due date of the real property taxes. Upon receipt of these funds the Agent shall then be responsible for paying the property tax to the taxing authority on behalf of all Parties. If any party is late in paying their portion of the taxes they will be responsible for payment of same and all late fees and fines. In the event there is any dispute as to the valuation and proration of the taxes, the matter shall be referred to an appraiser acceptable to a majority of the contesting Parties for determination, which appraiser's decision shall be final and binding upon all Parties. The costs of such appraisal shall be borne equally by the contesting Parties unless the appraiser determines otherwise.

29. DEVELOPMENT OF DOCUMENTS

All owners of portions and units are aware and agree that the attorneys preparing the condominium documents may, at their discretion, in keeping the intent of this document, alter words or add statements to clarify the intent of the Parties and to prepare the documents for submission for CPR Final Public Report.

30. INDEMNITY.

Each Party, for himself or herself and his or her heirs, successors and assigns, hereby agrees to and shall indemnify, defend and hold the other Parties, and their respective heirs, successors and assigns, harmless from and against any and all costs, expenses, charges, claims, demands, losses, obligations, liabilities, damages and deficiencies of any nature, including interest, penalties and reasonable attorney's fees, which may arise as a direct or indirect result of the indemnifying Party's, or the indemnifying Party's family's, guests\* or invites', use of, occupancy of, or activities or presence upon the Property.

31. EXPENSES AND CONTRIBUTIONS.

Except as may be otherwise stated in this Agreement, no Party shall have any authority to obligate the other Parties for any expense or liability in connection with the Property, or to contract or deal with the Property on behalf of the others in any manner. Each Party shall be liable only for his or her pro rata share, of the taxes, insurance, special assessments, engineering

and legal fees, and other common expenses related to the Property as a whole, unless otherwise stated herein or otherwise agreed in writing by the affected Parties,

31. ASSOCIATION AGENT

The Parties hereby appoint LEE S. JOSEPH as their initial Agent for the purpose of collecting and disbursing all common costs or expenses related to the Property, and carrying out the decisions of the Association, until a new Agent is decided upon, to occur within the first 30 days after closing. The initial Agent, and each successor Agent, shall serve until such time as he or she resigns, on not less than 30 days notice to the other Parties, or is replaced by a vote of the holders of not less than 60% of the ownership interest in the Property. Each Party acknowledges that he or she will be willing to serve as Agent in the future if necessary or desirable or the Association will vote to hire someone to handle these responsibilities. Agents shall serve as such until he either resigns or is removed. Without limiting the general authority granted herein, the Agent shall have the following responsibilities and authorities:

- A. To obtain and maintain any common insurance at a competitive rate with any insurance company licensed to do business in the State of Hawaii, owning each of the Parties hereto as additional insured parties on the policy. The insurance policy shall provide such limits of coverage as required herein or as the Agent reasonably deems prudent.
- B. To receive all common property bills, insurance premium bills, water bills and any other statements for common expenses related to the Property, and to promptly notify each of the Parties of receipt of the same, the due date for payment and the share which each Party must pay.
- C. To collect from each Party his or her respective share of every common expense, and in the event of default in contribution by any Party to the common expenses, to take action to collect such amounts pursuant to Paragraph E below.
- D. To take all reasonable steps to see that the common expenses are paid in a timely manner. It is understood and agreed, however, that the Agent shall not be deemed to guarantee payment of the common expenses for the Parties, except for his or her own share of the expenses, and in no event shall the Agent be liable for any charge, cost, damage or penalty of any nature which may result from the failure of any other Party to contribute his or her share of any common expense. Any such charge, cost, damage or penalty shall be the sole responsibility and liability of the Party(ies) who caused the same to arise due to their default in payment.
- E. To keep proper books and records with respect to all income and all costs and expenses towards the common ownership of the Property, including payment of real property taxes, maintenance of the common lands, use of all or portions of the common lands, repairs for the benefit of all the lands, repairs for the benefit of all the Parties, and the like. Accountings shall be rendered to all Parties periodically as required, but in any event, at least annually. In the event that any Party shall owe any monies based on any accounting, such monies shall be paid within ten

(10) days of receipt of such accounting, failing which there shall be charged 12% interest per annum on the amount owing. The interest earned, if any, shall become the property of the Party or Parties which have advanced the delinquent Party's share of costs and expenses. If the Party does not pay in a timely manner after written notification the association may place a lien against the offenders property and use the full extent of the law to collect, including force a foreclosure of the property.

F. Coordinate all CPR legal paperwork, engineering, contracting and other actions required to complete the CPR process for the Property.

33. DECISIONS

Except as may otherwise specifically be stated herein, all decisions affecting the Property concerning issues which are not already covered by this Agreement shall be made by the holders ^2-of not less than a sixty percent (60%) of the undivided ownership interests in the Property. The initial percentage of the original Parties is set forth above.

34. TAX LIENS. SEIZURE.

No Party shall fail to report or pay any taxes, income or otherwise, which may be due to United States Internal Revenue Service and/or the State of Hawaii, nor shall the proceeds of any illegal venture be used for the purchase of the Party's interest in the Property or for any improvements thereon, whereby the Property or any portions thereof or interest therein shall become liable to seizure, forfeiture, foreclosure, attachment on mesne or final process of law, or any other legal or equitable action adverse to or jeopardizing the rights and interest of the remaining parties in the Property. In the event that any such Party (herein called the "defaulting Party") shall fail to report or pay taxes or use the proceeds of illegal activities, or undertake or fail to undertake any actions such that a likelihood of such seizure, forfeiture, foreclosure, attachment on mesne or final process of law, or any other legal or equitable action arises, such action shall constitute a default under this Agreement and the other Parties shall have an immediate and prior lien on the defaulting Party's interest in the Property and their sole discretion may pay such sums to cure or remove such seizure, forfeiture, foreclosure, attachment or other action, or to acquire by auction or negotiation the defaulting Party's interest in the Property free and clear of such lien or encumbrance. If such lien or encumbrance is removed through advances without the Party or Parties so advancing the sum acquiring the defaulting Party's interest in the Property, the Party or Parties so advancing the sums shall have a lien on the defaulting Party's interest in the Property, which lien shall be in the amount of the amounts advanced together with interest at the highest rate of interest per annum allowable by law until repaid. The lien shall be subject to collection in the manner set forth in paragraph 5 hereof, hi the event that the Party or Parties elect to acquire the defaulting Party's interest in the Property to remove such lien or encumbrance, the Party or Parties shall take the defaulting Party's interest in the Property free and clear of any interest therein by the defaulting Party.

35. FUTURE MORTGAGE LOANS.

The Parties expressly acknowledge that because of the undivided interest ownership in the Property, it is unlikely that any Party would be able to obtain any loans which require that the Property or any interest therein be used as security without the joinder of all Parties on such loans. It is the Parties' intention that no Party shall bear any obligation or responsibility for the other Party's obligation in the purchase, construction or financing of any improvements of the Property, and that the Property shall not become subject to any mortgage lien until such time as each Party has acquired separate ownership of his or her CPR apartment. Accordingly, no Party shall obtain any loan or loans prior to finalization of the CPR process and the conveyance of separate condominium apartments to the various Parties wherein the Property or any interest or estate therein shall be used as security therefor, and nothing in this Agreement shall obligate a Party to join in, co-sign or become otherwise responsible in any manner for any loans of the other Party.

36. TERMINATION.

This Agreement shall terminate upon either (1) the granting of final CPR approval for the Property by the appropriate State of Hawaii agency(ies) and the delivery to each Party of a document of conveyance of title for each Party's respective CPR unit, containing these guidelines in the CPR documents, or (2) the written agreement of all of the Parties.

37. AMENDMENTS AND MISCELLANEOUS.

- (A) Any additions or amendments to this Agreement shall be in writing and shall require the approval of all of the Parties. However, the Parties agree to make changes to this Agreement which are required by the State of Hawaii, the County of Kauai or any bonafide institutional lender, so long as such changes do not unreasonably interfere with the peaceful use and occupancy of the units by each owner as provided by this Agreement.
- (B) This Agreement shall be binding on the Parties, their heirs, successor, successors in trust, personal representatives and assigns. Where a specific Party is mentioned by name herein, such reference shall be deemed to also refer to such Party's heirs, successors and assigns, unless the context indicates otherwise. Any reference to gender shall be deemed to include all genders; references to the singular shall be deemed to apply to the plural.
- (C) All written notices to a Party hereunder shall be served by personal delivery or by registered or certified mail, return receipt requested. Receipt of any written notice shall be deemed to have been made either upon actual receipt, if the notice is personally served, or two business days after mailing, if the notice is mailed.
- (D) The Parties herein agree to execute any and all other documents which may be necessary or desirable to carry out the purposes of this Agreement, including, without limitation any document required by the County for the construction of legal buildings permitted hereunder. In the event any person not identified herein shall become an owner of an interest in the Property after the execution of this

Agreement, such person shall become automatically bound by the terms and conditions of this Agreement. Upon request, such person shall execute an acknowledgment or other written intent accepting the terms and conditions hereof, but the failure or refusal to do so shall in no way invalidate or otherwise affect the binding nature of this Agreement upon such person or upon the Property.

- (B) The terms and provisions of this Agreement are severable, and invalidity of any part of this Agreement shall not affect the validity of the other parts hereof.
- (F) The failure of any Party hereto to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- (G) In the event of any conflict between the provisions of the main body of this Agreement and the provisions of the CC&Rs, the provisions of the main body of this Agreement shall control.

IN WITNESS WHEREOF, the undersigned have executed these presents as of the day and year first above written.

[The remainder of this page is intentionally left blank - signature pages follow]

MOLOAA VALLEY ONE, LLC

By *Lee Joseph*  
LEE JOSEPH  
Its Manager

STATE OF HAWAII

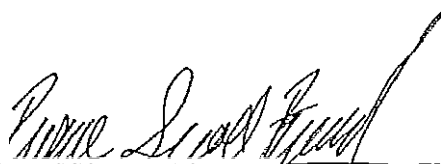
\_\_\_\_\_ COUNTY OF *Kauai* ) SS.

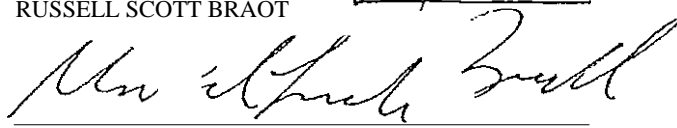
On this \_\_\_\_\_ day of **HAY 18 2000** 2000, before me personally

appeared LEE JOSEPH, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the true act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

*P. P. Serrano*  
Print Name: *PAT SERRANO*  
Notary Public, State of Hawaii

My Commission Expires: *5/16/01*

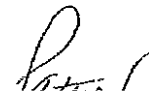
  
\_\_\_\_\_  
RUSSELL SCOTT BRAOT

  
\_\_\_\_\_  
MICHELLE LEIGH BRAND

STATE OF HAWAII )  
  U - ) ss.  
\_\_\_\_\_ COUNTY OF ittMjLL.- )

On this \_\_\_\_\_ day of **HAY 17 2000** **2000** before me personally

appeared RUSSELL SCOTT BRAND and MICHELLE LEIGH BRAND, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

  
\_\_\_\_\_

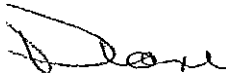
Print Name:  
Notary Public, State of Hawaii My

Commission Expires:..



COUNTY OF MNCJ^QITCL }

Oa this 11/2 \_\_\_\_\_ day of Nov 2000, before me personally appeared MICHAEL M. BLATT, to me personally Known, who, being by me duly sworn or affirmed, did say that such perspn(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Print Name: Michael M. Blatt Notary Public, State of North Carolina

My Commission Expires 11/1/2003  
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County / Wy Commission Expltes // O ^

CRAIG H. MAAS, Trustee of the Craig H. Mass Revocable Trust dated December 24, 1998

STATE OF HAWAII )  
 ) SS. )  
COUNTY OF *fiEUU*,

On this \_\_\_\_\_ day of **WAY 18 2000**, 2000, before me personally appeared CRAIG H. MAAS, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

^>\*H..... \*

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\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii

My Commission Expires:

CARL L. WRIGHT

*Sandra E. Wright*  
SANDRA E. WRIGHT

*Sw*

*WP*

STATE OF HAWAII

COUNTY OF

)  
) SS.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_ 2000, before me personally appeared CARL L. WRIGHT and SANDRA E. WRIGHT, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

^\$s\*B..... \*\  
\_\_\_\_\_

*(btcd)*  
Print Name:\_\_\_\_\_  
Notary Public, State of Hawaii My  
Commission Expires:.,.

## EXHIBIT "A"

That certain parcel of land (being portions(s) of the *land(s)* described in and covered by a portion of Allotment D-3, Kaapuna Hui Land Partition) situate at Moloaa, Kawaihau, Kauai, State of Hawaii, being Lot D-3 (Amended) described as follows:

Beginning at the southeast corner of this parcel of land on the north side of Kuhio Highway, F.A.P. No. F-056-1 (3) the coordinates of said point of beginning referred to Government Survey Triangulation Station "Moloaa" being 2,593.76 feet south and 7,105.25 feet west, and running by azimuths measured clockwise from true south:

1.        74° 25'                    109.15 feet along the north side of Kuhio Highway;
2.        164° 25'                    10.00 feet along the north side of Kuhio Highway;
3.        74° 25'                    503.69 feet along the north side of Kuhio Highway;

Thence along Lot M~3 on a curve the right with a radius of 533.69 feet, the chord azimuth and distance being:

4.        99° 11' 36"    119.10 feet;
5.        105° 36'                    216.25 feet along Lot M-3;

Thence along Lot M-3 on a curve to the left with a radius of 613.69 feet, the chord azimuth and distance being:

6.        91° 18'                    303.16 feet;
7.        77° 00'                    185.58 feet along Lot M-3; feet along Hawaiian Home Lands;
8.        124° 45'                    2775.46 feet along Land Court Application No. 1161; feet along
9.        213° 40'                    110.00 Land Court Application No. 1161; feet along Land Court
10.      172° 25'                    420.00 Application No. 1161; feet along Land Court Application
11.      216° 35'                    240.00 No. 1161; feet along Land Court Application No. 1161;
12.      254° or 30"                175.95 feet along Land Court Application No, 1161; feet along
13.      195° 20'                    672.00 Lot S; feet along LotS;
14.      212° 20'                    310.00
15.      337° 21' 30"                422.00
16.      271° 25'                    293.80

- 17. 246° 34' 142.10 feet along Lot S;
- 18. 235° 18' 170.60 feet along LotS;
- 19. 233° 16' 59.15 feet along Lot S;
- 20. 259° 00' 30' 781.70 feet along Lot D-2;
- 21. 319° 30' 95.65 feet along Royal Patent Grant Number 7423, Commission Award Number 9799 to Konohia;
- 22. 300° 30' 910.00 feet along Lot D-2;
- 23. 1° 30' 280.00 feet along Lot D-2;
- 24. 298° 24' 72.07 feet along Lot D-2;

Thence along (old) Kuhio Highway on a curve to the left with a radius of 125.00 feet, the chord azimuth and distance being;

- 25. 348° 39' 15" 135.08 feet;
- 26. 315° 57' 45.31 feet along (old) Kuhio Highway;

Thence along a curve to the left with a radius of 185.00 feet, the chord azimuth and distance being:

- 27. 284° 16' 30" 194.29 feet; .
- 28. 252° 36' 203.60 feet along (old) Kuhio Highway;

Thence along (old) Kuhio Highway on a curve to the right with a radius of 95.00 feet, the chord azimuth and distance being:

- 29. 284° 23' 30" 100.10 feet;
- 30. 316° 11' 199.62 feet along (old) Kuhio Highway;

Thence along (old) Kuhio Highway on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:

- 31. 358° 11' 66.91 feet;
- 32. 40° 11' 41.52 feet along (old) Kuhio Highway;

Thence along (old) Kuhio Highway on a curve to the right with a radius of 725.00 feet, the chord azimuth and distance being:

33. 47° 02' 172.94 feet;
34. 53° 53' 3.83 feet along (old) Kuhio Highway;  
 Thence along (old) Kuhio Highway on a curve to the left with a radius of 205.00 feet, the chord azimuth and distance being;
35. 30° 25' 163.27 feet;
36. 6° 57' 601.55 feet along (old) Kuliio Highway;  
 Thence along (old) Kuhio Highway on a curve to the right with a radius of 195.00 feet, the chord azimuth and distance being:
37. 22° 07' 30" 102.09 feet;
38. 37° 18' 412.65 feet along (old) Kuliio Highway;  
 Thence along (old) Kuhio Highway on a curve to the left with a radius of 77.50 feet, the chord azimuth and distance being:
39. 328° 05' 30" 144.91 feet;  
 Thence along (old) Kuhio Highway on a curve to the left with a radius of 328.36 feet, the chord azimuth and distance being:
40. 245° 42' 149.78 feet;
41. 232° 31' 320.61 feet along (old) Kuhio Highway;  
 Thence along (old) Kuhio Highway on a curve to the right with a radius of 95.00 feet, the chord azimuth and distance being:
42. 266° 47' 106.98 feet;
43. 301° 03' 104.55 feet along (old) Kuliio Highway;  
 Thence along (old) Kuhio Highway on a curve to the left with a radius of 175.00 feet, the chord azimuth and distance being:
44. 272° 16' 30" 168.48 feet;
45. 243° 30' 61.23 feet along (old) Kuliio Highway;  
 Thence along (old) Kuhio Highway on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being:

47. 254° 56' 30" 81.14 feet along (old) Kuhio Highway;

Thence along (old) Kuhio Highway on a curve to the left with a radius of 525.00 feet, the chord azimuth and distance being:

48. 247° 18' 45" **139.40** feet;

49. 239° 41' 154.34 feet along (old) Kulvio Highway;

50. 30° 19' 140.75 feet along a 20 feet wide Government Road;

51. 41° 43' 77.07 feet along a 20 feet wide Government Road;

52. 50° 24' 545.67 feet along a 20 feet wide Government Road;

53. 43° 34' 395.22 feet along a 20 feet wide Government Road to the point

of beghining and containing an area of 190.088 acres, more or less.

Together With a perpetual non-exclusive easement for construction, reconstruction, installation, maintenance, repair and replacement of improvements for pedestrian and vehicular access and for underground utilities over and across easement "AU-1" of Allotment D-2 (being a portion of easement 5 as described in the Final Decree of Kaapuni Hui Partition entered April 16, 1934, in The Lihue Plantation Company, Limited, et al., v. Achi, et al. Equity No. 85, Fifth Circuit Court, State of Hawaii, and as shown on survey map prepared by Dennis M. Esaki, Licensed Professional Surveyor, Certificate No. 4383, dated December 1999), as granted by Declaration of Grant and Reservation of Easement AU-1, dated April 21, 2000, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-056396.

Being a portion of the land conveyed to MVO by Warranty Deed dated \_\_\_\_\_ HAY 1 7 £000 \_\_\_\_\_, recorded in said Bureau as Document No. \_\_\_\_\_.

Subject, however, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of customary or traditional rights and practices, including, without limitation, those exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes, as amended.
3. Any unrecorded leases, subleases, or tenancy agreements demising a portion of (he land described herein, and any encumbrances affecting the same.
4. The rights of the United States of America, State of Hawaii, the municipality or the public, in and to that part of the premises in question falling in the bed of the Moloaa Stream, also to the rights of the riparian owners in and to the free and unobstructed flow of the water of said stream, if any.

5. Portion of Easement 5, ten (10) feet wide, as shown on survey map prepared by Dennis Esaki, Licensed Professional Land Surveyor.







BUILDING PERMITS. ;

Building set-backs within 449-1M) shall be 33 (thiny-three) ft« from nil property Uoeffi shared \* wuh other buyexs (unta\* a^eed to in wctitng by the affected patties) *except* in the 'High Meidow' (the cleared Higher ground area mac includes patts of the 3 Portions "A", "B" &, "C<sup>H</sup>) where they «hj)(l be 100' (on\* hundred *feet*). Set backs to the exterior boundimMshau be ««c by county. All owners agree ro consult with neighbor affected parities as to location of building\* \*o u not to unreasonably inrerfere with view planes. !

All owners agree to give hlt/hcr signature on a "county of Kauai" planning department form" authorising the owner\* of any other portionsjor\* 449\*11\*13 to obtain a building permit for anything allowed by eounry and these covenants.!

Any owner deaiing to tonsmicr a single family **Mim** dwelling on a unit will h\*v«- to comply with

County of Kauai building and toning codes, s) d c same may be changed fVbra rime to tlm«. TTie pxesent County kg>i uitcrpctanqn may require ejach owner to demonstrate die abUlcly to obtain income from farming on his or her area before, ttj ' e County will enter into a Farm Dwelling Agreement, The aaual requirements appemov\* r ...ry from time to time: A representative of the County will likely Insptet the area before a building permit Is issued Co tfcetttin that tVrmiftg -activities are taking place on flic unit of the owner \*ee&ng to build, Portions "A", "B" and "C" each have the right to build, erect, and conduct one (0 busInts\* m t church, monastery or Healing Retreat Center. B signing this agreement til owner\* of irvatea, portions or units dignity their approval. All port! >n. share or unit owners will »lso sign »n addition document stating the same for submission to the county l( needed,

4 **INFRASTRUCTURE.**

Except **fti** otherwise provided for **In** the DecUrfltt **m**, the costs to develop infrastructure to serve the Project, and to allow each unlc owner ro use l is, her or their are\* for agricultural and residential purposes, shall be the sole responsible y or\* each Unit owatt, with the exception of roadway cost\* which are described below, and the costs of the CPR procedure with survey and all that is required. !

E\*ch portion o^ner initially, within 21 days after'do sing will make, a dco«it of \$20,000 (twenty thoujand) into **an** escrow **ncounft** to go toward\* Infrastructure and CPR cosn. Each additional purchaser of a potential **or** actual CPR unit, sluce or porcion, vill deposit 520,000 (twenty thousand) within 21 day of their closing foe these! expense\*. Eject\* monies collected vill be rerunded and if additional monies are needed vill be deposited fay unit, portion or share owners, proportionately. Any units on the approximately 11 actas **on** the North ilde of the stream **are** not required ro parcicipa w in coats of the project MVEd or others from which they do not benefit-All CPR owners or potential ownet> shall pay a proportionate share of costs of those projects from which they benefit. The cost of th« CPR and related expenses vill be shared equally by the total number of CPR units or potential units. ■

Actual CPR unit, (hart or portion owners chat choose to participate in the Fire Prevention water requirements will make proportionate deposits toget this work done. See xeccton-on W>t« for Fire protection t\* 15, '.

initials                       
Buyer                      Date 4.21-00

Date

INSURANCE

Each shareowner will carry liability insurance on their own part of land and all buildings. Each share owner will pay one share of the required liability insurance for the common elements or elements that they Millie.

UTILITIES

Costs associated with bringing electric, telephone, cable and any other utilities and improvements (other than those described above) to any area shall be the responsibility of the owner of the unit being served by the same. When the first owner elects to develop his or her area all owners that desire to utilize these utilities shall contribute their share of actual costs. One share of cost equals one share, portion or CPR Unit to be. Participation shall be optional with each unit owner. All Utility lines and facilities shall be located within the roadway area except where the lines must cross another property and said property owners will not withhold utility. Utility extensions off of the county roadway to the area shall be installed, at the sole cost of the unit owners served by the extensions. No above ground power or telephone poles shall be allowed unless agreed to by 100% of owners whose view would be affected thereby. If it is more practical or cost-effective to do so, utility lines and/or facilities may be located at different locations than within the roadway, but only with the prior written consent of the unit owners affected by the proposed location, which consent shall not be unreasonably withheld, and each unit owner agrees to execute whatever easement or other such agreements as may be reasonably required to confirm the location of any utility lines.

WASTEWATER TREATMENT.

There are no sewer lines and no sanitary sewer system. Each unit will be required to have its own wastewater treatment system, to be located within its own limited common element area,

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ROADWAYS and EASEMENTS

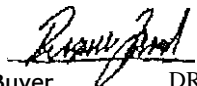
The common element(s), or easements, if any, and limited common element roadway improvements within the Project are delineated on Map "A".

The main Common Element or Easement driveway known as MVE-1 will be 30' (thirty feet) wide, allowing for adequate roadbed, shoulder, landscaping, and further development with the agreement of 100% of all owners

MVE-1 shall be 30' (thirty) feet wide with basic coarse coral gravel, 16' (sixteen feet) wide with a turn around for the fire trucks and emergency vehicles.

All units with a right to use a roadway shall have the right to improve it beyond coral gravel. A 100% vote will be required to share costs proportionately to upgrade the roadway beyond coral gravel. Cement or asphalt will probably need to be used in steep or wet areas. An Engineer's opinion will be used in conjunction with the preferences of the owners of units using said roadway to determine this. Construction, repair and connection of all driveways accessing the individual areas off of the roadway shall be the sole responsibility of the unit owner served thereby. Each unit owner will be responsible for clearing all vegetation and growth from his or her area to the extent it enters the area of the roadway improvements.

All owners shall pay for the costs to develop the roadway proportionate to the distance they use the roadway to access, their property. Any and all maintenance shall be provided for in the same

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 Seller Date



store, or allow the use or storage, of any toxic or hazardous materials, pollutants or contaminants upon the Property, the intent being that all owners and occupants of the Project shall, in their residential agricultural and other allowed uses on the Property, be sensitive to and supportive of the need to preserve the quality of the earth and air on the Project. Owners are not restricted from keeping gas, oil and other usual lubricants and fuel for usual domestic and farm use. D No unit owner or agent of a unit owner shall have the right, to spray noxious

chemicals or pesticides, and no aerial spraying of any kind shall be allowed. For the purposes of this paragraph, 'noxious' shall be deemed to mean any chemical that presents a physical danger to humans, domestic pets and farm animals.

This property is restricted to Organic fertilizers, herbicides, pesticide\* only. Any use of potentially hazardous materials within the stream shall be restricted to at least 100 feet back from the stream.

- as long as the presence and ownership of in any
- Any other animals shall be permitted unless unreasonable noise, smell or other nuisance is caused to any other Unit owner. To the extent necessary to prevent nuisance or inconvenience to the other unit owners, all animals shall be appropriately restrained or fenced so that the animals will not go upon any other owner's area. All owners shall practice and observe accepted standards of good husbandry with regard to farm animals. V No unit owner and no leasee, tenant, invitee of a unit owner shall be allowed to grow a hedge on his or her area, which blocks substantial amounts of any other unit owner's view of the ocean, and/or mountain. Border plantings along the borders shared by Portions Y and "B" shall be kept to 6' (six) feet and plantings along the borders of all other units shall be kept to a height of no more than 15' unless agreed upon by the affected parties.
- 0 No unit owner shall install or allow exterior lighting in such a way as to be intrusive to any other unit owner without the permission of that owner,
- H No unsightliness shall be allowed, and no crash dumping or indefinite storage of construction or other material shall be allowed, unless the same is completely screened from the view of the other unit owners.
- 1 No unit owner shall allow any construction, hobbies, or other activity upon his or her area to occur before 8:00 a.m. or after sunset, unless such activity does not produce unreasonable levels of noise that can be heard on any other unit. Exceptions to this includes parties, gatherings, small concerts as long there is 2 day advanced notice to affected neighbors and are allowed by law,
- J No subdivision of this property shall ever be allowed without the written agreement of 100% of all the current owners at that time. K 24 hour notice is required for fires larger than normal campfires.

#### U., FARMING.

\*" Each unit owner must engage in agricultural activity, as provided by law and as defined herein, as a condition precedent to the ability to build or occupy a "Farm Dwelling", as further set forth in the Comprehensive Zoning Ordinance ("CZO") of the County of Kauai. A unit owner may farm

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Unit owner shall use materials and/or equipment that are maintained and kept in good working order and repair and will not allow any unneeded, inoperable and/or junk material and/or vehicles to be stored and kept in the area or in or on common element\* or easements. Additionally, with the exception of reasonable seasonal halting

activities and preparation of ground for crops, no unit owner shall create such nuisance of noise or dust that the peaceable use of other units is materially affected. The written complaint of two or more unit owners shall be prima facie evidence of the existence of conditions that violate this paragraph. If only one party is affected, arbitration and other means may be used. The party in violation will reimburse the prevailing party.

#### U. CONSTRUCTION .

in the construction of a farm dwelling and/or any other accessory building, the Unit owner shall not use materials that would create a nuisance on the unit owner's area, or be a burden to the owners of other units in the condominium project. |

Set-backs within 449.1143 shall be 33 (thirty-three) feet from all property lines shared with other buyers (unless agreed to in writing by the affected parties) except in the 'High Meadow' where they shall be 100' (one hundred feet). Set backs to exterior boundaries shall be as set by county.

There is a total of 3 (three) Farm Dwellings (AKA.. House sites, residences, homes), on top of the area known as the "High Meadow", 1 (one) for each of the 3 portions "A", "B" and "C". Additional Farm Dwellings (AKA. House sites, residences, homes), may be built on the hillsides off the "High Meadow" as long as the roof line is at least 25 (twenty-five) feet below the generally considered relative flat area of the "High Meadow".

In addition, buyers may be allowed agricultural buildings as allowed and permitted by county as long as it is certain that said buildings will in no way jeopardize the ability of any of the owner\* of the remainder of the 190 (one hundred and ninety) acres to build any buildings. These buildings may be built anywhere within the above mentioned setbacks. Each unit owner shall place the improvements on his or her area in a manner and location which will not unreasonably interfere with or substantially impair the view planes toward the mountains and ocean from any other unit's area. All unit owners shall reasonably consult with each other on their plans for improvement prior to construction, in an attempt to place and construct improvements as inconspicuously; as reasonably possible as a matter of respect for neighbors and 'good neighbor' consideration.

Any damage beyond normal wear and tear to the Common Element or Easements during construction or any other time by an individual shall be repaired by that individual.

13. TEMPORARY STRUCTURES. • -No house trailer, mobile home, temporary building, structure of any kind shall be erected, constructed, placed or maintained on any portion except as expressly provided Herein.

Temporary structures or trailers may be erected, constructed or placed on any portion during the period of construction of permanent improvements, in no case to exceed twenty-four (24) months.

Buyer

Seller

Date







20. REPEAL OR MODIFICATION

These House Rules are accepted as written and maybe repealed or modified by the Fee Owner at anv time by a vote ot\* **100%**, prior to issuance of m effective date for a Final Public Report by the State of Hawaii, Real Estate Commission. There titer, exciptas ro modification ofview pfoM and screening requirements and MVS! location, which shall require a one hundred percent (100%) vote, the House Rules may be modified by an afi imative vou of the holders of seventy'-fivc-percent (75%) of the common interests in the Peobject,

I ZI. ARBITRATION

At the request of any parry, any dispute concerning ot Involving one or more unit owners and the Association, Its Board, Managing Agent, or one or more other unit owners relating to the interpretation, application or enforcement of th Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, ai amended), or the D« deration, Bylaws or these Home Rules adopted **In** accordance with the Bylaws, shall be submitted ( arbitration. Arbitration shall be conducted, unless otherwise agreed by die parries, before a s tigde arbitrator **In** accordance with the provisions of Chapter 5HA, Part VII (Sections 5X4A-121, e> seq.fc of the Hawaii Revised Statutes. Failure to (15) agrte on the identity of an arbitrator nftet fifteen days of attempts to do so shall cause

- • ""selection of an arbitrator to be referred to the ' Arherican Arbitration Association pursuant to its then-curtem rules for selection of n single Impart al arbitrator.

22. COUNTERPARTS

The parties hereto agree that this instrument ma be executed in counterparts, each of which shall be deemed an original, and said counterparts [sha.ll](#) together constitute one and the same instrument, binding all of the patties hereto, not vtthitidinga'lof tha parties are noc signatory to the original or the same counterparts. For all pur ;ores, including, without hmlratlon, recordation, filingand delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

OJ. STATE LAND USE RESTRICTIONS.

As long as a portion shall remain in the State L\*r d Use Agriculture District, then such portion shall be subject to rhe ttquiremenu with tegatd t the availability of potable water; the raising of live-stock\* domestic fowl and other anirwihi and t ■antes related to odor, noise, rodents and insects ot, if applicable, any mote strinjent requirements Herein contained.

24 WATER SERVICE.

A Each unit owner may make his or her owri arrangement for watet including, but not limited t, to, txtcndihg County of Kauai water service to his, her or tlwix area or drilling and constructing a private warec well. The cost of design, construction, repair.or replacement of any water system designed to «rve more tlurxone unit, whether it be the County of Kauai ox a private system, shall be prorated among those!unit owners who electro participate in ths,t system and water usage shall be paid by rhemjbased Upon each owner's volume of water usage, which shall he determined by prWatec water **meters** which will be Installed In each owner's line At thec owci expense. Any unit owner who wfthef to participate in an existing private system

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■ which has previously been installed by any other unit owner?\*) shall not be allowed to do so unless and until i. all of the already-participating owner(s) agree in writing that the owner wishing to participate shall be allowed to do so; ii. the owner wishing to participate shall agree in writing to be liable for any and all costs to connect the existing system including, without limitation, all trenching, water connections, re-landscaping, legal fees (if any) to establish easements for the water lines, and damages to the property of any other unit owner which may arise as a result of the connection of the existing water line, and shall obtain liability insurance in a reasonable amount, to be determined in the reasonable discretion of the already participating owner(s), to insure against any damages, injuries or death resulting from the installation of the connecting water lines and related improvements; iii. the owner wishing to participate shall demonstrate to the extent reasonably requested by the already participating owner(s) the current financial ability to complete in a timely manner the connection to the water system and all other related construction and improvement work; iv. the owner wishing to participate shall deliver to the already-participating owner(s) his or her written indemnification against any and all claims, costs, liabilities, liens and other obligations arising from the connection to the existing system, such indemnification to be in a form reasonably acceptable to the already-participating owner(s); and v. the owner wishing to participate shall reimburse his or her proportionate share of the original cost of installation and development of the system to the owner(s) who initially paid for the system, together with interest of ten percent (10%) per annum on said amount. Interest to commence from the date the original system was substantially completed and to continue through the date of payment of the proportionate contribution from the owner wishing to participate is received by the already-participating owner(s), unless different costs are agreed upon by 100% of the participating owners. 0. Should capacity of any multi-unit private water system prove to be insufficient upon

connection of any new participant (t), such new participant shall cease use of the water in reverse chronological order of joining the system unless and until such new participant(s), at his, her or their expense, provides an alternate engineer-approved solution, to capacity problems.

C. In the event that water shortages or similar problems develop after joint use of a private system has been established, the following shall apply: as to domestic potable water usage, the Original owners who installed the system shall have first priority to reasonable use for residential purposes, including maintenance of landscaping if agricultural water is not otherwise reasonably available; owners added subsequent to the initial installation shall retain rights according to chronological addition to the system; and agricultural water, if any, shall be fairly apportioned according to respective capital costs historically paid by the respective unit owner(s), with equitable adjustments for scope of then-current or previously-disclosed agricultural use of the land. \ p. Should any private water system become obsolete and/or substantially fail, all then-current users may become participants in reconstruction, and, upon payment of his, her or their respective contributions, shall acquire equal vested rights to future water in proportion to their participation in a new private water system. E. In the event that County of Kauai water service should ever become available to the Project at a reasonable cost, and if only a single water meter is permitted by the County of Kauai for the

Project, each unit owner, at his or her own expense, shall install a secondary private

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«W« meter (if allowed by the County) «j mcajure the amounts of water used on that owner's unit, and the cost of the water for the Project Khali be shared by the owners in ptoportion to their respective *u s t s* as determined by the Secondary meeets. The determination of each unit owners share of the *W W V I* cost shall be based on the fraction where the numerator is tht number of gallons used as shown on the secondary water meter for that owner and where the denominator is the number of gallons as shown on the original water meter, multiplied by the charges of th« County Department of Water. For example, if the secondary water meter of an owner shows a use of 5,000 gallon\* of water a»d the original water meter show? a use of 15,000 gallons of water for a given period, such owner shall be responsible for paying 5,000/15,000, ot one-third (1/3) of the waterjbili for that period of time. Readings of both water meters shall be taken at the same time, nt a time interval mutually agreeable to the unit owners but best determined to give the most accurate Indication of respective warn uses by the owners- Each unit owner shall pay his ot her share of the watet costs in a timely\* manner so *A t l o* avoid interruption of iht water f etvlce *t j* the Project,

F. Should the owners utilise a public utility watet system, allowing separate meter\* foe the Units, then all iighta of participant\* shall be governed by applicable reffuTfons and enactment under *t-i ^* state law or County of Kauai ordinances. /

G- All owners Agree to provide easements for sai< watet lines In convenient locations for the pipes as Ions \*s ir noes not interfere with bull ling site? and easements, and Water Easement Beneficiary agrees to repair any damage to ptt petty, landscaping and crops. THIS SHALL ALSO APPLY TO ANY OTHER UTIUTIES.

25 WATER FOR FIRE PROTECTION

The Common Element or Easement MVE-1 mustjbe «lease 16 (sixteen) feet wide of gravel plus 2 (twq) feet of shoulder on both side\* or better, to accommodate the Flee Pcpittment. The following, or what eve? it required ar the tim<j of corutruction, wiU be constructed and puld for proportionately by all owners that ihare It's us£. All units are allowed lo share this or some unit ownere may choose private systems or none at all. There must be a 15,000-gallon water storage tank Tar the Fire Prevention at or around the highest elevation of the Innd, the location of which is to bfc determined at the discretion of the owner of portion "A", as pottiort "A" has been designated \* s the portion to provide R space for said tank. If landscaping is required to 'hide' this tank it wit owners benefiting from this Fire prevention water keep it out of sight, if any u needed, shall be prov The Fife Department may require some houses to be provided out of the funds collected from all tank. Continued maintenance of landscaping to ded for out of annual association fees, have booster pumps to achieve tht adequate required pressure and will pay for same by themselves!

26 USE OF ALLOTTED CPR UNITS and FARM DWELLINGS (AKA.

HOUSE SITES, RESIDENCES, HOMES J Although the entire parcel of ^49\*11\*13 (approximately 190 acres) qualifies for 38 farm dwellings (AKA. House sites, residences, homes) there is hej-ebv added and stated that there is ft Deed Restriction to not allqy.' mote than M Farm Dwellings (AKA. House sites, residences, and homes). There is also a Deed Restriction added and stated that diere shall be no more than 21 CPR units created. Each CPR uuit shall be allotted and allowed I (one) Farm Dwelling (AKA. House sites,

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residences, homes) only, except for what is know currently known « Portion "A", initially to h< owned by Joseph And "B" to be owned by Brand)

The Amount of CPR units and "Farm. Dwellings' shall be divided up as follows-  
Portion \*,V, shall have 3 CPR units and 5 Farm Dwelling, initially to be owned by Joseph  
Portion. "0", shall have 7 CPR units and 8 Farm Dwellings, initially ro be owned by Brand  
Portion <sup>h</sup>C. shall have 11 CPR units and 11 Farm Dwellings, initially to be owned by Mais  
Any owner of multiple CPR units and multiple Farm Dwelling Rights may allocate any way they  
choose.

Any future buyers of portions or parts of portions shall be limited as to number of CPR Units and  
Farm Dwellings fAKA. House sices, residences, h imes), by what ever partj of portions they  
purchase from th« sellers of above mentioned Po tlons "A", <sup>M</sup>B", or <sup>U</sup>C". All current and future  
owners of shares, portions or units, in signing thi; document, hereby acknowledge these  
restrictions. ;

^"tn addition, buyers may be allowed agricultural bjiUdings as allowed and permitted by county as  
long m it Is certain that said buildings will In no way jeopardize the ability of any of the owners of  
the remainder of the 190 {one hundred and ninefy) acres to build any buildings.  
All current and future owner\* of shares, portions 'or units, hereby grant permission to build, to  
each owner of a share, portion Or unit, the above-mentioned number of \*F»nn Dwellings- and  
shall sign an additional document for submission; to the; county agencies signifying their  
acknowledgement, approval and permission for t&e construction of all legal buildings limited by  
the numbers above-

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All owners of portions of 4-4-9-1M3 agree to givq each other permission to reconfigure their own individual  
portions within their own borders as long as it is allowed by law.

## 27 CO-TENANCY AND CPR - COST AND REQUIREMENTS

All portion owners sgree that they shall cooperate In the completion of a condominium property regime (-CPR-  
) - the cost of which shall be born bf all portion, owners prorated based on their shares of the actual cost One  
sbare equals one potential CPR unit.

After recordation, owners of the portions shall meet to elect and/ot hire a representative to carry out and firuidw  
CPR process. Should owners for any reason not receive a final public report, ownership shall remain as co-  
tenant subject: to land use agreement of as determined by a vote of 80% of rthe owners. State law requires that  
an "apartment (any structure permitted by county) be built and permitted for, each condominium aparment  
unit. Said '■apartment will be a 2'wx 2, lx 2'h. shade bouse, or the minimum required) by county. All **oHJicri-  
Qi Dortiong atrpce to keep die fi?ndP<sup>minimum</sup> current update it, wirh alj construction (which shall be  
builr. unjer county permit?) until ^udi\_dirie-5S\_panies mutually agree (in writing) thauhilia no longer  
necessaiv.**

## 28 REAL ESTATE TAXES

Ptigr to completion of the CPR. property taxes on 449-1143 shall be shared among the owners proportionate  
to the acreage owned wssessed value and improvements theteon. In the event the


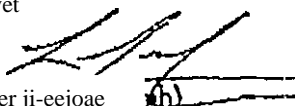
CPR is not completed owners shall determine due appropriate allocation of property taxes among themselves bisect on annual county tax appraisal!

29 All owners of portions, shares, and units are aware und agree that the Attorneys, at their discretion, in keeping the intent of this document, may alter words or add statements to clarify our intent Rnc CPR prepare the documents roc submission for Final Public Report.


**30 PERIOD OF RESTRICTIVE COVENANTS**

The covenants and conditions contained Herein to any particular, portion until such rime as the si District classtflcacion oth\*r>ch<in die "Agricultura die owner\* as described \f item # 20.

(hall continue and be In full force and effect as bjece portion is reclassified to % Sate band Use " district classification or until changed by voce of

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Buyer Date

 4/14/03  
Seller Date