

Kula Nani

KULA NANI ESTATES Subdivision Documents

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Section 1.
PUBLIC OFFERING STATEMENT
ON THE KULA NANI ESTATES

AMENDED PUBLIC OFFERING STATEMENT
ON THE
KULA NANI ESTATES

1. NAME AND ADDRESS OF SUBDIVIDER:

OH BAYASHI HAWAII CORPORATION
Pacific Tower, Suite 2680
1001 Bishop Street
Honolulu, Hawaii 96813

2. DESCRIPTION OF LAND:

The subdivision is located at Waiakoa, Kula, Maui. It consists of 38 lots containing an area of approximately 2 acres each. The lots are more particularly described in Exhibit "A", attached hereto and by reference made a part hereof.

3. OWNERSHIP OF LAND:

The land is owned by Ohbayashi Hawaii Corporation.

4. NATURE OF INTEREST IN LAND TO BE CONVEYED:

Upon full payment of the purchase price for the lot, Ohbayashi Hawaii Corporation will convey the fee simple title to said lot to the Purchaser.

5. TYPE OF INSTRUMENT USED FOR CONVEYANCE:

A Warranty Deed will be given to each purchaser upon full payment of the purchase price.

6. ZONING REGULATIONS:

The lots in the subdivision are zoned agricultural. The minimum lot size is 87,120 square feet, and the minimum building setbacks are 20 feet.

7. USE FOR WHICH PROPERTY OFFERED:

The lots are being sold for agricultural-residential use in compliance with the zoning of the property. Permitted uses are defined in Chapter 19.30 of the Maui County Code, and are characterized by the cultivation of crops, including but not limited to flowers, foliage, fruits, forage and timber; animal husbandry, including but not limited to livestock, poultry and bees; and accessory uses, including but not limited to dwellings. Additional information regarding administration of these requirements can be obtained from the County of Maui Department of Public Works, Land Use and Codes Division.

8. ENCUMBRANCES, EASEMENTS, LIENS, RESTRICTIONS:

ALL OF THE LOTS IN THE SUBDIVISION ARE SUBJECT TO THE DECLARATION OF RESTRICTIVE COVENANTS FOR KULA NANI ESTATES. IN ADDITION, VARIOUS LOTS IN THE SUBDIVISION ARE SUBJECT TO DRAINAGE AND ELECTRICAL TRANSFORMER EASEMENTS. There are no liens on any of the lots. Finally, various lots in the subdivision are subject to the easements and encumbrances more particularly described in Exhibit A attached hereto and by reference made a part hereof.

9. EXISTING TAXES, SPECIAL TAXES OR ASSESSMENTS:

Each of the lots will be subject to real property taxes. At the present time, Ohabayshi Hawaii Corporation is unaware of any special taxes or assessments existing on any of the lots in the subdivision.

10. ROADS:

The access road to the subdivision is Kekaulike Avenue, a state 2-lane highway. Ohabayshi Hawaii Corporation has constructed two streets within the subdivision and also installed poles and fixtures for the street lighting system. Both streets are 20 feet in width of asphaltic concrete. The streets and street lighting systems have been dedicated to and will be maintained by the County of Maui. The lighting system will be energized at the discretion of the County of Maui. It is the Seller's understanding that the current policy of the County of Maui Department of Public Works is to energize dedicated street lighting systems when one-half of the lots in a subdivision have occupied dwellings.

11. WATER SYSTEM:

The subdivision is serviced by a PRIVATE WATER SYSTEM composed of a pumping station, two storage tanks of 10,000 and 75,000 gallons capacity, respectively, and 1" or 1-1/4" lateral distribution pipelines to lot lines, which have been designed and constructed in accordance with County of Maui requirements. The water system has pumping, storage and distribution capacity that substantially exceeds projected domestic residential needs. HOWEVER, THE QUANTITY OF WATER AVAILABLE WILL DEPEND UPON THE AMOUNT DELIVERED TO THE PRIVATE SYSTEM BY THE COUNTY OF MAUI PUBLIC SYSTEM WHICH ON OCCASION HAS BEEN SUBJECT TO WATER SHORTAGES IN THE KULA AREA. ADDITIONALLY, ALTHOUGH THE LOTS ARE ZONED AND USE DESIGNATED FOR AGRICULTURAL PURPOSES, OHBAYASHI HAWAII CORPORATION CANNOT MAKE ANY REPRESENTATION OR WARRANTY THAT THE AVAILABILITY OF WATER, OR THE CAPACITY OF THE PUMPING STATION, WATER STORAGE TANKS OR DISTRIBUTION SYSTEM WILL BE SUFFICIENT FOR FULL-SCALE AGRICULTURAL IRRIGATION PURPOSES ON ALL LOTS AT ALL TIMES. A copy of the construction plans for the private water system prepared by Land Construction & Co., Inc. are available for review at the office of the Seller.

The costs of operating, maintaining and insuring the private water system will be borne by the Kula Nani Estates Community Association. The Kula Nani Estates Community Association will assess each of the lot owners a pro rata share of such costs as part of maintenance fees it will assess against each lot. In addition, each lot owner shall be periodically billed for the amount of water he had consumed in the previous billing period. Ohbayashi Hawaii Corporation and the Association reserve the right to dedicate the water system to the County of Maui, but are not obligated to do so.

12. ELEVATION OF THE LAND:

The subdivision is located at an elevation of between 3,600 to 4,100 feet above sea level.

13. SOIL CONDITION - DRAINAGE:

The soil in the subdivision is composed primarily of what is commonly called Kula loam of variable depths, which is generally well-drained. The subdivision is characterized by rocky outcrops, and steep grades and ravines which facilitate the downward drainage of water.

14. SEWAGE DISPOSAL FACILITIES:

There will be NO PUBLIC SEWER SYSTEM servicing the subdivision. Lot owners must therefore construct and maintain their own cesspools. The purchaser will be responsible for obtaining all necessary permits and approvals for the lot.

15. EXISTING AND PROPOSED IMPROVEMENTS:

The two streets within the subdivision, the street lighting system, and the private water system, including the water storage tanks and the water pumping station, are described in paragraphs 10 and 11 above. The Seller proposes to build and landscape on Lot 1 and donate to the Kula Nani Estates Community Association an entrance wall and sign to enhance the entry way into Kula Nani Estates.

16. RESPONSIBILITY FOR MAINTENANCE OF EXISTING IMPROVEMENTS:

The cost of the operation, maintenance and insurance of the streets and street lighting will be borne by the County of Maui.

The cost of operating, maintaining and insuring the private water system and all other common elements of the subdivision shall be borne by the Kula Nani Estates Community Association. Each lot owner will be assessed his pro rata share of the cost of operating, maintaining and insuring said private water system and other common elements by the Kula Nani Estates Community Association as part of the maintenance fees, as hereinafter described in paragraph 27, assessed against each lot.

17. ELECTRICITY, TELEPHONE, GAS:

Electricity and telephone service in the subdivision will be provided by the respective utility companies. Each Purchaser will bear the cost of his respective electricity and telephone bill. Gas service will not be provided to the subdivision, although lot purchasers may install their own private bottled gas system.

18. FIRE AND POLICE PROTECTION:

The nearest police station is located in Wailuku, which is located 20 miles away. The nearest fire station is located in Makawao, which is approximately 8 miles away.

19. PUBLIC TRANSPORTATION:

There is no public transportation to the subdivision. The closest airport is located in Kahului, which is 18 miles away.

20. SCHOOLS:

There are no plans to construct any schools within the subdivision. The nearest elementary school is located 1.5 miles away in Kula and is called the Kula Elementary School. The nearest high school is located 18 miles away in Kahului.

21. SHOPPING FACILITIES:

There are no plans to construct any shopping center in the subdivision. The closest shopping center is located 7 miles away in Pukalani.

22. TERMS OF SALE:

The lots will be either sold by cash or by way of an Agreement of Sale.

23. PROVISIONS OF INSTALLMENT CONTRACT OF SALE:

The primary terms of Agreements of Sale offered to purchasers will be as follows:

- a. Not less than 10% of the purchase price as a down payment.
- b. The interest on the principal balance remaining unpaid from time to time will be twelve percent (12%) per annum, simple interest, payable monthly.
- c. Monthly payments will also include a portion of principal based upon 25 year amortization, and a reserve for real property taxes.
- d. Purchaser shall have the right to prepay any portion of the purchase price at any time without penalty.

- e. The length of the Agreement of Sale will be 5 years, with the unpaid balance due in full at the end of the term.

THE MONTHLY AGREEMENT OF SALE PAYMENTS WILL CONSIST OF INTEREST, PARTIAL PRINCIPAL AMORTIZATION, REAL PROPERTY TAX RESERVE, AND COLLECTION ACCOUNT FEES.

24. The real property tax which will be assessed against each of the lots is estimated to be between approximately \$117.00 to \$580.00 per year per lot, based upon the 1983-1984 tax year assessments.

25. ESCROW OR TRUST AGREEMENT:

An escrow agreement has been entered into with Title Guaranty Escrow Services, Inc., to handle the escrow for the sale of the lots in the subdivision.

26. REPRESENTATIVE OR REAL ESTATE AGENT IN HAWAII:

Ohbayashi Hawaii Corporation has entered into a listing agreement with Chaney, Brooks & Company, a Hawaii limited partnership, for marketing the lots.

27. ESTIMATED MAINTENANCE FEE:

An initial non-refundable assessment of \$500.00 will be charged as a reserve for anticipated future repairs and replacement of common element facilities. The estimated periodic maintenance fee which will be assessed against each of the lots is estimated to be \$35.00 per month. In addition to said maintenance fee, each lot owner will also be assessed for the water he consumes, based upon County of Maui rates from time to time. Each lot has been individually metered. The current plans of the Kula Nani Estates Community Association are to bill assessment fees and water usage charges on a quarterly basis. However, the Association reserves the right to change the billing period to monthly or any other period it deems appropriate.

28. IMPORTANT NOTICES TO PURCHASERS:

PURCHASER IS HEREBY ADVISED THAT BY ACCEPTANCE OF A DEED CONVEYING TITLE TO A LOT, OR BY EXECUTING AN AGREEMENT OF SALE FOR THE PURCHASE OF A LOT, PURCHASER SHALL ACCEPT SUCH DEED OR AGREEMENT OF SALE UPON AND SUBJECT TO ALL PROVISIONS OF THE DECLARATION OF RESTRICTIVE COVENANTS FOR KULA NANI ESTATES, AND SHALL AUTOMATICALLY BECOME A MEMBER OF THE KULA NANI ESTATES COMMUNITY ASSOCIATION, AND SHALL PAY ANY MAINTENANCE ASSESSMENT OR ANY OTHER ASSESSMENT LEVIED AGAINST SAID LOT BY SAID COMMUNITY ASSOCIATION AS HEREIN DESCRIBED. BY SUCH ACCEPTANCE, PURCHASERS SHALL COVENANT, CONSENT AND AGREE TO AND WITH OHBAYASHI HAWAII CORPORATION AND THE GRANTEEES OR PURCHASERS OF THE OTHER LOTS IN KULA NANI ESTATES SUBDIVISION, TO KEEP, OBSERVE, COMPLY WITH, AND REFORM THE COVENANTS, CONDITIONS AND

PURCHASER IS HEREBY FURTHER ADVISED THAT OHBAYASHI HAWAII CORPORATION HAS FORMED THE KULA NANI ESTATES COMMUNITY ASSOCIATION FOR THE OPERATION OF THE COMMON ELEMENTS AND/OR AREAS OF THE KULA NANI ESTATES SUBDIVISION. THE ASSOCIATION WILL ASSESS EACH OF THE LOT OWNERS A PRO RATA SHARE OF THE COST OF MAINTAINING COMMON ELEMENTS AND/OR OTHER AREAS OF THE SUBDIVISION, AS MORE PARTICULARLY DETERMINED BY THE PERCENTAGE COMMON INTEREST ATTRIBUTED TO EACH LOT. THE COMMON EXPENSES WILL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING:

1. MAINTENANCE AND OPERATION OF THE PRIVATE WATER SYSTEM FOR THE KULA NANI ESTATES SUBDIVISION.
2. THE COLLECTION OF A RESERVE ACCOUNT ASSESSMENT BY THE KULA NANI ESTATES COMMUNITY ASSOCIATION FOR THE ANTICIPATED REPAIRS AND REPLACEMENT OF THE COMMON ELEMENT FACILITIES.
3. THE MAINTENANCE OF ANY OF THE OTHER COMMON ELEMENTS AND/OR AREAS OF THE KULA NANI ESTATES SUBDIVISION.
4. THE MANAGEMENT FEE CHARGED BY THE MANAGING AGENT FOR THE KULA NANI ESTATES SUBDIVISION.

IT IS THE SELLER'S UNDERSTANDING THAT THE CURRENT POLICY OF THE KULA POST OFFICE IS TO COMMENCE MAIL SERVICES TO RESIDENCES IN THE KULA AREA UPON WRITTEN REQUEST BY RESIDENTS. IT IS ALSO SELLER'S UNDERSTANDING THAT THE CURRENT POLICY OF THE COUNTY OF MAUI DEPARTMENT OF PUBLIC WORKS IS TO COMMENCE REFUSE COLLECTION UPON WRITTEN REQUEST BY RESIDENTS. PURCHASERS SHALL THEREFORE BE RESPONSIBLE FOR MAKING HIS OWN ARRANGEMENTS FOR MAIL SERVICE AND REFUSE COLLECTION.

PURCHASER IS HEREBY FURTHER ADVISED THAT LOTS WILL BE SOLD IN "AS IS" CONDITION. SELLER WILL NOT BE REQUIRED TO LANDSCAPE, CLEAR TREES FROM, GRADE, OR DO ANYTHING TO IMPROVE THE PRESENT CONDITION OF THE LOT AND PURCHASERS WILL BE REQUIRED TO ACCEPT ALL RISKS REGARDING ALL TREES AND OTHER CONDITIONS ON THE LOTS.

PURCHASER IS HEREBY FURTHER ADVISED THAT THE KULA NANI ESTATES COMMUNITY ASSOCIATION HAS ENTERED INTO A "WATER USAGE AGREEMENT" WITH YOSHIO INOUE FARM, INC., A HAWAII CORPORATION, AND YOSHIO INOUE AND MATSUE INOUE, HUSBAND AND WIFE, HEREINAFTER CALLED THE "INOUEYES" PROVIDING FOR THE INOUEYES TO CONNECT INTO AND USE WATER FROM THE KULA NANI ESTATES PRIVATE WATER SYSTEM. A COPY OF SAID WATER USAGE AGREEMENT HAS BEEN DELIVERED TO PURCHASER AND IS ON FILE AT THE OFFICE OF SELLER AND ITS SALES AGENT. PURCHASERS WILL BE REQUIRED TO ACCEPT THE TERMS OF SAID WATER USAGE AGREEMENT.

PURCHASER IS HEREBY FURTHER ADVISED THAT THE STREET LIGHTING SYSTEM FOR THE KULA NANI ESTATES WILL NOT BE ACTIVATED UNTIL IT HAS BEEN ENERGIZED BY THE COUNTY OF MAUI. THE COUNTY OF MAUI WILL ENERGIZE THE STREET

PURCHASER IS HEREBY FURTHER ADVISED THAT AUWAIS OR DRY STREAM BEDS EXIST THROUGHOUT THE SUBDIVISION AND THAT EACH OF THE LOTS WITHIN THE SUBDIVISION ARE SUBJECT TO THE FREE FLOW OF WATER. PURCHASER IS ADVISED THAT HE SHOULD NOT BUILD ANY STRUCTURE OVER OR NEAR SAID AUWAIS OR DRY STREAM BEDS. PURCHASERS WILL BE REQUIRED TO AGREE NOT TO BUILD ANY STRUCTURE OVER OR NEAR SAID AUWAIS OR DRY STREAM BEDS.

EACH PURCHASER WILL BE REQUIRED TO AGREE THAT IN THE EVENT PURCHASER CONSTRUCTS A DRIVEWAY OVER SAID AUWAIS OR DRY STREAM BEDS, IT WILL BE HIS SOLE AND SEPARATE RESPONSIBILITY TO CONSTRUCT THE DRIVEWAY SUCH THAT THE FREE AND NATURAL FLOW OF WATER IN THE AUWAIS OR DRY STREAM BEDS IS NOT DIVERTED FROM ITS NATURAL COURSE OR INTENSIFIED. IN THE EVENT A PURCHASER DIVERTS THE FREE AND NATURAL FLOW OF WATER IN THE AUWAIS OR DRY STREAM BEDS OR INTENSIFIES THE FLOW IN ANY WAY, THE PURCHASER WILL BE HELD STRICTLY LIABLE FOR ANY INJURIES OR DAMAGES RESULTING FROM SUCH DIVERSION OR INTENSIFICATION, AND THE PURCHASER WILL BE OBLIGATED TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY LIABILITY RESULTING FROM SUCH DIVERSION OR INTENSIFICATION.

EACH PURCHASER WILL BE OBLIGATED TO AGREE, UPON EXECUTING AN AGREEMENT OF SALE OR ACCEPTING A DEED, TO ASSUME THE RISK OF ANY DAMAGE ARISING FROM THE FLOODING OF SAID AUWAIS OR DRY STREAM BEDS AND FURTHER TO RELEASE, INDEMNIFY AND SAVE SELLER HARMLESS FROM ANY LIABILITY ARISING FROM SUCH FLOODING.

THIS SUBDIVISION HAS BEEN REGISTERED WITH THE DIRECTOR OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, STATE OF HAWAII, ON OCTOBER 30, 1980, AND AMENDED ON DECEMBER 9, 1983. REGISTRATION DOES NOT INDICATE APPROVAL OR DISAPPROVAL OF THE SUBDIVISION.

OHBAYASHI HAWAII CORPORATION,
A Hawaii Corporation

By


TAKEKI OKAMOTO

Its Vice President

THIS AMENDED PUBLIC OFFERING STATEMENT MUST BE GIVEN TO EACH PURCHASER AT THE TIME OF SALE AND A RECEIPT THEREOF MUST BE TAKEN. PURCHASER MUST ALSO BE GIVEN AMPLE OPPORTUNITY TO READ THE STATEMENT. SALE OF SUBDIVISION IS GOVERNED BY ACT 233, SLH 1967, AS AMENDED.

EXHIBIT A

<u>Kula Nani Estates Lot No.</u>	<u>Tax Map Key No.</u>	<u>Area</u>	<u>File Plan 1612 Lot No.</u>	<u>Land Court Map 2, Appl. No. 643 Lot No.</u>
1	2-2-010-002	90,447	1	-
2	2-2-010-024	87,191	2	-
3	2-2-010-025	87,897	3	-
4	2-2-010-026	87,141	4	-
5	2-2-010-027	87,131	5	-
6	2-2-010-028	87,171	6	and 12
7	2-2-010-029	87,220	7	and 11
8	2-2-010-030	87,600	8	and 10
9	2-2-010-031	87,536	9	and 9
10	2-2-010-032	87,600	10	-
11	2-2-010-033	89,426	11	-
12	2-2-010-034	89,730	12	-
13	2-2-010-035	89,926	13	-
14	2-2-010-036	87,996	14	-
15	2-2-010-037	87,758	15	-
16	2-2-010-038	88,077	16	and 8
17	2-2-010-039	87,716	17	and 7
18	2-2-010-060	95,156	-	6
19	2-2-010-059	94,935	-	5
20	2-2-010-058	91,215	-	4
21	2-2-010-057	88,549	-	3
22	2-2-010-056	93,153	-	2
23	2-2-010-040	90,614	18	and 1
24	2-2-010-041	103,326	19	-
25	2-2-010-042	91,077	20	-
26	2-2-010-043	89,471	21	-
27	2-2-010-044	90,394	22	-
28	2-2-010-045	87,151	23	-
29	2-2-010-046	87,226	24	-
30	2-2-010-047	87,877	25	-
31	2-2-010-048	88,483	26	-
32	2-2-010-049	87,506	27	-
33	2-2-010-050	91,899	28	-
34	2-2-010-051	91,879	29	-
35	2-2-010-052	99,310	30	-
36	2-2-010-053	88,128	31	-
37	2-2-010-054	88,645	32	-
38	2-2-010-055	95,178	33-A	-

All of the aforesaid lots and encumbrances thereon are more particularly described on the following continuation of Exhibit A.

EXHIBIT A CONTINUED

The aforesaid lots and the encumbrances thereon are more particularly described as follows:

FIRST: All of those certain parcels of land situate at Waiakoa, District of Kula, Island and County of Maui, State of Hawaii, described as follows:

LOTS	1,	area	21,497	square feet,
	2,	area	93,153	square feet,
	3,	area	88,549	square feet,
	4,	area	91,215	square feet,
	5,	area	94,935	square feet,
	6,	area	95,156	square feet,
	7,	area	84,661	square feet,
	8,	area	8,730	square feet,
	9,	area	1,305	square feet,
	10,	area	50,338	square feet,
	11,	area	68,636	square feet,
	12,	area	17,058	square feet,

as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 643 of Antone Soares Medeiros et al.;

BEING the same premises described in Transfer Certificate of Title No. 159,694 issued to Ohbayashi Hawaii Corporation, a Hawaii corporation.

SECOND: All of those certain parcels of land situate at Waiakoa, District of Makawao, Island and County of Maui, State of Hawaii, of the "Kula Nani Estates Subdivision", as shown on File Plan Number 1612, filed in the Bureau of Conveyances of the State of Hawaii, described as follows:

<u>LOT</u>	<u>AREA</u>
1,	90,447 square feet,
2,	87,191 square feet,
3,	87,897 square feet,
4,	87,141 square feet,
5,	87,131 square feet,
6,	70,113 square feet,
7,	18,584 square feet,
8,	37,262 square feet,
9,	86,231 square feet,
10,	87,600 square feet,
11,	89,426 square feet,
12,	89,730 square feet,
13,	89,926 square feet,
14,	87,996 square feet,
15,	87,758 square feet,
16,	79,347 square feet,

<u>LOT</u>	<u>AREA</u>
17,	3,055 square feet,
18,	69,117 square feet,
19,	103,326 square feet,
20,	91,077 square feet,
21,	89,471 square feet,
22,	90,394 square feet,
23,	87,151 square feet,
24,	87,226 square feet,
25,	87,877 square feet,
26,	88,483 square feet,
27,	87,506 square feet,
28,	91,899 square feet,
29,	91,879 square feet,
30,	99,310 square feet,
31,	88,128 square feet,
32,	88,645 square feet.

THIRD: LOT 33-A of the Kula Nani - Murashige Consolidation, containing an area of 2.185 acres, more or less, more particularly described in Exhibit "B" attached hereto.

BEING the premises conveyed to Ohbayashi Hawaii Corporation, a Hawaii corporation, by Donald Hayashi Tokunaga, husband of Alice Yaeko Tokunaga, Frank Munoz, husband of Jessie Rego Munoz and Tin Fook Tom, husband of Rose Chock Tom, by Deed dated June 14, 1973, recorded in said Bureau of Conveyances in Liber 9237, Page 129.

SUBJECT, HOWEVER, to the following:

1. As To Parcel First Only:

A. As to Lot 3:

(1) Designation of easement "1" (6 feet wide) situate at the southwest corner of Lot 3, as shown on Map 2, as set forth by Land Court Order No. 53607, filed on June 28, 1979.

(2) Grant in favor of Maui Electric Company, Limited, and Hawaiian Electric Company, dated August 4, 1980, filed as Land Court Document No. 1029062 and recorded in Liber 14952 at Page 757; granting a perpetual right and easement to build, construct, etc., pole and wire lines and underground power lines, over and across Easement "1".

B. As to Lot 8:

(1) Designation of easement "2" (6 feet wide) situate at the south (front) corner of Lot 8, as shown on Map 2, as set forth by Land Court Order No. 53607, filed on June 28, 1979.

(2) Grant in favor of Maui Electric Company, Limited, and Hawaiian Electric Company, dated August 4, 1980, filed as Land Court Document No. 1029062 and recorded in Liber 14952 at Page 757; granting a perpetual right and easement to build, construct, etc., pole and wire lines and underground power lines, over and across Easement "2".

C. As to Lot 11 - Reservation by Ohbayashi Hawaii Corporation of easement 12 feet wide over and across said Lot 11, to be granted in favor of Lot 10 of said Map 2 and in favor of Lot 8 of said File Plan 1612, for pedestrian and vehicular ingress and egress to and from said Lot 10 and said Lot 8.

D. A grant in favor of Maui Electric Company, Limited and Hawaii Telephone Company, dated August 4, 1980, filed in said Office of the Assistant Registrar of as Land Court Document No. 1029062 and also recorded in said Bureau of Conveyances in Liber 14952, Page 757; granting a perpetual right and easement to build, construct, etc., pole and wire lines and underground power lines over and across said easements "1" and "2", and roadway Lot 14, besides other easements.

2. As to Parcel Second Only:

A. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

B. As to Lot 1:

(1) A grant in favor of Maui Electric Company, Limited, dated October 4, 1926, recorded in said Bureau of Conveyances in Liber 1194, Page 140; granting pole and wireline easement route "B".

"B beginning at a point on the northerly boundary of Grant No. 3882 Waiakoa Homestead, Kula, Maui, State of Hawaii, approximately where the Homestead Road enters said grant and running in a southerly direction to a point on the boundary common to said Grant No. 3882 and L.C.A. 8462B about 200 feet east of the north westerly corner of said L.C.A. 8462B; to cut and keep cut all trees near and adjoining said lines that interfere with the same, and at all times to enter upon his land for repairing and renewing said lines and keeping the same free from obstruction. Said company shall be liable for any damages to growing crops and fences caused by repairing lines."

(2) Restricted abutters' rights along the westerly boundary of Lot 1 as shown on File Plan No. 1612.

(3) Easement "24" for water tank site and utility purposes situate at the east corner of Lot 1, as shown on said File Plan.

C. As to Lot 2 - Easement "1" (6 feet wide) for electrical transformer purposes situate at the north corner of Lot 2, as shown on said File Plan.

D. As to Lot 3:

(1) Easement "8" (5 feet wide) for drainage purposes situate along the eastern portion of Lot 3, as shown on said File Plan.

(2) Easement "9" (15 feet wide) for drainage purposes situate along the southeastern portion of Lot 3, as shown on said File Plan.

(3) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over said Easements "8" and "9".

E. As to Lot 4 - Easement "2" (6 feet wide) for electrical transformer purposes situate at the northeast corner of Lot 4, as shown on said File Plan.

F. As to Lot 7

(1) Easement "3" (6 feet wide) for electrical transformer purposes situate at the north (front) corner of Lot 7, as shown on said File Plan.

(2) Grant in favor of Maui Electric Company, Limited and Hawaiian Telephone Company, dated August 4, 1980, filed as Land Court Document No. 9029062, recorded in Liber 14952 at Page 757; granting a perpetual right and easement to build, construct, etc., pole and wire lines and underground power lines over and across Easement "3".

(3) Reservation by Ohbayashi Hawaii Corporation of easement 12 feet wide over and across said Lot 7, to be granted in favor of Lot 8 of File Plan 1612 and in favor of Lot 10 of said Map 2 for pedestrian and vehicular ingress and egress to and from said Lot 8 and said Lot 10.

G. As to Lot 10:

(1) Easement "10" for drainage purposes situate at the north (front) corner of Lot 10, as shown on said File Plan.

(2) Easement "27" (6 feet wide) for electrical transformer purposes situate at the west (front) corner of Lot 10, as shown on said File Plan.

(3) Reservation by Ohbayashi Hawaii Corporation of easement 12 feet wide over and across said Lot 10 to be granted in favor of Lot 9 of File Plan 1612 and in favor of Lot 9 of said Map 2 for pedestrian and vehicular ingress and egress to and

(4) Grant in favor of the County of Maui dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over said Easement "10".

(5) Grant in favor of Maui Electric Company, Limited, dated February 18, 1981, recorded in Liber 15446 at Page 30; granting an easement for pole and wire lines and underground power lines over said Easement "27".

H. As to Lot 12 - Easement "4" (6 feet wide) for electrical transformer purposes situate at the north (front) corner of Lot 12, as shown on said File Plan.

I. As to Lot 13:

(1) Easement "11" for drainage purposes situate along the western portion of Lot 13, as shown on said File Plan.

(2) Easement "12" (15 feet wide) for drainage purposes situate at the south corner of Lot 13, as shown on said File Plan.

(3) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403, granting an easement for storm drainage system over said Easements "11" and "12".

J. As to Lot 14 - Easement "13" (15 feet wide) for drainage purposes situate along the eastern portion of Lot 14, as shown on said File Plan.

K. As to Lot 16:

(1) Easement "14" (15 feet wide) for drainage purposes situate along the southern portion of Lot 16, as shown on said File Plan.

(2) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over Easement "14".

L. As to Lot 18:

(1) Easement "15" (15 feet wide) for drainage purposes situate along the northern (front) portion of Lot 18, as shown on said File Plan.

(2) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over Easement "15".

M. As to Lot 19:

(1) Easement "25" for water tank site and utility purposes situate along the northerly boundary of Lot 19, as shown on said File Plan.

(2) Grant in favor of Kula Nani Estates Community Association, dated April 20, 1981, recorded in Liber 15493 at Page 293; granting an easement over Easement "25".

N. As to Lot 20:

(1) Easement "5" (6 feet wide) for electrical transformer purposes situate at the west (front) corner of Lot 20, as shown on said File Plan.

(2) Easement "26" (15 feet wide) for drainage and waterline purposes situate along the southern portion of Lot 20, as shown on said File Plan.

(3) Grant in favor of Kula Nani Estates Community Association, dated April 20, 1981, recorded in Liber 15493 at Page 301; granting an easement over Easement "26".

O. As to Lot 21:

(1) Easement "6" (6 feet wide) for electrical transformer purposes situate along the northern portion of Lot 21, as shown on said File Plan.

(2) Easement "16" (15 feet wide) for drainage purposes situate along the western portion of Lot 21, as shown on said File Plan.

(3) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over Easement "16".

P. As to Lot 22:

(1) Easement "17" (15 feet wide) for drainage purposes situate at the west (front) corner of Lot 22, as shown on said File Plan.

(2) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over Easement "17".

Q. As to Lot 24:

(1) Easement "18" for drainage purposes situate at the northwest corner of Lot 24, as shown on said File Plan.

(2) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system

R. As to Lot 25 - Easement "7" (6 feet wide) for electrical transformer purposes situate at the west (front) corner of Lot 25, as shown on said File Plan.

S. As to Lot 27:

(1) Easement "19" for drainage purposes situate at the south (front) corner of Lot 27, as shown on said File Plan.

(2) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over Easement "19".

T. As to Lot 29:

(1) Easement "20" (15 feet wide) for drainage purposes situate along the southern portion of Lot 29, as shown on said File Plan.

(2) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over Easement "20".

U. As to Lot 31:

(1) Easement "21" (15 feet wide) for drainage purposes situate along the southern portion of Lot 31, as shown on said File Plan.

(2) Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over Easement "21".

V. A grant in favor of Maui Electric Company, Limited and Hawaiian Telephone Company, dated August 4, 1980, filed in said Office of the Assistant Registrar as Land Court Document No. 1029062 and also recorded in said Bureau of Conveyances in Liber 14952, Page 757; granting a perpetual right and easement to build, construct, etc., pole and wire lines and underground power lines over and across said Easements "24" (Lot 1), "1" (Lot 2), "2" (Lot 4), "3" (Lot 7), "4" (Lot 12), "5" and "26" (Lot 20), "6" (Lot 21), and "7" (Lot 25).

3. As To Parcel Third Only:

A. Easement "22" (15 feet wide) for drainage purposes situate along the western portion of Lot 33, as shown on said File Plan.

B. Easement "23" (23 feet wide) for drainage purposes situate along the western portion of Lot 33, as shown on said File Plan.

C. Grant in favor of the County of Maui, dated April 1, 1981, recorded in Liber 16182 at Page 403; granting an easement for storm drainage system over Easements "22" and "23".

4. That certain Agreement dated March 21, 1979, recorded in said Bureau of Conveyances in Liber 13588, Page 189, made by and between the County of Maui, Department of Water Supply, as "County", and Ohbayashi Hawaii Corporation, a Hawaii corporation, as "Subdivider".

5. Declaration of Restrictive Covenants for Kula Nani Estates dated October 15, 1980, filed as Document No. 1037334 and recorded in Liber 15080 at Page 617.

END OF EXHIBIT A

EXHIBIT B

Description of Lot 33-A
Kula Nani - Murashige Consolidation

ALL of that certain parcel of land being a portion of Lot 33 of Kula Nani Estates Subdivision (File Plan 1612) and portions of Royal Patent 7884, Land Commission Award 8462, Apana 3 to Kawaalau, Royal Patent 7883, Land Commission Award 10,482, Apana 3, Part 2 to Naha, Grant 3867 to Antone De Medirsh Pirsh, Royal Patent 7883, Land Commission Award 10,482, Apana 4, Part 2 to Naha Grant 3582 to Antone De Medirsh Pirsh and Grant 1207, Apana 1 to Napela situate at Waiakoa, Kula, Maui, Hawaii.

BEGINNING at a pipe on the westerly corner of this parcel of land, being also the southeasterly corner of Lot 4-A, on the northerly side of Wahelani Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puu Pane" being:

20,349.48 feet South
1,832.01 feet East

and running by azimuths measured clockwise from true south:

1. 237° 00' 40.78 feet along Lot 4-A and along remainders of Lot 33 of Kula Nani Estates Subdivision (File Plan 1612), R.P. 7884, L.C. Aw. 8462, Ap. 3 to Kawaalau and R.P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha to a pipe;
2. 342° 50' 66.00 feet along Grant 3869 to Jose DeRego to a pipe;
3. 296° 30' 339.93 feet along same to a pipe;
4. 297° 52' 57" 132.58 feet along Lot 30 of Kula Nani Estates Subdivision (File Plan 1612) and along remainder of Grant 3867 to Antone De Medirsh Prish to a pipe;
5. 41° 00' 313.22 feet along Lot 31 of Kula Nani Estates Subdivision (File Plan 1612) and along remainders of Grant 3867 to Antone De. Medirsh Pirsh, R.P. 7883, L.C. Aw. 10482, Ap. 4, Part 2 to Naha and Grant 3582 to Antone De Medirsh Pirsh to a pipe:

- | | | | |
|----|----------|--------|--|
| 6. | 90° 00' | 131.53 | feet along Lot 32 of Kula Nani Estates Subdivision (File Plan 1612) and along remainders of Grant 3582 to Antone De Medirsh Pirsh and Grant 1207, Ap. 1 to Napela to a pipe; |
| 7. | 180° 00' | 183.53 | feet along Wahelani Street and along remainders of Grant 1207, Ap. 1 to Napela and R. P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha to a pipe;

thence along Wahelani Street, along remainder of R.P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha and along an arc of a curve to the left with a radius of 320.00 feet, the chord azimuth and distance being; |
| 8. | 163° 30' | 181.77 | feet to a pipe; |
| 9. | 147° 00' | 158.71 | feet along Wahelani Street and along remainders of R.P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha and R.P. 7884, L.C. aw. 8462 Ap. 3 to Kawaalau to the point of beginning and containing an area of 2.185 acres. |

END OF EXHIBIT B

Section 2.
DECLARATION OF RESTRICTIVE COVENANTS
FOR KULA NANI ESTATES

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

KASHIWA, IWAI, MOTOOKA & GOTO
521-4943

RETURN BY: MAIL () PICKUP (X)

We hereby certify that this is a true copy of the original
filed as Land Court Document No. 1037334 and/or
recorded in Liber 15080 on Page 617
on OCT 21 1980 at 11:22 o'clock A.M.

TITLE GUARANTY OF HAWAII, INCORPORATED

By A. Franco

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

DECLARATION OF RESTRICTIVE COVENANTS
FOR KULA NANI ESTATES

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, OHBAYASHI HAWAII CORPORATION, a Hawaii corporation, whose principal place of business and post office address is 2680 Pacific Trade Center, 190 South King Street, Honolulu, Hawaii, is the owner in fee simple of that certain land situated in Waiakoa, Kula, County of Maui, State of Hawaii, known as the Kula Nani Estates Subdivision, being Lots 1 to 12, inclusive, as shown on Map 2 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 643 and described in Transfer Certificate of Title No. 159,694 and Lots 1 to 32 as shown on File Plan No. 1612, held in the Bureau of Conveyances of the State of Hawaii and Lot 33-A as shown on the Kula Nani-Murashige Consolidation, recorded in said Bureau of Conveyances and more particularly described in Exhibit "A", attached hereto and by reference made a part hereof; and

WHEREAS, said OHBAYASHI HAWAII CORPORATION, desires to impose restrictive covenants on said Lots 1 to 12, inclusive, as shown on said Map 2 and said Lots 1 to 32, inclusive, as shown on said File Plan No. 1612, and said

sound and proper use of said land for agricultural-residential purposes; and

WHEREAS, said OHBAYASHI HAWAII CORPORATION, as owner of said Lots 1 to 12, inclusive, as shown on said Map 2 and said Lots 1 to 32, inclusive, as shown on said File Plan No. 1612 and said Lot 33-A will form the Kula Nani Estates Community Association, hereinafter called the "Association", which shall take and hold title of and operate the private water system and any other common elements of the Kula Nani Estates Subdivision, and take possession and maintain the easement areas granted to said Association in said Kula Nani Estates, and enforce the restrictive covenants hereinafter contained;

NOW, THEREFORE, said OHBAYASHI HAWAII CORPORATION, does hereby declare that said Lots 1 to 12, inclusive, as shown on said Map 2 of Land Court Application No. 643 and Lots 1 to 32, inclusive, as shown on said File Plan No. 1612 and said Lot 33-A, more particularly described in said Exhibit "A", and each and every one of them shall be subject to the following restrictive covenants, which shall run with the land and be binding on and inure to the benefit of the present, as well as subsequent owners and purchasers of said parcels of lands; PROVIDED, HOWEVER, that such restrictive covenants shall be applicable only to subdivided lots designated for use as agricultural-residential lots, and shall not be applicable to roadway lots or areas zoned or designated other than for agricultural-residential purposes:

1. The premises shall be used for agricultural-residential purposes only.

2. Any dwelling to be erected on a lot shall

contain a two-car garage or carport and not less than 1,200 square feet of enclosed living area. All buildings shall be built with entirely new materials. No used or second-hand lumber shall be used for or incorporated in any improvements to be erected or placed on any of the granted premises, nor shall any "quonset hut" type building be erected, placed, or maintained on any lot. No building roof shall be constructed of corrugated iron, corrugated aluminum or similar corrugated metal or plastic material, or have an exterior surface that is "highly reflective."

3. The construction of any building upon any lot shall be substantially completed within twelve (12) months after the visible commencement of such construction.

4. No structure or vehicle of a temporary nature, such as a house trailer, mobile home, tent, shack, garage, or barn, shall be used on any lot at any time as a residence, whether it be temporary or permanent.

5. No unlawful activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

6. Each grantee or purchaser of a lot, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereto, whether from the owners above named or subsequent owner of such lot, shall accept such deed or contract upon and subject to all provisions of this Declaration, and shall automatically become a member of said Association, and shall pay any maintenance assessment or any other assessment levied against said lot by said Community Association. By such acceptance, each such

representatives, successors and assigns, covenant, consent and agree to and with said OHBAYASHI HAWAII CORPORATION, the grantee or purchaser of the other lots in said Kula Nani Estates Subdivision, and said Association, to keep, observe, comply with, and perform the covenants, conditions, and restrictions contained in this Declaration and said Association Charter, By-Laws, and Restrictions.

7. No structures shall be constructed between any applicable building setback area and the boundary of the lot, provided that walks, fences, walls, driveways and garbage receptacle enclosures may be so constructed if not in violation of any other restriction of this Declaration.

8. Each lot is subject to the free flowage of water. No structures shall be constructed on, over, or near any auwais or dry stream beds located on said lot, provided that walks or driveways may be so constructed if said construction does not divert or intensify said free flowage of waters in said auwais or dry stream beds.

9. Each grantee or purchaser of a lot, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereto, whether from the owners above named or subsequent owner of such lot, shall for himself, his heirs, personal representatives, successors and assigns, assume the risk of any and all damage arising from the flooding of said auwais or dry stream beds and agrees to release and indemnify the grantor or seller of said lot from any liability or damage arising from said flooding.

10. For any breach or violation or threatened

violation of any of the restrictive covenants herein contained to be observed or performed, the owner(s) or purchaser(s) of any other lot(s) subject to these covenants or said Association shall have a remedy against the delinquent or offending party or parties by action for damages, suit for injunction, mandatory or restraining, or any other appropriate remedy, and the adoption or pursuit of any one remedy for, or the waiver of acquiescence in, any such breach shall not preclude or prevent the adoption or pursuit of any other remedy thereafter for the same breach or failure or for any other prior or subsequent breach or failure. In the event that legal proceedings are brought for the breach or failure in the observance of any of the said restrictive covenants, all expenses and costs, including reasonable attorney's fees shall be charged against the owner(s) or purchaser(s) of any of said lot(s) who have violated the aforesaid restrictive covenants.

11. The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other covenants which shall remain in full force and effect.

12. Each and all of the foregoing restrictions and covenants shall run with the land and shall be binding on all parties and all persons claiming under them and shall continue and remain in full force for twenty-five (25) years from the date hereof, after which period said covenants shall be automatically extended indefinitely unless and until an agreement shall have been signed by seventy-five percent (75%) of the then owners of the lots agreeing to

amend said covenants in whole or in part or to terminate same.

13. Each of the lots shall have appurtenant thereto an undivided interest (herein called the "common interest") in all of the common elements of the Kula Nani Estates for all purposes, excluding voting, as follows:

<u>Lot</u>	<u>Percent Common Interest</u>
(1) Lot 1 as shown on File Plan 1612	2.63%
(2) Lot 2 as shown on File Plan 1612	2.63%
(3) Lot 3 as shown on File Plan 1612	2.63%
(4) Lot 4 as shown on File Plan 1612	2.63%
(5) Lot 5 as shown on File Plan 1612	2.63%
(6) Lot 6 as shown on File Plan 1612 and Lot 12 as shown on Land Court Map 2 of Land Court Application 643	2.63%
(7) Lot 7 as shown on File Plan 1612 and Lot 11 as shown on said Land Court Map 2	2.63%
(8) Lot 8 as shown on File Plan 1612 and Lot 10 as shown on Land Court Map 2	2.63%
(9) Lot 9 as shown on File Plan 1612 and Lot 10 as shown on Land Court Map 2	2.63%
(10) Lot 10 as shown on File Plan 1612	2.63%
(11) Lot 11 as shown on File Plan 1612	2.63%
(12) Lot 12 as shown on File Plan 1612	2.63%
(13) Lot 13 as shown on File Plan 1612	2.63%
(14) Lot 14 as shown on File Plan 1612	2.63%
(15) Lot 15 as shown on File Plan 1612	2.63%
(16) Lot 16 as shown on File Plan 1612 and Lot 8 as shown on Land Court Map 2	2.63%
(17) Lot 17 as shown on File Plan 1612 and Lot 7 as shown on Land Court Map 2	2.63%

<u>Lot</u>	<u>Percent Common Interest</u>
(18) Lot 6 as shown on Land Court Map 2	2.63%
(19) Lot 5 as shown on Land Court Map 2	2.63%
(20) Lot 4 as shown on Land Court Map 2	2.63%
(21) Lot 3 as shown on Land Court Map 2	2.63%
(22) Lot 2 as shown on Land Court Map 2	2.63%
(23) Lot 18 as shown on File Plan 1612 and Lot 1 as shown on Land Court Map 2	2.63%
(24) Lot 19 as shown on File Plan 1612	2.63%
(25) Lot 20 as shown on File Plan 1612	2.63%
(26) Lot 21 as shown on File Plan 1612	2.63%
(27) Lot 22 as shown on File Plan 1612	2.63%
(28) Lot 23 as shown on File Plan 1612	2.63%
(29) Lot 24 as shown on File Plan 1612	2.63%
(30) Lot 25 as shown on File Plan 1612	2.63%
(31) Lot 26 as shown on File Plan 1612	2.63%
(32) Lot 27 as shown on File Plan 1612	2.63%
(33) Lot 28 as shown on File Plan 1612	2.63%
(34) Lot 29 as shown on File Plan 1612	2.63%
(35) Lot 30 as shown on File Plan 1612	2.63%
(36) Lot 31 as shown on File Plan 1612	2.63%
(37) Lot 32 as shown on File Plan 1612	2.69%
(38) Lot 33-A as more particularly described in said Exhibit "A"	2.63%

The foregoing common interest shall run with the land.

IN WITNESS WHEREOF, OHBAYASHI HAWAII CORPORATION
has hereunto set its hand this 15th day of October,
19 80.

OHBAYASHI HAWAII CORPORATION,
a Hawaii corporation

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 15th day of October, 1980,
before me personally appeared Takeki Okamoto,
to me known, who, being by me duly sworn, did say that he
is the Vice President of OHBAYASHI HAWAII CORPORATION,
a Hawaii corporation; that the seal affixed to the foregoing
instrument is the corporate seal of said corporation; that
said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors, and said
Takeki Okamoto acknowledged said instrument to be
the free act and deed of said corporation.

Arthur K. Gots
Notary Public, State of Hawaii

My commission expires: 08/27/82

EXHIBIT "A"

Description of Lot 33-A
Kula Nani - Murashige Consolidation

ALL of that certain parcel of land being a portion of Lot 33 of Kula Nani Estates Subdivision (File Plan 1612) and portions of Royal Patent 7884, Land Commission Award 8462, Apana 3 to Kawaalau, Royal Patent 7883, Land Commission Award 10,482, Apana 3, Part 2 to Naha, Grant 3867 to Antone De Medirsh Pirsh, Royal Patent 7883, Land Commission Award 10,482, Apana 4, Part 2 to Naha, Grant 3582 to Antone De Medirsh Pirsh and Grant 1207, Apana 1 to Napela situate Waiakoa, Kula, Maui, Hawaii.

BEGINNING at a pipe on the westerly corner of this parcel of land, being also the southeasterly corner of Lot 4-A, on the northerly side of Wahelani Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puu Pane" being:

20,349.48 feet South

1,832.01 feet East

and running by azimuths measured clockwise from true south:

1. 237° 00' 40.78 feet along Lot 4-A and along remainders of Lot 33 of Kula Nani Estates Subdivision (File Plan 1612), R.P. 7884, L.C Aw. 8462, Ap. 3 to Kawaalau and R.P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha to a pipe;
2. 342° 50' 66.00 feet along Grant 3869 to Jose DeRego to a pipe;
3. 296° 30' 339.93 feet along same to a pipe;
4. 297° 52' 57" 132.58 feet along Lot 30 of Kula Nani Estates Subdivision (File Plan 1612) and along remainder of Grant 3867 to Antone De Medirsh Pirsh to a

5. 41° 00' 313.22 feet along Lot 31 of Kula Nani Estates Subdivision (File Plan 1612) and along remainders of Grant 3867 to Antone De Medirsh Pirsh, R.P. 7883, L.C. Aw. 10,482, Ap. 4, Part 2 to Naha and Grant 3582 to Antone De Medirsh Pirsh to a pipe;
6. 90° 00' 131.53 feet along Lot 32 of Kula Nani Estates Subdivision (File Plan 1612) and along remainders of Grant 3582 to Antone De Medirsh Pirsh and Grant 1207, Ap. 1 to Napela to a pipe;
7. 180° 00' 183.53 feet along Wahelani Street and along remainders of Grant 1207, Ap. 1 to Napela and R.P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha to a pipe;
- thence along Wahelani Street, along remainder of R.P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha and along an arc of a curve to the left with a radius of 320.00 feet, the chord azimuth and distance being:
8. 163° 30' 181.77 feet to a pipe;
9. 147° 00' 158.71 feet along Wahelani Street and along remainders of R.P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha and R.P. 7884, L.C. Aw. 8462, Ap. 3 to Kawaalau to the point of beginning and containing an area of 2.185 Acres.

SUBJECT to two (2) easements for Drainage Purposes, as shown on Kula Nani Estates Subdivision Map (File Plan 1612), more particularly described as follows: Easement 22 and Easement 23.

Section 3.
SUBDIVISION ESCROW AGREEMENT

SUBDIVISION ESCROW AGREEMENT

THIS AGREEMENT, made this 15th day of October, 1980, by and between TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, whose principal place of business and post office address is 235 Queen Street, Third Floor, City and County of Honolulu, State of Hawaii, hereinafter called "Escrow", and OHBAYASHI HAWAII CORPORATION, a Hawaii corporation, whose principal place of business and post office address is Suite 2680, Pacific Trade Center, 190 South King Street, City and County of Honolulu, State of Hawaii 96813, hereinafter called "Developer",

W I T N E S S E T H :

WHEREAS, Developer proposes to develop a residential subdivision known as "KULA NANI ESTATES", consisting of thirty-eight (38) fee simple lots on those certain parcels of land described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Developer proposes to sell fee simple lots within the subdivision pursuant to sales contracts, the terms of which will provide for payments on account of the purchase price to be paid to Escrow.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. As and when Developer shall enter into a sales contract for the sale of a lot in said project, Developer shall require the payments due thereunder to be made to Escrow and shall deliver an executed copy of said sales contract to Escrow. Developer shall also pay over to Escrow any monies or checks received by Developer in connec-

2. Escrow shall receive and hold in escrow and disburse as herein set forth (a) payments received by it under the sales contracts; (b) sums received hereunder from Developer; and (c) sums received from any other source with respect to said project.

3. Escrow shall retain in escrow all of the amounts received from each purchaser until such time as the sale to such purchaser shall have been closed in accordance with the terms and conditions of the contract between such purchaser and the Developer.

4. Notwithstanding any provision to the contrary, a purchaser shall be entitled to a refund of his funds, and Escrow shall pay said funds to said purchaser, without interest, in the event Developer shall fail to perform its obligations under the contract of sale with such purchaser. Upon refund of said funds to purchaser, Escrow shall return to Developer such purchaser's sales contract and any deed or agreement of sale theretofore delivered to Escrow, and thereupon Escrow shall have no further obligation hereunder with respect to said purchaser.

5. Escrow shall arrange for and supervise the execution of all documents with respect to each purchaser to be signed subsequent to the sales contract, and shall record the same.

6. Upon receipt of a notice in writing from the Developer that any payments are due under any sales contract, Escrow shall give notice in writing to the purchaser under such contract held by Escrow, and shall call for such payment to be made to Escrow.

7. If at any time Developer shall certify in writing to Escrow that a purchaser whose funds are being held hereunder by Escrow has defaulted under the terms of his sales contract, Escrow shall notify said purchaser of his default and shall thereafter treat all funds of such purchaser paid on account of said sales contract as funds of Developer which were transmitted to Escrow to be held pursuant to the provisions hereof and not as funds of such purchaser.

8. All monies received by Escrow hereunder shall be deposited, within a reasonable time of their receipt by Escrow and in reasonably convenient and practical sums, in a special account or accounts with a federally insured financial institution or institutions in Hawaii, to earn interest at the prevailing rate and held in accordance with the terms hereof, and all interest paid thereon shall be credited to the account of the Developer.

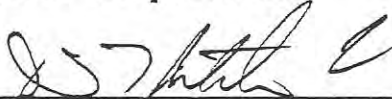
9. In consideration of Escrow acting as escrow holder hereunder, it is agreed that Escrow is relieved from all liability for acting in accordance with the terms hereof, notwithstanding a notice to the contrary by Developer or any purchaser or third person. Escrow shall not be responsible for the validity or sufficiency of any sales contracts and other documents received by it and shall be entitled for all purposes to assume that same have been signed by the persons whose signatures purport to be thereon and that any written certification or instructions from Developer are true and accurate. If any dispute or difference arises or if any conflicting demand shall be made upon Escrow, Escrow shall

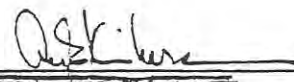
not be required to determine the same or take any action in the premises by Escrow may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or Escrow may file a suit in interpleader in the Circuit Court of the State of Hawaii, for the purpose of having the respective rights of the parties adjudicated and may deposit with the Court any or all monies held hereunder. Upon institution of such interpleader suit or other action, depositing such money with the Court, and notice thereof to the parties thereto by personal service, or in accordance with the Order of the Court, Escrow shall be fully released and discharged from all further obligations hereunder.

10. The compensation of Escrow for action hereunder shall be \$200.00 per lot plus the applicable general excise tax; provided however, in the event of cancellation of any sales contract, said compensation shall be a cancellation fee of \$50.00. All escrow fees shall be paid by purchaser.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TITLE GUARANTY ESCROW
SERVICES, INC.,
a Hawaii corporation

By 
Its President

By 
Its ~~Treasurer~~
TREASURER

"Escrow"

OHBAYASHI HAWAII CORPORATION,
a Hawaii corporation

By *Takaki Oomoto*
Its Vice President

"Developer"

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) ss.

On this 9th day of October, 1980,
before me appeared DAVID T. PIETSCH, JR. and _____
AMY E. KURIHARA, to me personally known, who, being by me
duly sworn, did say that they are the President and ~~Vice~~ **TREASURER**
~~President~~, respectively, of TITLE GUARANTY ESCROW SERVICES,
INC., a Hawaii corporation, and that the seal affixed to the
foregoing instrument is the corporate seal of said corporation
and that the instrument was signed and sealed in behalf of
said corporation by authority of its Board of Directors, and
said DAVID T. PIETSCH, JR. and AMY E. KURIHARA
_____ acknowledged the instrument to be
the free act and deed of said corporation.

A. N. Swish
Notary Public, State of Hawaii

My commission expires: 7-7-84

L.S

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 15th day of October, 1980,
before me personally appeared -----TAKEKI OKAMOTO-----,
to me known, who, being by me duly sworn, did say that he
is the ----Vice President---- of OHBAYASHI HAWAII CORPORATION,
a Hawaii corporation; that the seal affixed to the foregoing
instrument is the corporate seal of said corporation; that
said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors, and said
-----TAKEKI OKAMOTO----- acknowledged said instrument to be
the free act and deed of said corporation.

Arthur K. Kato
Notary Public, State of Hawaii

My commission expires: 08/27/82

EXHIBIT "A"

Kula Nani Estates
Description of Lots

CONSTRUCTION PLAN		LAND COURT APPLICATION 643		FILE PLAN 1612		TAX MAP KEY
Lot #	S.F.	Lot #	S.F.	Lot #	S.F.	
1	90,447			1	(90,447)	2-2-10- 2
2	87,191			2	(87,191)	2-2-10-24
3	87,897			3	(87,897)	2-2-10-25
4	87,141			4	(87,141)	2-2-10-26
5	87,131			5	(87,131)	2-2-10-27
6	87,171	12	(17,058)	6	(70,113)	2-2-10-28
7	87,220	11	(68,636)	7	(18,584)	2-2-10-29
8	87,600	10	(50,338)	8	(37,262)	2-2-10-30
9	87,536	9	(1,305)	9	(86,231)	2-2-10-31
10	87,600			10	(87,600)	2-2-10-32
11	89,426			11	(89,426)	2-2-10-33
12	89,730			12	(89,730)	2-2-10-34
13	89,926			13	(89,926)	2-2-10-35
14	87,996			14	(87,996)	2-2-10-36
15	87,758			15	(87,758)	2-2-10-37
16	88,077	8	(8,730)	16	(79,347)	2-2-10-38
17	87,716	7	(84,661)	17	(3,055)	2-2-10-39
18	95,156	6	(95,156)			2-2-10-60
19	94,935	5	(94,935)			2-2-10-59
20	91,215	4	(91,215)			2-2-10-58
21	88,549	3	(88,549)			2-2-10-57

CONSTRUCTION PLAN		LAND COURT APPLICATION 643 FILE PLAN 1612				TAX MAP KEY
Lot #	S.F.	Lot #	S.F.	Lot #	S.F.	
22	93,153	2	(93,153)			2-2-10-56
23	90,614	1	(21,497)	18	(69,117)	2-2-10-40
24	103,326			19	(103,326)	2-2-10-41
25	91,077			20	(91,077)	2-2-10-42
26	89,471			21	(89,471)	2-2-10-43
27	90,394			22	(90,394)	2-2-10-44
28	87,151			23	(87,151)	2-2-10-45
29	87,226			24	(87,226)	2-2-10-46
30	87,877			25	(87,877)	2-2-10-47
31	88,483			26	(88,483)	2-2-10-48
32	87,506			27	(87,506)	2-2-10-49
33	91,899			28	(91,899)	2-2-10-50
34	91,879			29	(91,879)	2-2-10-51
35	99,310			30	(99,310)	2-2-10-52
36	88,128			31	(88,128)	2-2-10-53
37	88,645			32	(88,645)	2-2-10-54
38	2.185 Acres			33-A	(2.185 Acres)	
			as more particularly described in Exhibit "1" attached hereto.			

EXHIBIT "1"

Description of Lot 33-A
Kula Nani - Murashige Consolidation

ALL of that certain parcel of land being a portion of Lot 33 of Kula Nani Estates Subdivision (File Plan 1612) and portions of Royal Patent 7884, Land Commission Award 8462, Apana 3 to Kawaalau, Royal Patent 7883, Land Commission Award 10,482, Apana 3, Part 2 Naha, Grant 3867 to Antone De Medirsh Pirsh, Royal Patent 7883, Land Commission Award 10,482, Apana 4, Part 2 to Naha, Grant 3582 to Antone De Medirsh Pirsh and Grant 1207, Apana 1 to Napela situate Waiakoa, Kula, Maui, Hawaii.

BEGINNING at a pipe on the westerly corner of this parcel of land, being also the southeasterly corner of Lot 4-A, on the northerly side of Wahelani Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puu Pane" being:

20,349.48 feet South

1,832.01 feet East

and running by azimuths measured clockwise from true south:

1. 237° 00' 40.78 feet along Lot 4-A and along remainders of Lot 33 of Kula Nani Estates Subdivision (File Plan 1612), R.P. 7884, L.C Aw. 8462, Ap. 3 to Kawaalau and R.P. 7883, L.C. Aw. 10,482, Ap. 3, Part 2 to Naha to a pipe;
2. 342° 50' 66.00 feet along Grant 3869 to Jose DeRego to a pipe;
3. 296° 30' 339.93 feet along same to a pipe;
4. 297° 52' 57" 132.58 feet along Lot 30 of Kula Nani Estates Subdivision (File Plan 1612) and along remainder of Grant 3867 to Antone De Medirsh Pirsh to a pipe;

SUBJECT to two (2) easements for Drainage Purposes, as shown on Kula Nani Estates Subdivision Map (File Plan 1612), more particularly described as follows: Easement 22 and Easement 23.

Section 4.
**KULA NANI ESTATES PROPERTY MANAGEMENT
AND AGENCY AGREEMENT**

KULA NANI ESTATES

PROPERTY MANAGEMENT AND AGENCY AGREEMENTS

THIS AGREEMENT made this 1st day of June, 1983, by and between the KULA NANI ESTATES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, whose principal place of business and post office address is 269 East Papa Place, #2, Kahului, Maui, Hawaii 96732, hereinafter called the "Association", and EMS, INC., a Hawaii corporation, whose principal place of business and post office address is 269 East Papa Place, #2, Kahului, Maui, Hawaii 96732, hereinafter called "Agent",

W I T N E S S E T H :

WHEREAS, the Association wishes to retain the services of an Agent to maintain, manage, operate and control the electrical, mechanical and plumbing system of the private water system and to manage, control and supervise the maintenance of the common areas of the KULA NANI ESTATES, hereinafter called the "Project", subject to the direction of the Board of Directors of the KULA NANI ESTATES COMMUNITY ASSOCIATION, hereinafter called the "Board"; and

WHEREAS, the Board has been empowered by the Association to hire the managing agent for the Association, who shall be fully authorized to manage the Project as aforesaid and to incur expenses on behalf of the lot owners, which expenses shall be charged against the lot and the owners thereof as common expenses

NOW, THEREFORE, the parties hereto do hereby agree as follows:

A. APPOINTMENT. The Association hereby appoints the Agent, and Agent hereby accepts appointment, on the terms and conditions hereinafter provided as exclusive agent of the Association.

B. LIMITATION OF AUTHORITY. It is understood and agreed that the authority and duties conferred upon Agent hereunder are confined to the duties more particularly described in this Agreement.

C. PLANS AND SPECIFICATIONS FOR PROJECT. In order to facilitate efficient operation, the Association shall furnish the Agent with a complete set of the plans and specifications of the private water system and the common elements of the Project, and a copy of the documents filed with the Department of Regulatory Agencies registering the Kula Nani Estates subdivision, and with the aid of these documents and inspection made by competent personnel the Agent will inform itself with the construction and layouts, locations, character, plan and operation of the lighting, plumbing, and private water systems, as well as any other mechanical equipment relating to the common elements or private water system of the Project.

D. AGENT'S DUTIES. Agent shall render services and perform duties as Agent of the Association and under the supervision of the President of the Board, as follows:

General:

hereunder. Compensation for the services of such employees of the Agent who handle or are responsible for the handling of the Association's moneys shall, without expense to the Association, be bonded by a fidelity bond acceptable both to the Agent and the Board.

2. On the basis of an operation and maintenance schedule attached hereto as Exhibit "A" and by reference made a part hereof, investigate, hire, pay, supervise, and discharge the personnel necessary to be employed to properly maintain and operate the KULA NANI ESTATES, pursuant to the terms of said schedule and the terms hereinafter contained. Such personnel shall in every instance be independent contractors, or employees of Agent. Compensation for the services of such employees shall be considered an operating expense of the Agent.

3. Immediately ascertain the general condition of the property, and take and keep an inventory of all equipment, maintenance tools and supplies, which belong to the Association.

4. Maintain businesslike relations with the lot owners, hereinafter called the "Owners", whose service request shall be received, considered and recorded in systematic fashion in order to show the action taken with respect to each. Complaints of a serious nature, shall, after thorough investigation, be reported to the Board with appropriate recommendations. As part of a continuing program, secure full performance by the Owners of all items

standards acceptable to the Board. For any item of repair or replacement the expense incurred shall not exceed the sum of THREE HUNDRED AND NO/100 DOLLARS (\$300.00) unless specifically authorized by the Board, excepting, however, that emergency repairs, involving manifest danger to life or property, or immediately necessary for the preservation and safety of the property, or for the safety of the Owners, or required to avoid the suspension of any necessary service to the KULA NANI ESTATES may be made by the Agent irrespective of the cost limitation imposed by this paragraph. Notwithstanding this authority as to emergency repairs, it is understood and agreed that the Agent will, if at all possible, confer immediately with the Board regarding every such expenditure. The Agent shall not incur liabilities (direct or contingent) which will at any time exceed the aggregate of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) or any liability maturing more than one year from the creation thereof, without first obtaining the approval of the Board.

6. Taking such action as may be necessary to comply promptly with any and all orders or requirements affecting the premises or improvements placed thereon by any federal, state, county or municipal authority having jurisdiction thereover and orders of the Board of Fire Underwriters or other similar bodies, subject to the same limitation contained in paragraph D.5 in connection with the making of repairs and alterations. The Agent, however,

intention to contest any such order or requirement. The Agent shall promptly, and in no event later than 72 hours from the time of their receipt, notify the Board in writing of all such orders and notices of requirements.

7. Subject to approval by the Board, make contracts for electricity, telephone, vermin extermination, and other necessary services, or such of them as said Board shall deem advisable. Also, place orders for such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the KULA NANI ESTATES. All such contracts and orders shall be made in the name of the Association and signed by the Agent and shall be subject to the limitations set forth in paragraph D.5. When taking bids or issuing purchase orders, the Agent shall be under a duty to secure for and credit to the Association any discounts, commissions, or rebates obtainable as a result of such purchases, and to obtain the best possible price and terms.

8. When authorized by the Board in writing, cause to be placed and kept in force all forms of insurance needed adequately to protect the Association, and its members, including but not limited to workmen's compensation insurance, public liability insurance, fire and extended coverage insurance and burglary and theft insurance. All of the various types of insurance coverage required shall be placed with such companies, in such amounts, and with such beneficial interests appearing therein as shall be

damage relating to the management, operation and maintenance of the common elements or private water system of the KULA NANI ESTATES including any damage or destruction thereof and the estimated cost of repair and shall cooperate and make any and all reports required by an insurance company in connection therewith.

9. Working in conjunction with an accountant prepare for execution all forms, reports and returns required by law in connection with unemployment insurance, workmen's compensation insurance, disability benefits, Social Security, and other similar taxes now in effect or hereafter imposed, relating to the employment of personnel.

10. It shall be the duty of the Agent at all times during the term of this Agreement to operate and maintain the KULA NANI ESTATES according to the highest standards achievable consistent with the overall plan of the Association. The Agent shall be expected to perform such other acts and duties as are reasonable, necessary and proper in the discharge of its duties under this Agreement.

11. ~~It shall be the duty of the Agent at all~~ times during the term of this Agreement to provide emergency engineering and electrical services. The cost of providing said emergency engineering and electrical services shall be borne by the Association and shall be in addition to the Agent's Fee as hereinafter provided in paragraph I.

12. It shall be the duty of the Agent at all times during the term of this Agreement to provide routine

common areas pursuant to said schedule attached hereto as Exhibit "A".

13. It shall be the duty of the Agent at all times during the term of this Agreement to provide roadway shoulder maintenance for all roadways located within the Project, including but not limited to the cutting of grass and small trees on a monthly basis, until acceptance of said roadways by the County of Maui.

Fiscal and Accounting Services for the project will include the following:

1. Agent shall prepare an Annual Maintenance Budget at least 60 days prior to the end of the fiscal accounting year, which will serve as the basis for monthly maintenance fees for the ensuing year.

2. Agent shall render to the Association by no later than the twentieth (20th) day after the end of a quarter, a statement of receipts and disbursements as of the end of said quarter.

3. Agent shall prepare and post on individual lot ledgers.

4. Agent shall prepare and distribute the unaudited Annual Financial Reports to all Owners. In the event the Association desires to have an audited Financial Report prepared, they may request Agent to have said audited Financial Report prepared. The cost of the preparation of said audited Financial Report shall be borne by said Association.

5. Agent shall prepare and mail delinquent

6. Agent shall follow up on all delinquencies to effectuate collection of all amounts owed.

7. Agent shall prepare correspondences and reports regarding finances as requested by the Board or Association. Said reports shall include, but not be limited to, all reports required by any governmental agencies. The cost of the preparation and mailing of said reports shall be borne by the Association.

8. Agent shall assist in the performance of audits in consonance with auditors appointed by the Board.

9. Agent shall prepare and maintain accurate payroll time sheets for all personnel.

10. Agent shall payroll checks on a timely basis and disburse same to all project personnel.

11. Agent shall collect in advance, the monthly installments of assessments against the respective lots for the common expenses and reserve fund of the project. Said collection will be made from the lot owners by the first day of each month.

12. Agent shall compute and bill each lot owner for the pro rata cost of the water used by said lot. Said billing will be made on a monthly basis. Agent shall also be responsible for the collection on said billing in a timely manner.

13. Agent shall maintain a comprehensive system of office records, books and accounts in a satisfactory manner, which records shall be subject to examination by

14. Agent shall promptly pay all fire and other property insurance premiums as they become due.

Meeting - Board of Directors, Annual Meetings of the Association and Special Meetings:

1. Agent shall prepare and mail notices, proxies, ballots and agendas for the annual or special meetings of the Association in accordance with the requirements and provisions of the By-Laws.

2. Agent shall duplicate and mail said notices of meetings, agendas, ballots, proxies, minutes and officers' reports. The cost of said duplication and mailing shall be borne by the Association.

3. Agent shall attend all such annual and special meetings.

4. Agent shall prepare and present for approval, all requests for reports such as financial, contractual, operational and others of a regular nature.

5. Agent shall arrange for and schedule places, dates and times for the conduct of meetings called by the Board and attend all such meetings.

6. Agent shall prepare special reports in accordance with requests by the Board, at a charge to be mutually agreed upon.

Records and Correspondence:

1. Agent shall maintain all financial records of the Association.

2. Agent shall maintain individual files for each owner including all documents covering each unit in

3. Agent shall record changes of ownership upon receipts of advice of Owners, with supporting documentation.

4. Agent shall maintain complete files for all correspondence.

5. Agent shall maintain all data pertaining to transfers of ownership, including transfer of voting rights.

6. Agent shall maintain current owners' lists as provided by supporting information recorded at the State of Hawaii Bureau of Conveyances.

7. Upon request by the Association, the Agent shall duplicate additional copies of project documents, correspondences, reports, etc. The cost of said duplication shall be borne by the Association.

E. UNDISCLOSED FEES. Agent agrees not to collect or charge any undisclosed fees, rebates, or discounts; and same shall be credited to the account of the Association.

F. BANK ACCOUNT. Agent shall maintain a bank account in a bank whose deposits are insured by the Federal Deposit Insurance Corporation, in a manner to indicate the custodial nature thereof, for the deposit of the monies of the Association and to draw thereon for any payments to be made by the Agent to discharge any liabilities or obligations incurred to this Agreement.

G. AGENT IS INDEPENDENT CONTRACTOR. Everything

Association, and all obligations or expenses incurred thereunder shall be for the account, on behalf, and at the expense of the Association, except that the Association shall not be obligated to pay the overhead expenses of the Agent's office. Any payments to be made by the Agent hereunder shall be made out of such sums as are available in the special account of the Association, or as may be provided by the Association. The Agent shall not be obligated to make any advances to or for the account of the Association or to pay any sum, except out of funds held or provided as aforesaid, nor shall the Agent be obliged to incur any liability or obligation for the account of the Association without assurances that the necessary funds for the discharge thereof will be provided.

H. TERM. Unless cancelled pursuant to Section (a), (b), or (c) of this paragraph, this Agreement shall be in effect from June 1, 1983 until May 31, 1984.

(a) In the event a petition in bankruptcy is filed by or against Agent, or in the event that he shall make an assignment for the benefit of creditors or take advantage of any insolvency act, either party hereto may terminate this Agreement without notice to the others. In the event this Agreement is terminated pursuant to this paragraph, the Association shall immediately and automatically have a lien upon all funds held by the Agent for the benefit of the Association in accordance with the terms of this Agreement. The Board shall have the right and power

(b) This Agreement may be terminated by mutual consent of the parties as of the end of any calendar month otherwise, this Agreement may be terminated by an affirmative vote of three-fourths (3/4ths) of all the members of the Association on sixty (60) days' written notice to the Agent. The power to terminate this Agreement as provided in this paragraph shall not be delegated to the Board in any way so as to eliminate the necessity of the vote of said members of the Association.

(c) Upon termination, the contracting parties shall either enter into a new Agreement or account to each other with respect to all matters outstanding as of the date of termination, and the Board shall furnish the Agent security, satisfactory to the Agent, against any outstanding obligations or liabilities which the Agent may have incurred hereunder.

I. AGENT'S FEE: The compensation which the Agent shall be entitled to receive for all services performed under this Agreement shall be as follows:

1. \$600.00 per month from the first month until the 19th lot in KULA NANI ESTATES is closed. When said 19th lot is closed, Agent shall be entitled to receive a fee of \$800.00 per month from the following month until this Agreement is terminated as provided in paragraph H.

a. If the closing is held before the 15th of any given month, then Agent shall be entitled to his fees as of the 1st day of such month.

his fee as of the 1st day of the next month immediately following the month in which the closing was held.

2. Compensation is to be net to the Agent above operating expenses of the Association.

J. AGREEMENT TO BE CHANGED IN WRITING ONLY.

This Agreement shall constitute the entire Agreement between the Contracting Parties, and no variance or modification thereof shall be valid and enforceable, except by an agreement in writing.

K. RESPONSIBILITY. Agent shall be responsible for any willful misconduct or gross negligence, but shall not be held responsible for any matters relating to error of judgment, or for anything which it may do or refrain from doing, which does not include any willful misconduct or gross negligence.

L. DEFINITIONS. As used in this Agreement:

1. The term "Assessments" shall mean those monthly rates established and approved by the Board, which the Owners are bound to pay as their share of the common expenses.

2. The term "Association" as used herein shall mean an Association consisting of all of the Owners of lots in the project organized under the laws of the State of Hawaii for the purpose of administering the project established by the Association's Charter of Incorporation.

3. The term "Project" as used herein shall mean the property and improvements belonging to the Association.

to have been duly given if either delivered personally or mailed in a registered or certified postpaid envelope addressed to the party.

N. SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of and constitute a binding obligation upon the Agent and the Association, its successors and permitted assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

KULA NANI ESTATES COMMUNITY
ASSOCIATION

By *Takaki Kamoto*
Its President

"Association"

EMS, INC.

By *Cynthia M. Munk*
Its PRESIDENT

"Agent"

EXHIBIT "A"

<u>Description</u>	<u>Weekly</u>	<u>Monthly</u>	<u>Quarterly</u>	<u>Yearly</u>
Routine inspection Engineer			X	
Change flowmeter charts and check ink sacks	X			
Check motors and motor controls	X			
Lubricate motors and pump				(per manufacturer's recommendation)
Read water meters		X		
Maintain pump and water tank grounds		X		
Replace worn packing or bearings				X
Compute and bill for water usage		X		
Keep accounting records of payments		X		
Routine painting of rusted areas (touch up; upper water tank not included)			X	

Section 5.
AGREEMENT OF SALE
(SPECIMEN)

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL () PICKUP ()

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

AGREEMENT OF SALE
KULA NANI ESTATES

THIS AGREEMENT made this ____ day of _____,
19___, by and between OHBAYASHI HAWAII CORPORATION, a Hawaii
corporation, whose business and post office address is
Pacific Tower, Suite 2680, 1001 Bishop Street, Honolulu,
Hawaii 96813, hereinafter called the "Seller" and _____

_____ ,
whose residence and post office address is _____
_____,
hereinafter called the "Purchaser",

W I T N E S S E T H:

That the Seller hereby agrees to sell to the Pur-
chaser, in the tenancy of _____
_____,

and the Purchaser hereby agrees to purchase in such tenancy
from the Seller, for the consideration stated below and on the
terms, covenants, and conditions contained in this Agreement
and subject thereto, all of the real property described in
Exhibit "A" attached hereto and made a part hereof by

I. Term of Purchase and Closing

1.1 THE TOTAL PURCHASE PRICE shall be _____

_____ which the Purchaser agrees to pay to the Seller as follows:

1.2 The sum of _____, previously paid to the Seller, receipt whereof is hereby acknowledged.

1.3 The balance of said purchase price, being the sum of _____, together with interest thereon and on the unpaid balance thereof remaining from time to time at the rate of TWELVE PERCENT (12%) per annum from _____, until fully paid, and together with principal based upon 25 year amortization and the charges provided in sub-paragraph 1.4, as follows:

(a) If this Agreement is dated on any date other than the first (1st) day of a month, then the initial (only) payment hereunder shall be interest only, prorated from the date hereof in the sum of _____ to be paid on the first (1st) day of _____, 19____, and thereafter monthly payments and the final payment shall be as provided in (b) immediately below;

(b) The sum of _____, including said charges and interest, to be paid on the first (1st) day of _____, 19____, and a like sum to be paid on the first (1st) day of each month thereafter until the _____ day of _____, 19____, when the

monthly payments include a prorated portion of anticipated real property taxes and assessments, if any, chargeable to the subject real property. Said monthly payments shall be adjusted from time to time as may be necessary to equal any adjustment in the amounts provided for in subparagraph 1.4 hereof.

1.4 Each of said monthly payments shall be applied toward the obligations of the Purchaser under this Agreement in the following order: First, to late charges, if any, assessable pursuant to Article V hereof; second, to reimburse Seller for any funds advanced by Seller in Purchaser's behalf; Third, to collection account fees as provided for in subparagraph 1.8 hereof; Fourth, to such reserve for prompt payment, as they shall become due, of all real property taxes and governmental assessments that shall accrue against said premises; and the balance shall be credited first to the interest on the unpaid portion of principal remaining from time to time, and the balance thereof shall be applied toward principal; provided that if any payment is not sufficient to cover the amounts due for all such charges other than principal, the Seller may increase the amount payable each month to cover such charges and add any unpaid amounts to principal owed under this Agreement.

1.5 Purchaser shall have the right to prepay the purchase price hereunder, or any portion thereof, at any time without penalty; provided that no such prepayment shall defer nor diminish any future monthly payment due hereunder.

1.6 The Seller shall deliver possession of said premises to the Purchaser as of the date hereof, and from such date Purchaser shall quietly enjoy possession of the premises

thereto and all rents, issues and profits thereof unless and until the purchaser shall cause or permit any default with respect to any of the terms, covenants and/or conditions herein contained and to be observed and/or performed by the Purchaser.

1.7 All taxes, assessments, maintenance fees, water rates and other carrying charges pertaining to said premises are to be prorated between the Purchaser and the Seller as of the date hereof and if not paid from monthly installments under subparagraph 1.4 hereof, shall thereafter be paid by Purchaser directly to or as directed by the Kula Nani Estates Community Association or its agent as set forth in subparagraph 3.10 hereof.

1.8 Collection Account. Seller and Purchaser shall establish a collection account with Bank of Hawaii, Main Branch, in accordance with this Agreement. Purchaser hereby agrees to pay the full cost of the collection account. All payments due under this Agreement must be paid in United States currency and be delivered or mailed to the collection agency for the account of the Seller. The collection agent shall decide any dispute relating to the application of monthly payments due under this Agreement and such decision shall be binding upon the parties.

II. Covenants of the Seller

THE SELLER, in consideration of the premises, the payments made and to be made by the Purchaser and the covenants herein contained of the Purchaser, covenants and agrees:

2.1 Quiet Possession. The Seller does hereby covenant that the Purchaser shall quietly enjoy possession of

forth hereinabove, so long as the Purchaser shall observe and perform all of Purchaser's obligations hereunder.

2.2 Title. At the time full payment of all sums herein provided to be paid and the observance and/or performance by the Purchaser of all terms, covenants and conditions herein contained and by the Purchaser to be observed and/or performed, the Seller shall convey and deliver title to the property to the Purchaser in the aforesaid tenancy. The Seller will at the Seller's expense cause to be promptly executed and delivered to the Purchaser a deed for said real property.

Said deed shall convey all of the aforesaid property to the Purchaser free and clear of encumbrances except as specifically set forth in this Agreement or in Exhibit "A" and except as shall have been made, suffered or permitted by the Purchaser from and after the date hereof, and shall further be in a form acceptable for filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances of the State of Hawaii, as applicable.

2.3 Evidence of Title. If requested by Purchaser, the Seller, at Purchaser's expense and at the time of conveyance of title pursuant to subparagraph 2.2 hereof, shall deliver to the Purchaser a policy of title insurance or a certificate from a reputable title company doing business in Honolulu, Hawaii, insuring or certifying the Purchaser to have marketable title to the property except as aforesaid.

2.4 The Seller does hereby covenant and agree to make or cause to be made all of the payments as they become due for which funds have been advanced to the Seller under

III. Covenants of the Purchaser

THE PURCHASER, in consideration of the premises and the aforesaid agreements by the Seller, hereby covenants and agrees:

3.1 Taxes, Assessments and Other Charges. That the Purchaser will pay when, where and in the manner provided in this Agreement all real property taxes and all assessments of every kind and all water rates, fire insurance and maintenance fees and all other taxes, rates and charges and other similar impositions which shall, after the date of proration set forth herein, be legally payable upon or with respect to said premises, or the use thereof, whether charged against the Seller or the Purchaser, and the Purchaser shall hold the Seller fully harmless therefrom. In any case in which the place for payment of any charge or fee applicable to the premises is not expressly provided for in this Agreement, then Purchaser shall pay such charge or fee directly unless otherwise directed by Seller in writing.

3.2 Insurance. Purchaser shall obtain and maintain comprehensive public liability insurance covering injury, death, loss and damage to persons and property occurring on or about the premises in an amount not less than \$300,000.00 per occurrence, or such higher amounts as may be established from time to time by Seller consistent with then prudent practice in the State of Hawaii, and Purchaser shall deliver to Seller through Escrow a copy of such policy or policies, or good and sufficient binders therefor, at the time of or prior to delivery of this Agreement of Sale to Purchaser. All such policies shall be made out in the names of the parties hereto

Purchaser with and retained by the Seller. Purchaser shall procure endorsements on said policies requiring (i) the insurance companies to give Seller thirty (30) days advance written notice of any proposed cancellation or material change of insurance, (ii) to give Seller thirty (30) days advance written notice of any non-renewal of the policy, and (iii) to forward to Seller copies of all endorsements issued after the date of such policies. If the Purchaser takes out or obtains any other or additional insurance upon the property, all such insurance shall likewise be made out in the names of the parties hereto as their respective interest may appear and together with receipts for premiums paid thereon, shall be deposited with and returned by the Seller. Purchaser is entitled to obtain such insurance from any insurance company authorized to do business in the State of Hawaii.

3.3 Consent to Assign, Mortgage, etc. That the Purchaser shall not sell, assign, mortgage, lease or otherwise dispose or part with possession of this Agreement, said premises, or any interest of the Purchaser therein, without the prior written consent of the Seller, and all such transfers without such consent shall be voidable by the Seller.

3.4 Place of Payments. That all payments required to be made to the Seller by the Purchaser shall be made at such address in the State of Hawaii as the Seller shall from time to time notify the Purchaser in writing, which said place for payment initially shall be as provided in subparagraph 1.8 hereof.

3.5 Payments Made at Option of Seller. That if the Purchaser shall fail to pay any taxes, assessments, rates and/or charges, or shall fail to make any other payment

effect and keep in force all insurance or improvements as required by this Agreement, the Seller may pay or effect the same and recover from the Purchaser upon demand all sums paid therefor by the Seller with interest thereon at the rate of twelve percent (12%) per annum simple interest. If such sums are not paid on demand, all such payments so made by the Seller may at the option of the Seller be added to and considered as a part of the purchase price of the premises.

3.6 General Maintenance. That the Purchaser will well and substantially maintain and keep said premises and all improvements in good order and condition.

3.7 No Unlawful Usage; No Waste. That the Purchaser will not use said premises or allow any other person to use said premises for or and in connection with any unlawful purpose, and will not commit or suffer any strip or waste of the premises or any improvements.

3.8 Compliance with all Laws. That the Purchaser will faithfully observe, perform and abide by all laws, governmental ordinances, rules and regulations applicable to said premises, including but not limited to all lawful requirements of any health authority operating within the County of Maui.

3.9 Attachment. That the Purchaser will not commit any breach of any covenants or condition herein contained or do or suffer any act or negligence whereby said premises or any interest therein shall become liable to seizure, lien or attachment upon mesne or final process of law whether in bankruptcy, reorganization, rearrangement, assignment for benefit of creditors, foreclosure or otherwise.

3.10 Kula Nani Estates Community Association That

Estate Community Association, and hereby covenants with Seller to abide by the rules set forth in the Charter of Incorporation, By-Laws, rules and regulations and decisions of said Association, and to be responsible for and to pay when and as billed or directed by said Association or its agent a pro-rata share of the costs of maintaining and operating the common areas and facilities, including but not restricted to, the cost of operating, maintaining, repairing, replacing and improving the water pumping station, the storage tanks and distribution lines and facilities, the maintenance of any further area or facility maintained or operated for the use and/or benefit of the residents of said Kula Nani Estates Subdivision.

The Purchaser further covenants with the Seller to abide by the terms and conditions of the restrictive covenants which encumber said real property. In the event Purchaser fails to abide by said restrictive covenants, the rules and regulations established by said Kula Nani Estates Community Association or any decisions of said Association, Purchaser hereby authorizes said Association and/or Seller to undertake whatever action is necessary to fulfill the terms of said restrictive covenants, rules and regulations or decisions of said Association, and Purchaser hereby agrees to reimburse said Association and/or Seller for any and all costs incurred thereby, including court costs and reasonable attorneys' fees.

IV. Mutual Agreements, Obligations and Covenants.

AND, IT IS MUTUALLY UNDERSTOOD AND AGREED as follows:

4.1 Title. That legal title to the property shall remain in the Seller until the Purchaser has fully paid,

covenants and conditions herein contained on the part of the Purchaser to be paid, observed and performed, and thereupon shall be conveyed to the Purchaser.

4.2 Risk of Loss. That the provisions of Chapter 508 of the Hawaii Revised Statutes, as amended from time to time (the Uniform Vendor and Purchaser Risk Act) are by this reference incorporated herein and made a part hereof for all purposes.

4.3 Improvements.

(a) Consent. Purchaser will not make any improvements to the property without the prior written consent of Seller, which consent shall not be unreasonably withheld; no fees shall be charged for any such consent except the cost, including attorney's fees, of reviewing, processing and preparing the consent by Seller or its agents. Seller may condition its consent upon Purchaser furnishing the following to Seller:

- a. A copy of the fully executed construction contract.
- b. A copy of the requisite applicable building permit.
- c. Evidence of adequate financing to pay for the improvements.
- d. Evidence of good and sufficient payment and performance bond, naming Seller as an obligee, in an amount equal to 100% of the cost of all labor and materials furnished and used, which bond shall be executed by a corporate surety authorized to do business in Hawaii.
- e. Insurance as provided in subparagraph 4.3(b)

(b) Insurance. At the time of commencement of all such improvements and thereafter, Purchaser, at Purchaser's sole cost and expense, shall obtain and maintain continuously in place hazard insurance to cover, as a minimum, the full replacement value of all buildings and other improvements on the premises. The insurance must cover loss or damage caused by fire, hazards normally covered by the broad term of "extended coverage" hazard insurance policies, and other hazards for which Seller from time to time requires coverage. All such policies must have an "inflation guard" rider. All such policies shall be made out in the names of the parties hereto as their respective interests appear, and together with receipts for premiums paid thereon, shall be deposited by Purchaser with and retained by Seller. Purchaser shall procure endorsements on all said policies requiring the insurance companies (i) to give Seller thirty (30) days advance written notice of any proposed cancellation or material change of insurance, (ii) to give Seller thirty (30) days advance written notice of any non-renewal of the policy and (iii) to forward to Seller copies of all endorsements issued after the date of such policies. In case of loss, the proceeds of all such insurance shall immediately be applied to the repair, restoration or replacement of the damaged or destroyed improvement unless otherwise decided by Seller. Any surplus shall be applied to the unpaid balance under this Agreement, whether such balance is then due or shall be due in the future, and the remainder shall be paid to Purchaser.

4.4 Inspection. That upon the giving of reasonable notice in writing, the Seller shall have the right to make reasonable inspections of the property to determine whether

4.5 Condemnation. That in case the said property, or any part thereof, is condemned, either the Seller or the Purchaser, or both of them, may appear and defend any condemnation suit, and all proceeds paid to the Seller and the Purchaser shall be applied first to payment of costs and a reasonable attorney's fee for the Seller in such condemnation suit and second, to the payment of the unpaid balance under this Agreement, whether such balance is then due or shall be due in the future, and the surplus remaining shall become the property of the Purchaser. No condemnation shall constitute grounds for rescission of this Agreement.

4.6 Costs and Attorney's Fees. That if any party hereto shall ever be in default with respect to this Agreement, and the other party shall incur costs or employ an attorney to make any demand or to otherwise protect or enforce its rights herein, the party in default shall pay all costs and expenses incurred by the other party, including costs of court and a reasonable attorney's fee.

4.7 Consents. That wherever the consent of either party is required herein, such consent shall not be unreasonably withheld or delayed, or withheld or delayed to obtain the payment of money or other consideration, except the reasonable cost of reviewing, processing and preparing such consent, and except as otherwise provided in this Agreement.

V. Seller's Remedies Upon Default By Purchaser

If the Purchaser (i) shall fail to pay any of the said installments of the purchase price and/or interest as aforesaid or shall fail to make any other required payment within ten (10) days of the time when the same shall be due

faithfully observe or perform any other term, covenant, agreement or condition herein contained and on the part of the Purchaser to be observed and/or performed, and if the Purchaser shall not cure such other default within ten (10) days after notice from the Seller of such other default; then and in any such event, the Seller may at the option of the Seller exercise any one or more of the remedies set forth in this Article V. In the event that any payment of money due is not made within the ten (10) day grace period, the Seller shall be entitled to a late charge. The late charge shall be equal to the amount of five percent (5%) of the monthly installment due pursuant to the provisions of paragraph 1.3. Purchaser shall pay Seller said late charge for the purpose of covering the extra expense involved in handling delinquent installments, and such charge shall be without prejudice to any other remedies provided for in this Agreement of Sale in the event of default by the Purchaser. All moneys not timely paid by the Purchaser shall bear interest at the rate of fifteen percent (15%) per annum simple interest from the original date due until paid, provided, however, that the interest to be paid under this provision shall not exceed the maximum rate of interest allowable by law. If any non-money default is capable of being cured but cannot be cured within said ten (10) day period, no default shall be deemed to have occurred if the Purchaser shall commence within said period to cure the default and shall thereafter diligently pursue and complete such cure. Notwithstanding the foregoing, If the Purchaser (or any of them if there be more than one) shall become bankrupt or insolvent, or seek protection under any

threaten to abandon said premises, or suffer the premises to be taken under any writ of execution or other legal process, then in any such event, the Purchaser shall thereupon be deemed to be in default and the Seller shall immediately without further demand or notice have the right to the remedies set forth in this Article V. The Seller shall be entitled to:

5.1 Accelerated Maturity. Without notice or demand, upon default by Purchaser, Seller may declare all sums of money due and payable immediately and sue Purchaser for the amount due and all expenses of suit, including reasonable attorney's fees.

5.2 Cancellation and Repossession. Subject to all the provisions of this Article, Seller may cancel this Agreement by giving written notice of cancellation to Purchaser. Seller may retain all payments previously made by Purchaser as the consideration for Seller's execution of this Agreement and as an agreed rental for the use and possession of the property during Purchaser's occupancy and may take possession of the premises without service of further notice or legal process and without permission of Purchaser and in so doing may summarily eject Purchaser and all persons having possession of the property by, through or under Purchaser, without being liable for any damage for such repossession. Any person in possession of the property shall be conclusively deemed to be a tenant-at-will of Seller after the date of cancellation, and Seller shall have all remedies for recovering possession of the property that are available to landlords under the laws of the State of Hawaii. Seller may

date that possession is restored to Seller, together with costs, reasonable attorney's fees, and any damages arising out of Purchaser's occupancy of the property. Cancellation may further be made by petitioning the Land Court or any Circuit Court in the State of Hawaii, requesting cancellation of this Agreement and amendment of applicable certificate of title noting thereon the cancellation of this Agreement.

5.3 Public Sale. Seller may foreclose this Agreement under power of sale as though a mortgage with or without judicial action (including sale by publication and public auction) and upon such notice as may be required by Hawaii law governing foreclosure of mortgages, sell the property and all improvements thereon, including improvements placed on the property by Purchaser, at public auction, and either as attorney in fact for Purchaser (for that purpose hereby irrevocably constituted and appointed) or in the name of Purchaser, make, execute and deliver a good and sufficient instrument conveying the property to the purchaser at such sale free and clear of the provisions of this Agreement. Seller may purchase the property or any part thereof at any such sale. Any such sale shall forever bar Purchaser and all persons claiming by, through or under Purchaser from all and any right and interest in the property both at law and in equity. Seller shall apply the proceeds of such sale first to the costs and expenses of sale, together with reasonable attorney's fees, and second to the payment of all sums due under this Agreement; and the balance shall be paid to Seller to the extent of a reasonable rent for the period of time after the default until Seller is restored to possession, and

judgment against Purchaser for such deficiency, and Purchaser shall promptly pay to Seller such deficiency, and Seller shall have the right to sue for and recover the deficient amount together with costs and expenses, including reasonable attorneys' fees, incurred in connection with such suit.

5.4 Other Remedies. The Seller may pursue any one or combination of the foregoing or any other or further legal or equitable remedies available to the end that the Seller shall be made whole. The pursuit of any one or more of the remedies set forth above shall not constitute an election or waiver of Seller's rights to enforce any other remedy for any default on the part of Purchaser.

5.5 Waiver. Seller's acceptance of any payment due shall not constitute a waiver of Seller's right to pursue any remedy for breach of this Agreement. No waiver by Seller of a violation of any provision of this Agreement shall constitute or be construed as a waiver of any subsequent violation, whether of the same or some other provision hereof.

VI. Remedies of the Purchaser

In the event the Seller shall breach or default any covenant or obligation of the Seller hereunder the Purchaser, if not then in default, may bring an action against the Seller for specific performance of this Agreement and/or pursue such other legal remedy as shall be allowed at law or in equity, all toward the end of making the Purchaser hereunder whole.

VII. Construction of Agreement

7.1 Binding Effect. These presents shall be binding upon and shall inure to the benefit of the parties herein

named and their respective legal representatives and such successors in interest.

7.2 Definitions. The word "Purchaser", and any pronoun in reference thereto wherever used herein, shall be construed to mean the singular and/or the plural, the masculine or the feminine or the neuter, and vice versa, as the context may provide. Where the term "Purchaser" shall include more than one person, such as but not limited to husband and wife, then each such person shall be individually, jointly and severally bound and liable with respect to all of the terms, covenants, conditions and remedies provided for throughout this Agreement. That the words "premises" and/or "property" wherever used herein or where the context so admits or requires shall be construed to mean and shall include the real property as hereinabove particularly described and all buildings and improvements situate or built or placed on the land described therein, and all rights, easements and appurtenances used, occupied or enjoyed in connection therewith.

7.3 Headings. All headings used in this Agreement are for reference convenience only and are not to be construed as limiting in any manner the content of any paragraph or particular provision.

7.4 Entire Agreement. This Agreement as hereinabove and hereinbelow provided shall constitute the entire agreement between the parties, supercedes and cancels all prior negotiations, representations, understandings and agreements, both written and oral, of the parties hereto and their agents, and shall not be modified except by an instrument in writing signed by all of the parties.

7.5 Notices. Any notice given by either party pursuant to this Agreement shall be valid if in writing and personally delivered or if sent by registered mail, return receipt requested, postage prepaid, to the Seller or to the Purchaser at their respective addresses set forth hereinabove. Such notice shall be effective upon such personal delivery or two (2) days after such mailing, whichever first occurs. Either party may, at any time and from time to time, in the manner set forth for the giving of notices, give notice to the other party hereunder of any changed address for the giving of notices, and any such address shall be sufficient under this Agreement for all purposes until superceded by subsequent written notice given as aforesaid.

7.6 Severability. If any provision of this Agreement is held invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision hereof.

7.7 Time. Time is of the essence of this Agreement.

7.8 Tenancy of Purchaser. All rights, title and interest of the Purchaser in and to this Agreement and the property shall be deemed to be held by the Purchaser, and each of them, in the tenancy set forth hereinabove, and upon final closing hereof title documents in and to the property shall be delivered in form showing said tenancy.

VIII. ADDITIONAL NOTICES AND PROVISIONS

PURCHASER HEREBY AGREES THAT BY EXECUTING THIS AGREEMENT OF SALE FOR THE PURCHASE OF SAID LOT, PURCHASER

ACCEPT THE DEED THEREFOR UPON AND SUBJECT TO ALL PROVISIONS OF THE DECLARATION OF RESTRICTIVE COVENANTS FOR KULA NANI ESTATES, AND DOES HEREBY AUTOMATICALLY BECOME A MEMBER OF THE KULA NANI ESTATES COMMUNITY ASSOCIATION, AND SHALL PAY ANY MAINTENANCE ASSESSMENT OR ANY OTHER ASSESSMENT LEVIED AGAINST SAID LOT BY SAID COMMUNITY ASSOCIATION AS HEREIN DESCRIBED. BY SUCH ACCEPTANCE, PURCHASER COVENANTS, CONSENTS AND AGREES TO AND WITH SELLER AND THE GRANTEEES OR PURCHASERS OF THE OTHER LOTS IN SAID KULA NANI ESTATES SUBDIVISION, TO KEEP, OBSERVE, COMPLY WITH, AND PERFORM THE COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN SAID DECLARATION AND THE KULA NANI ESTATES COMMUNITY ASSOCIATION CHARTER, BY-LAWS, AND RESTRICTIONS.

PURCHASER IS HEREBY FURTHER ADVISED AND AGREES THAT HE IS PURCHASING SAID LOT IN "AS IS" CONDITION. PURCHASER IS AWARE AND AGREES THAT SELLER WILL NOT BE REQUIRED TO LANDSCAPE, CLEAR TREES FROM, GRADE, OR DO ANYTHING TO IMPROVE THE PRESENT CONDITION OF THE LOT, AND THAT THE PURCHASER ACCEPTS ALL RISKS REGARDING ALL TREES AND OTHER CONDITIONS ON THE LOT.

PURCHASER IS HEREBY FURTHER ADVISED AND AGREES THAT KULA NANI ESTATES SUBDIVISION IS SERVED BY A PRIVATE WATER SYSTEM AND THAT THE QUANTITY OF WATER AVAILABLE WILL DEPEND UPON THE AMOUNT DELIVERED TO THE PRIVATE SYSTEM BY THE COUNTY OF MAUI PUBLIC SYSTEM WHICH ON OCCASION HAS BEEN SUBJECT TO WATER SHORTAGES IN THE KULA AREA. ADDITIONALLY, ALTHOUGH THE LOTS ARE ZONED AND USE DESIGNATED FOR AGRICULTURAL PURPOSES, SELLER CANNOT AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY THAT THE AVAILABILITY OF WATER, OR THE CAPACITY OF THE PUMPING STATION, WATER SHORTAGE TANKS OR DISTRIBUTION SYSTEM WILL BE SUFFICIENT FOR FULL-SCALE AGRICULTURAL IRRIGATION PURPOSES ON

ALL LOTS AT ALL TIMES. PURCHASER HEREBY ACCEPTS THIS AGREEMENT AND THE LOT AND WILL ACCEPT THE DEED THEREFOR SUBJECT TO SUCH LIMITATIONS. PURCHASER FURTHER AGREES THAT THE PRIVATE WATER SYSTEM MAY BE DEDICATED TO THE COUNTY OF MAUI, BUT THAT THERE IS NO OBLIGATION TO DO SO.

PURCHASER IS HEREBY FURTHER ADVISED THAT THE SELLER HAS FORMED THE KULA NANI ESTATES COMMUNITY ASSOCIATION FOR THE OPERATION OF THE COMMON ELEMENTS AND/OR AREAS OF THE KULA NANI ESTATES SUBDIVISION. THE ASSOCIATION WILL ASSESS EACH OF THE LOT OWNERS, AND PURCHASER AGREES TO PAY, A PRO RATA SHARE OF THE COMMON EXPENSES, AS MORE PARTICULARLY DETERMINED BY THE PERCENTAGE COMMON INTEREST ATTRIBUTED TO EACH LOT. SAID PERCENTAGE COMMON INTEREST, FOR THE LOT BEING PURCHASED HEREIN BY PURCHASER, IS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" OF THIS AGREEMENT. THE COMMON EXPENSES WILL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING:

1. MAINTENANCE AND OPERATION OF THE PRIVATE WATER SYSTEM FOR THE KULA NANI ESTATES SUBDIVISION.
2. THE COLLECTION OF A RESERVE ACCOUNT ASSESSMENT BY THE KULA NANI ESTATES COMMUNITY ASSOCIATION FOR THE ANTICIPATED REPAIRS AND REPLACEMENT OF THE COMMON ELEMENT FACILITIES.
3. THE MAINTENANCE OF ANY OF THE OTHER COMMON ELEMENTS AND/OR AREAS OF THE KULA NANI ESTATES SUBDIVISION.
4. THE MANAGEMENT FEE CHARGED BY THE MANAGING AGENT FOR THE KULA NANI ESTATES SUBDIVISION.

PURCHASER IS HEREBY FURTHER ADVISED THAT THE KULA

NANI ESTATES COMMUNITY ASSOCIATION HAS ENTERED INTO A WATER

USAGE AGREEMENT" WITH YOSHIO INOUYE FARM, INC., A HAWAII CORPORATION, AND YOSHIO INOUYE AND MATSUYO INOUYE, HUSBAND AND WIFE, HEREINAFTER CALLED THE "INOUYES", PROVIDING FOR THE INOUYES TO CONNECT INTO AND USE WATER FROM THE KULA NANI ESTATES PRIVATE WATER SYSTEM, A COPY OF SAID WATER USAGE AGREEMENT HAS BEEN DELIVERED TO PURCHASER AND IS ON FILE AT THE OFFICE OF THE SELLER. PURCHASER HEREBY APPROVES AND ACCEPTS THE TERMS OF SAID WATER USAGE AGREEMENT.

PURCHASER FURTHER AGREES THAT PURCHASER SHALL BE RESPONSIBLE FOR MAKING HIS OWN ARRANGEMENTS FOR MAIL SERVICE AND REFUSE COLLECTION.

PURCHASER IS FURTHER ADVISED THAT THE STREET LIGHTING SYSTEM FOR THE KULA NANI ESTATES WILL NOT BE ACTIVATED UNTIL IT HAS BEEN ENERGIZED BY THE COUNTY OF MAUI. SAID COUNTY OF MAUI WILL ENERGIZE SAID STREET LIGHTING AT ITS SOLE DISCRETION AFTER IT HAS ACCEPTED DEDICATION OF SAID STREET LIGHTING.

PURCHASER IS HEREBY FURTHER ADVISED THAT AUWAIS OR DRY STREAM BEDS EXIST THROUGHOUT THE SUBDIVISION AND THAT EACH OF THE LOTS WITHIN THE SUBDIVISION ARE SUBJECT TO THE FREE FLOW OF WATER. PURCHASER IS ADVISED THAT HE SHOULD NOT BUILD ANY STRUCTURE OVER OR NEAR SAID AUWAIS OR DRY STREAM BEDS. PURCHASER HEREBY AGREES THAT HE WILL NOT BUILD ANY STRUCTURE OVER OR NEAR SAID AUWAIS OR DRY STREAM BEDS.

IN THE EVENT PURCHASER CONSTRUCTS A DRIVEWAY OR OTHER STRUCTURE OVER OR IN THE AUWAIS OR DRY STREAM BEDS, PURCHASER HEREBY ACCEPTS AND AGREES THAT IT WILL BE HIS SOLE AND SEPARATE RESPONSIBILITY TO CONSTRUCT THE DRIVEWAY OR OTHER STRUCTURE SUCH THAT THE FREE AND NATURAL FLOW OF WATER IN THE AUWAIS OR DRY STREAM BEDS IS NOT DIVERTED FROM ITS NATURAL COURSE OR INTENSIFIED. IN THE EVENT PURCHASER CONSTRUCTS ANY

STRUCTURE, OR DIVERTS THE FREE AND NATURAL FLOW OF WATER IN THE AUWAIS OR DRY STREAM BEDS OR INTENSIFIES SAID FLOW IN ANY WAY, PURCHASER HEREBY AGREES THAT HE WILL BE HELD STRICTLY LIABLE FOR ANY INJURIES OR DAMAGES RESULTING FROM SUCH STRUCTURE, DIVERSION OR INTENSIFICATION, AND PURCHASER HEREBY FURTHER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY LIABILITY RESULTING FROM SUCH STRUCTURE, DIVERSION OR INTENSIFICATION.

PURCHASER HEREBY EXPRESSLY AGREES TO ASSUME AND DOES HEREBY ASSUME THE RISK OF ANY DAMAGE ARISING FROM THE FLOODING OF SAID AUWAIS OR DRY STREAM BEDS AND FURTHER AGREES TO INDEMNIFY AND SAVE SELLER HARMLESS FROM SUCH FLOODING.

PURCHASER IS HEREBY FURTHER ADVISED THAT THERE IS NO SEWER SYSTEM FOR KULA NANI ESTATES SUBDIVISION. PURCHASER IS THEREFORE REQUIRED TO CONSTRUCT HIS OWN CESSPOOL.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

OHBAYASHI HAWAII CORPORATION,
a Hawaii corporation

By _____
Its

-Seller-

-Purchaser-

Section 6.
DEED (SPECIMEN)

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL () PICKUP ()

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 19___, by and between OHBAYASHI HAWAII CORPORATION, a Hawaii corporation, having its principal place of business and post office address at Pacific Tower, Suite 2680, 1001 Bishop Street, Honolulu, Hawaii 96813, hereinafter called the "Grantor", and JOHN CHARLES DOE and JANE MARGARET LOUISE DOE, husband and wife, whose residence and post office address is _____, Honolulu, Hawaii, hereinafter called the "Grantees",

W I T N E S S E T H:

That the Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) to it paid by the Grantees, receipt whereof is hereby acknowledged, does hereby by these presents, grant, bargain, sell and convey unto said Grantees, as tenants by the entirety with full rights of survivorship, in fee simple, the property described in Exhibit "A" attached hereto and made a part hereof;

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and

TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto said Grantees, as tenants by the entirety with full rights of survivorship, absolutely and in fee simple;

And the Grantor, in consideration of the premises, does hereby for itself and its successors covenant and agree to and with said Grantees and their respective heirs, personal representatives and assigns, that it (the Grantor) is seised of the above granted premises for an estate in fee simple and that its title thereto is free and clear of and from all encumbrances except as aforesaid; that it has good right to sell and convey the same as aforesaid and that it will and its successors shall WARRANT AND DEFEND the same unto said Grantees, as tenants by the entirety as aforesaid, and their respective heirs, personal representatives and assigns against the lawful claims and demands of all persons except as aforesaid,

And the Grantees, for and in consideration of the foregoing conveyance, do hereby covenant and agree with said Grantor as follows:

1. That they (the Grantees) accept the foregoing conveyance subject to all of the provisions contained in the Declaration of Restrictive Covenants for Kula Nani Estates.

2. That as the owner of said property, they (the Grantees) are automatically members of the Kula Nani Estates Community Association, and they (the Grantees) hereby agree to pay any maintenance assessment or any other assessment levied against said property by said Association.

3. That they (the Grantees) covenant, consent and agree with Grantor and the Grantees or Purchasers of other lots in the Kula Nani Estates Subdivision, to keep, observe, comply with and perform the covenants, conditions and restrictions contained in said Declaration of Restrictive Covenants and the Kula Nani Estates Community Association Charter, By-Laws and Restrictions.

4. That they (the Grantees) have been advised and agree that the Kula Nani Estates Subdivision is served by a private water system and that the amount of water available from time to time will be subject to the amount delivered by the County of Maui public system which on occasion has been subject to water shortages.

5. That they (the Grantees) are purchasing said property in "as is" condition, and accept all risks in connection therewith.

6. That they (the Grantees) have been advised by Grantor that auwais or dry stream beds exist throughout the subdivision and that said property is subject to the free flow of water.

7. That they (the Grantees) have been advised by Grantor that they (the Grantees) should not build any structure over or near said auwais or dry stream beds and hereby covenant and agree with Grantor not to build any structure over or near said auwais or dry stream beds.

8. In the event they (the Grantees) construct or place a driveway or other structure over or in said auwais or dry stream beds, Grantees hereby agree that it will be their sole and separate responsibility to construct said driveway or

auwais or dry stream beds are not diverted from their natural course or intensified in any way. In the event they (the Grantees) should construct any structure, or divert the free and natural flow of water in said auwais or dry stream beds or intensify said flow in any way, they (the Grantees) hereby agree that they will be strictly liable for any injuries or damages resulting from said diversion or intensification, and they (the Grantees) further agree to indemnify and hold Grantor harmless from any liability resulting from such structure, diversion or intensification.

9. That they (the Grantees) hereby expressly assume the risk of any damage arising from the flooding of said auwais or dry stream beds and further agree to release, indemnify and save Grantor harmless from any liability arising from said flooding.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

OHBAYASHI HAWAII CORPORATION,
a Hawaii corporation

By _____
Its

-Grantor-

JOHN CHARLES DOE

JANE MARGARET LOUISE DOE

-Grantees-

Section 7.
PETITION FOR CHARTER OF INCORPORATION
(KULA NANI ESTATES COMMUNITY
ASSOCIATION)

STATE OF HAWAII
DEPARTMENT OF REGULATORY AGENCIES
Business Registration Division
1010 Richards Street
Mailing address: P. O. Box 40, Honolulu, Hawaii 96810

In the Matter of the)
Incorporation)
of)
KULA NANI ESTATES)
COMMUNITY ASSOCIATION)

PETITION FOR CHARTER OF INCORPORATION

The undersigned, a majority of whom are residents of the State of Hawaii, hereby petition, under the provisions of Section 416-19 and 416-20, Hawaii Revised Statutes, for a charter of incorporation, for themselves and their associates, as a non-profit corporation under the name of KULA NANI ESTATES COMMUNITY ASSOCIATION, and in connection herewith do hereby incorporate herein by reference thereto the accompanying proposed charter of incorporation wherein set forth various matters required under Section 416-20 aforesaid.

Dated at Honolulu, Hawaii, this 16th day of October, 1980.

Takeki Okamoto
TAKEKI OKAMOTO

Masatoshi Suzuki
MASATOSHI SUZUKI

Tsutomu Tsuda
TSUTOMU TSUDA

Section 8.
CHARTER OF INCORPORATION
(KULA NANI ESTATES
COMMUNITY ASSOCIATION)

STATE OF HAWAII
DEPARTMENT OF REGULATORY AGENCIES
Business Registration Division
1010 Richards Street
Mailing address: P. O. Box 40, Honolulu, Hawaii 96810

In the Matter of the)
Incorporation)
of)
KULA NANI ESTATES)
COMMUNITY ASSOCIATION)

CHARTER OF INCORPORATION

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, the undersigned Director of Regulatory Agencies of the State of Hawaii send Greetings:

WHEREAS, TAKEKI OKAMOTO, MASATOSHI SUZUKI, and TSUTOMU TSUDA, a majority of whom are residents of the State of Hawaii, have filed with me as Director of Regulatory Agencies, a verified petition to grant to them and their associates a charter of incorporation as a non-profit corporation, in accordance with the provisions of Section 416-19 and Section 416-20, Hawaii Revised Statutes;

NOW, THEREFORE, KNOW YE, That I, the said Director, in the exercise and execution of every power and authority in anywise enabling me in this behalf, do hereby constitute the said petitioners and their associates a corporation under the laws of the State of Hawaii for the purposes and in the form hereinafter set forth.

I.

NAME

The name of the corporation shall be: KULA NANI ESTATES COMMUNITY ASSOCIATION.

II.

PRINCIPAL OFFICE

The location of the principal office of the corporation shall be in Wailuku, County of Maui, State of Hawaii, and the post office address of its initial office shall be 100 Wells Street, Kanoa Building, Wailuku, Maui 96793.

III.

PURPOSE AND POWERS OF THE ASSOCIATION

The purposes for which the corporation is formed, are as follows:

a. The specific and primary purpose of the corporation is to act as the principal agency in the form of a community association composed of owners of lots in the Kula Nani Estates with powers charged, delegated, and assigned by the membership to maintain, preserve, manage, and administer the community properties and common facilities and also levy, collect, and disburse the assessments and charges, all as herein set forth.

b. The corporation shall adopt regulations, which govern the use of the privately owned lots in the subdivision.

c. The corporation shall promote the health, safety, and the pride of ownership of the members of the corporation.

as such law is now in effect or may at any time hereafter be amended, and shall perform all other acts necessary or incidental to the administration of the affairs and for carrying out the purpose of the corporation, including any or all of the following acts or things:

(1) To enter into contracts or other arrangements with any person, firm, association, corporation, municipality, body politic, county, state, or government conducive to the specific and primary purpose of the corporation.

(2) To acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, license, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the corporation.

(3) To borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of the real or personal property of the corporation as security for money borrowed or debts incurred.

(4) To fix, levy, collect, and enforce payment of, by any lawful means, charges, and assessments, pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all licenses, taxes, or governmental charges, if any, levied or imposed against the property of the corporation.

(5) To adopt regulations governing the common facilities, community properties, and private properties.

(6) To exercise all of the powers and privileges and to perform all of the duties and obligations of this Association as set forth in that certain Declaration of Restrictive Covenants for Kula Nani Estates, hereinafter called the "Declaration", filed or to be filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and the Bureau of Conveyances of the State of Hawaii, and as set forth in the successively numbered Amendments to the said Declaration which will be filed in said Office of the Assistant Registrar of the Land Court or said Bureau of Conveyances, and as further set forth in other amendments to the same as they will be made from time to time;

The foregoing statement of purposes shall be construed as a statement of both purposes and powers, and the purposes and powers stated in each clause shall, except where otherwise expressed, be in nowise limited or restricted by any reference to or inference from the terms or provisions of any other clause, but shall be regarded as independent purposes and powers. Notwithstanding any of the above statements of purposes and powers, the corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific or primary purposes of the corporation.

IV.

MEMBERSHIP

Each Owner, as hereinafter defined, shall automatically become a member of the Association and shall be entitled to and be bound by all of the rights, duties, priv-

Charter and By-Laws, the Declaration of Restrictive Covenants for Kula Nani Estates, and any Restrictions adopted by said Association. Upon transfer or termination of the ownership interest in a Kula Nani Estates Subdivision lot, a person, corporation, or other legal entity shall no longer be considered an "Owner" as hereinafter defined and shall no longer be entitled to or bound by said rights, duties, privileges, and obligations.

An "Owner" shall be defined as a person or persons, corporation or corporations, or other legal entity or entities, who or which own a lot in the Kula Nani Estates Subdivision. The purchaser of a lot in the Kula Nani Estates Subdivision by way of an Agreement of Sale shall be considered to be the "Owner" of said lot by said Association, until his right to possession is rescinded by the terms of said Agreement of Sale.

V.

DURATION

The duration of the corporation shall be perpetual.

VI.

OFFICERS

The officers of the corporation shall be a President, a Vice-President, a Secretary, and a Treasurer, and such other officers as may be provided in the By-Laws. The Secretary and/or Treasurer may be an individual, firm or corporation. The offices of Secretary and Treasurer may be held by the same person. The officers shall be elected or appointed as provided in the By-Laws. The names and addresses of the initial officers are:

President: Takeki Okamoto
857 Hokulani Street
Honolulu, Hawaii 96825

Vice-President: Donald Tokunaga
327 South Alu Road
Wailuku, Maui, Hawaii 96793

Secretary: Tsutomu Tsuda
500 University Avenue
Apartment 507
Honolulu, Hawaii 96826

Treasurer: Masatoshi Suzuki
1717 Mott-Smith Drive
Apartment 3011
Honolulu, Hawaii 96825

VII.

BOARD OF DIRECTORS

There shall be a board of directors consisting of not less than three (3) members. The following persons shall be the initial officers and directors, and shall hold office for the first (1st) year or until their successors are duly elected pursuant to the By-Laws of the corporation.

<u>Office Held</u>	<u>Name</u>	<u>Residence Address</u>
President & Director	Takeki Okamoto	857 Hokulani Street Honolulu, Hawaii 96825
Vice-President & Director	Donald Tokunaga	327 South Alu Road Wailuku, Maui, Hawaii 96793
Secretary & Director	Tsutomu Tsuda	500 University Avenue Apartment 507 Honolulu, Hawaii 96826
Treasurer & Director	Masatoshi Suzuki	1717 Mott-Smith Drive Apartment 3011 Honolulu, Hawaii 96825

VIII.

NON-PROFIT LAWS

The corporation is organized pursuant to Chapter 416, Section 416-19 and Section 416-20, of the Hawaii

Revised Statutes of the State of Hawaii. The funds of the corporation, regardless of the source thereof, shall be used exclusively in the promotion of the business and purposes of the corporation in such manner as the Board of Directors may from time to time determine. No part of the net earnings, if any, of the corporation shall be distributed to or inure to the benefit of any of its members or to the benefit of any private individual.

IX.

POWERS AUTHORIZED BY LAW

The corporation shall have all the powers provided by law, and not expressly denied by law or this Charter of Incorporation.

X.

DISSOLUTION

The corporation does not contemplate pecuniary gain or profit to the members thereof and it is organized solely for non-profit purposes. Upon the dissolution and winding up of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be distributed to a non-profit organization to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the corporation; provided, however, that such non-profit organization shall qualify for exemption from the payment of federal income tax under the appropriate section of the Internal Revenue Code, as amended, from time to time. In no event shall any corporate assets inure to the benefit of any persons or individual or any members or directors of the corporation. The corporation is

not organized for profit, it will not issue any stock, and no part of its assets, income, or earnings shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation.

XI.

RIGHTS, POWERS, AND DUTIES TO BE DESCRIBED IN THE BY-LAWS

The rights, powers, and duties of the members of the corporation, the Board of Directors, and the several officers shall be set forth in the By-Laws.

XII.

LIABILITY

The property of the corporation shall alone be liable in law for the payment of its debts and the discharge of its obligations. Neither the members of the corporation nor the members of the Board of Directors nor any of the officers shall have any personal liability for the payment of such debts or the discharge of such obligations, except that every member of the corporation shall be subject to assessment for and on account of debts, expenses, and obligations of the corporation as in the By-Laws provided.

XIII.

BY-LAWS

The initial By-Laws of the corporation shall be adopted by the persons who signed the petition for a charter of incorporation, within thirty (30) days after the granting hereof. The By-Laws may be amended or repealed, and new By-Laws may be adopted in the manner provided in the By-Laws.

XIV

AMENDMENTS

This Charter of Incorporation may not be amended without the vote ~~of the members~~ of seventy-five percent (75%) of the members entitled to exercise such vote in accordance with the provisions of Section 416-23 of the Hawaii Revised Statutes. No amendment shall be effective unless it complies with the provisions of said Section 416-23.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Department of Regulatory Agencies, at Honolulu, this ____ day of _____, 198__.

Director of Regulatory Agencies

Section 9.
BY-LAWS OF KULA NANI ESTATES
COMMUNITY ASSOCIATION

BY-LAWS
OF
KULA NANI ESTATES COMMUNITY ASSOCIATION

ARTICLE I

Name and Location

The name of the corporation is KULA NANI ESTATES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, hereinafter referred to as the "Corporation".

The principal address of the Corporation shall be in _____, State of Hawaii. The initial mailing address of the Corporation shall be 2680 Pacific Trade Center, 190 South King Street, Honolulu, Hawaii.

ARTICLE II

Members of the Corporation

Section 1. Qualification; Proof of Status; Certificates.

(a) Each person, corporation, or other legal entity who is, or such persons, corporations, or other legal entities who are an "Owner" of any lot within the KULA NANI ESTATES as described in the Declaration of Restrictive Covenants for Kula Nani Estates, as the same may be amended from time to time (herein called the "Declaration"), shall be a member of the Corporation, and no person other than such an Owner may be a member of the Corporation. The purchaser of a lot in the Kula Nani Estates Subdivision by way of an Agreement of Sale shall be considered to be the "Owner" of said lot by said Association, until his right to possession is rescinded by the terms of the Agreement of Sale.

(b) No person shall exercise the rights of membership in the Corporation until satisfactory proof has been furnished to the secretary of the Corporation that he is an Owner. Such proof may consist of a copy of a duly executed, acknowledged, and recorded deed or title insurance policy, or a Transfer Certificate of Title, showing said person to be the Owner of a lot within the KULA NANI ESTATES, or a copy of a Sales Contract or an Agreement of Sale showing said person to be the Owner of a lot within the KULA NANI ESTATES. Any such deed, policy, contract, or Agreement of Sale shall be deemed conclusive in the absence of a conflicting claim based upon a later deed, policy, contract, or Agreement of Sale, or a Transfer Certificate of Title.

(c) The Board of Directors of the Corporation may provide for the issuance of certificates evidencing membership in the Corporation which shall be in such form as may be determined by the Board. All certificates evidencing membership shall be consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the Corporation maintained by its Secretary. If any certificate shall become lost, mutilated or destroyed a new certificate may be issued therefor upon such terms and conditions as the Board may direct.

Section 2. Voting Rights; Proxies.

(a) At any meeting of the members of the Corporation, each member shall be entitled to cast one vote for each lot said member owns in the KULA NANI ESTATES SUBDIVISION. If more than one person or entity owns one given lot, any one of said persons or entities may exercise said one vote on behalf of all the Owners of said lot, but no such vote shall be exercised without the unanimous consent of all said persons or entites.

(b) Any member may attend and vote at meetings in person, or by a proxy holder duly appointed by a written proxy signed by the member and filed with the Secretary of the Corporation. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. It shall be deemed revoked when the Secretary shall receive actual notice of the death or judicially declared incompetence of such member, or upon termination of such member's status as an Owner as defined in said Charter of Incorporation. Where two or more persons constitute a member, any proxy with respect to the vote of such member shall be signed by the member or members actually residing or occupying the lot.

Section 3. Meetings; Notice; Quorum.

(a) An annual meeting of the members of the Corporation shall be held each year on such date and at such time and at such place in the County of Maui, State of Hawaii, as may be designated in the notice of annual meeting, for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting.

(b) Special meetings of the members of the Corporation may be held at such time and at such place in the County of Maui, State of Hawaii, and for such purposes as shall be specified in a call for any such meeting made by resolution of the Board of Directors or by a writing filed with the Secretary signed by the President, or by a majority of the Directors, or by ten percent in voting interest of the entire membership of the Corporation.

ation, notice of each meeting of the members of the Corporation, specifying the day and time and place of the meeting and the purposes for which the meeting is called, and specifying whether it is an annual or special meeting, shall be given by or under direction of the Secretary to each member of the Corporation at least ten days before the date fixed for such meeting, by advising him in writing or by word of mouth of the meeting at his residence address as it appears on the books of the Corporation or his usual place of business, or by mailing written notice of the meeting postage prepaid, addressed to him at his said residence address or usual place of business. In case of the death, absence, incapacity, or refusal of the Secretary, such notice may be given by a person designated either by the Secretary or by the person or persons calling the meeting or by the Board of Directors. If notice is given pursuant to the provisions of these By-Laws, nonreceipt of actual notice of any meeting by any member of the Corporation shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. No notice of any meeting need be given to any member of the Corporation who at the time of the meeting is absent from the State of Hawaii. Any member of the Corporation may waive notice of any meeting, with the same effect as though notice of the meeting had been given to him. The presence of any member of the Corporation at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

(d) At any regular or special meeting of the Corporation, members representing a majority of the lots in the KULA NANI ESTATES, present or represented by proxy, shall constitute a quorum for the transaction of business. A quorum must be present for the Corporation to conduct any meeting. Whether a quorum be present or not, a majority vote of the members present may adjourn any meeting from time to time, and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting the concurring vote of members having a majority of the votes of the members constituting a quorum shall be valid and binding upon the Corporation except as otherwise provided by law, the Charter of Incorporation, the Declaration, or these By-Laws.

ARTICLE III

Board of Directors

Section 1. Number; Election; Tenure; Vacancies.

(a) There shall be a Board of Directors of the Corporation of not less than three nor more than nine members, and until the members of the Corporation shall otherwise determine, the Board of Directors shall consist of four members. Subject to the foregoing limitations, the number of Directors shall be fixed each year by the members of the Corporation at their annual meeting, provided that the number of Directors may be decreased or increased subject to

the foregoing limitations and if increased the additional Directors may be elected by the members at any special meeting called for such purposes. None of the directors shall receive any salary from the Corporation.

(b) The Directors shall be classified by dividing them into two classes, as follows: first class, _____ and _____; second class _____ and _____;

_____ . The Directors of the first class shall hold office until the first annual meeting of the members of the Corporation, at which time the successors of the first class of Directors shall be elected for a term of two years. The Directors of the second class shall hold office until the second annual meeting of the members of the Corporation. At each annual election of Directors, the successors to the class of directors whose terms shall expire in that year shall be elected Directors for a term of two years, so that the term of office of one class of Directors shall expire each year, but each Director of whatever class, shall hold office until his successor shall have been elected and shall qualify, or until his death or until he shall resign or shall have been removed in the manner herein provided. Except with respect to their respective terms of office, all Directors shall have equal powers. In case of any increase in the number of Directors, each class shall be respectively increased so that after any such increase, each class shall consist as nearly as possible of one-third or more of the members of the whole Board of Directors. In case of any decrease in the number of Directors, each class shall be decreased so that after any such decrease, each class shall consist as nearly as possible to at least one-third of the members of the whole Board of Directors. Nothing contained herein shall be deemed to restrict the power of the members or of the Board of Directors to remove a director for cause.

(c) Vacancies on the Board may be filled by a majority of the remaining Directors though less than a quorum, and each Director so elected shall hold office until his successor is elected by the members. Upon tender of a resignation by a Director, the Board shall have the power to elect his successor to take office at such time as the resignation becomes effective.

Section 2. Meetings; Notice; Quorum.

(a) An annual meeting of the Board of Directors shall be held each year immediately after the annual meeting of the members of the Corporation and at the place of such annual meeting, without call or formal notice. Regular meetings of the Board of Directors, other than annual meetings, shall be held on such day or days and at such time or times and at such place or places in the County of Maui, State of Hawaii, as shall be determined from time to time by the Board of Directors, and when any such meeting or meetings shall be so determined no further notice thereof shall be required. Special meetings of the Board of Directors may

shall be held on such day, at such time and at such place in the County of Maui, State of Hawaii, as shall be specified by the person or persons calling the meeting.

(b) Notice of each special meeting of the Board of Directors, specifying the day and time and place of the meeting shall be given by or under direction of the Secretary or by a person calling the meeting to each member of the Board of Directors, by advising him in writing or by word of mouth of the meeting, or by leaving written or oral notice of the meeting at his residence or usual place of business, or by mailing written notice of the meeting postage prepaid addressed to him at his residence or usual place of business. Nonreceipt of notice of any meeting by any member of the Board of Directors shall not invalidate the meeting or any proceedings taken or any business done at the meeting. No notice of any meeting need be given to any member of the Board of Directors who at the time of the meeting is absent from the State of Hawaii. Any member of the Board of Directors may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting has been given to him. The presence of any member of the Board of Directors at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

(c) A majority of the members of the Board of Directors shall constitute a quorum for the conduct of the business at any meeting, and any decision of a majority of such quorum, within the scope of the authority of the Board of Directors, shall be valid and binding on the Corporation. Any business within the scope of the authority of the Board of Directors may be transacted at any meeting thereof, irrespective of any specification of the business to be conducted at the meeting which may be set forth in the call or notice thereof.

Section 3. General Powers. The property, business, and affairs of the Corporation shall be managed and controlled by the Board of Directors, which shall have and may exercise all of the powers of the Corporation, including, without limitation, all of the powers of the Corporation as set forth in said Declaration, except such as are expressly reserved to or may from time to time be conferred upon the members by law, by the Charter of Incorporation, by said Declaration or by these By-Laws. The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, create and appoint one or more committees, each committee to consist of two or more of the Directors of the Corporation which, to the extent provided in said resolution or resolutions or in other provisions of these By-Laws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

ARTICLE IV

Officers and Agents

Section 1. Designation; Duties.

(a) The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer, who shall be appointed by the Board of Directors, and who shall hold office until their successors are appointed and qualified. The Corporation may have such other officers, agents, and factors as may be deemed necessary, who shall be appointed in such manner, hold their offices for such terms, and have such authority and duties as may be determined by the Board of Directors. So far as is permitted by law, any two offices may be held by the same person. In addition to the duties and powers herein set forth, each officer shall have such duties and powers as are commonly incident to his office and such duties and powers as the Board of Directors shall from time to time designate. In all cases where the duties of any officer, agent, or employee are not specifically prescribed by the By-Laws or by the Board of Directors, such officer, agent, or employee shall obey the orders and instructions of the President.

(b) President. Subject to the control of the Board of Directors, the President shall be the chief executive officer of the Corporation and shall exercise general supervision and direction over the management and conduct of the affairs and business of the Corporation. Unless the Board of Directors otherwise directs, he shall preside at all meetings of the members and of the Board of Directors at which he is present.

(c) Vice President. The Vice President, or if more than one shall have been appointed, the Vice Presidents, in order of priority of appointment, shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. Each Vice President shall have such other powers and duties as may be given to him by law or in these By-Laws and as may be assigned to him from time to time by the Board of Directors or by the President.

(d) Secretary. The Secretary shall have charge of the membership ledger, all documents pertaining to the title to all real property owned or held by the Corporation, and all rules, regulations, and other documents required to be filed with the Corporation or in the office of the Corporation by the Declaration, an original or duplicate of each of which shall at all times during the usual hours of business be open to the examination of every member of the principal office or place of business of the Corporation in the County of Maui, State of Hawaii. The Secretary shall record all proceedings of the meetings of the members and Directors in a book which shall be the property of the

perform such other duties as shall be assigned to him. In the absence of the Secretary from any such meeting, a temporary Secretary shall be chosen who shall record the proceedings of such meeting in the aforesaid book.

(e) Treasurer. Subject to the direction and under the supervision of the Board of Directors, and the provisions of the foregoing paragraph, the Treasurer shall have the care and custody of the funds and valuable papers of the Corporation, shall have power to endorse for deposit or collection all notes, checks, drafts and other obligations for the payment of money to the Corporation or its order, and shall keep or cause to be kept accurate financial books and accounts of the Corporation and to render statements of the same in such form and as often as required by the Board of Directors.

(f) Auditor.

(i) Election. The members may at any annual meeting, or at any special meeting called for that purpose, appoint some person, firm or corporation engaged in the business of auditing to act as the auditor of the corporation.

(ii) Disqualification. No director or officer shall be eligible to serve as auditor of the corporation.

(iii) Duties. The auditor shall, as required by the members, examine the books and papers of the corporation and compare the statements of the treasurer with the books and vouchers of the corporation, and otherwise make a complete audit of the books of the corporation, and thereafter make appropriate reports to the members.

ARTICLE V

Removals, Vacancies and Absences

Section 1. Removals. The members of the corporation may at any time depose or remove from office, for or without cause, any director, officer, subordinate officer, agent or employee. The Board of Directors may at any time, for or without cause, remove from office or discharge from employment any officer, subordinate officer, agent or employee appointed by it or by any person under authority delegated by it.

Section 2. Vacancies. In case of any vacancy occurring in the Board of Directors between meetings of the members, through death, resignation, disqualification, removal or other cause other than temporary absence or illness, the directors remaining, although less than a majority of the Board, may by affirmative vote of a majority of them appoint a successor or successors to hold the office or offices so vacant for the unexpired term or terms thereof,

respectively, or until the members shall by election fill the same. The Board of Directors may elect a successor for any officer whose office becomes vacant for any of the foregoing reasons.

ARTICLE VI

Liability of Officers and Directors

Section 1. Exculpation. No director or officer of the corporation shall be liable for his acts, defaults or neglects unless said acts, defaults or neglects constitute wilful misconduct, wilful neglect or wilful negligence. No director or officer of the corporation shall be liable for acts, defaults, or neglects of any other director or officer, or for any loss sustained by the corporation, unless the same has resulted from his own wilful misconduct, wilful neglect or wilful negligence.

Section 2. Indemnification of Directors & Officers. The Corporation shall indemnify any and all persons who may serve or who have served at any time as directors or officers, and their respective heirs, personal representatives, successors and assigns, against any and all expenses, including amounts paid upon judgment, counsel fees and amount paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them, are made parties, or a party, or which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or officer of the corporation, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any action, suit or proceeding to be liable for his own wilful negligence or wilful misconduct in the performance of his duty. Such indemnification shall be in addition to any other rights to which those indemnified may be entitled under any law, bylaw, agreement, vote of stockholders, or otherwise.

ARTICLE VII

Fiscal Year

The fiscal year of the corporation shall be such as may from time to time be established by the Board of Directors.

ARTICLE VIII

Execution of Instruments

Except in the case of a contract for compensation

of Directors may authorize one or more of its number or one or more officers or subordinate officers to execute the same, all checks, notes, bonds, deeds, leases, contracts, or other documents or instruments shall be executed by any two of the following officers: the President, a Vice President, the Treasurer and the Secretary. The members of the Corporation or the Board of Directors, by general or special resolution may designate some other officer to join with one of the foregoing officers in place of the second officer in the execution of any such documents or instruments.

ARTICLE IX

Seal

The Corporation may adopt and use a corporate seal and it shall be in such form and devise as shall from time to time be determined by the members of the Corporation.

ARTICLE X

Adoption, Amendment, and Repeal

Section 1. Vote Required. The By-Laws may be amended or repealed and new By-Laws may be adopted, by action of not less than a seventy-five percent (75%) voting interest of the members of the Corporation at a meeting duly called and held, the notice of which shall have stated that a purpose of the meeting is to consider the adoption, amendment, or repeal of the By-Laws and the general nature of the same.

These By-Laws are hereby adopted this ____ day of _____, 19____, in _____, State of Hawaii.

_____, Secretary of KULA NANI ESTATES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, hereby certifies that the foregoing is a true copy of the By-Laws of said Corporation, and that said By-Laws were adopted on the ____ day of _____, 19____, and are still in force and effect.

Witness the hand of the undersigned this ____ day of _____, 19____.

Section 10.
WATER USAGE AGREEMENT

WATER USAGE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 1980, by and between KULA NANI ESTATES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, with its principal place of business and post office address in Kula, Maui, Hawaii, hereinafter called "KNECA" and YOSHIO INOUE FARM, INC., a Hawaii corporation, with its principal place of business and post office address at said Kula, and YOSHIO INOUE and MATSUYO INOUE, husband and wife, of said Kula, hereinafter jointly called "Inouyes";

W I T N E S S E T H T H A T :

WHEREAS, the Kula Nani Estates is a subdivision comprised of thirty-eight (38) 2 acre lots situated in Kula, Maui; and

WHEREAS, Ohbayashi Hawaii Corporation, a Hawaii corporation having its principal place of business and mailing address in Honolulu, City and County of Honolulu, State of Hawaii, hereinafter called "OHC", presently owns all of the lots in said Kula Nani Estates subdivision; and

WHEREAS, the County of Maui entered into that certain Agreement with OHC, as owner of all of the lots in said Kula Nani Estates, dated March 21, 1979, (hereinafter called the "Private Water System Agreement"), whereby said County of Maui permitted OHC to construct, maintain and operate a private water system to provide water for said Kula Nani Estates subdivision; and

WHEREAS, OHC, as owner of all of the lots in said Kula Nani Estates subdivision, has formed the Kula Nani

Estates Community Association to maintain and operate said private water system and any other common elements of said Kula Nani Estates; and

WHEREAS, the Inouyes own that certain parcel of land situated adjacent to said Kula Nani Estates and identified on the Tax Maps as Tax Key: 2-2-10-17, containing an area of approximately 20.91 acres; and

WHEREAS, the Inouyes wish to connect into and use water from said private water system; and

WHEREAS, KNECA is willing to permit the Inouyes to connect into and use water from said private water system under the terms and conditions hereinafter contained.

NOW, THEREFORE, the parties hereto, for and in consideration of the foregoing premises, and of the mutual covenants and agreements herein contained, do agree as follows:

1. KNECA shall permit the Inouyes and their successors, heirs and assigns to connect into and use water from the Kula Nani Estates private water system provided that:

a. The use of said water by the Inouyes shall be restricted to the normal domestic use for one single-family dwelling only on said lot identified by Tax Map Key as 2-2-10-17.

b. The County of Maui determines that such use by the Inouyes does not breach or violate any of the terms and conditions of the above-mentioned Private Water

System Agreement

to install a water meter on their property
and to connect into said private water system.

2. The Inouyes shall be solely responsible for applying to and obtaining permits from the County of Maui for said water meter and shall bear all costs and expenses related to obtaining said water meter from said County of Maui.

3. The Inouyes shall, at their own cost and expense, purchase and install said water meter.

4. The Inouyes shall be solely responsible for obtaining any and all approvals required from the County of Maui for their (the Inouye's) connection into and use of water from said private water system.

5. The Inouyes hereby agree to pay for all of the water they use from said private water system in such amounts, at such rates and at such times as set and determined by KNECA; provided that such rates are not discriminatory, and shall be no greater than that charged normally to any member of KNECA owning a lot in said Kula Nani Estates.

6. The Inouyes hereby agree to pay the maintenance fees for the maintenance and reserve funds for said private water system and any other common elements of the Kula Nani Estates, in such amounts, at such rates and at such times as are set and determined by KNECA from time to time for each of its members and their respective lots within Kula Nani Estates. The Inouyes shall therefor be responsible for paying maintenance fees, as aforesaid, equivalent to the maintenance fees assessed against a member of KNECA owning one lot in said Kula Nani Estates. The Inouyes shall commence paying said maintenance fees, from and after their (the Inouye's) initial use of water from said private water system.

7. The Inouyes hereby agree to assume the duties

obligations and liabilities with respect to said private water system and its maintenance and operations as though the Inouyes were members of KNECA, provided, however, that the Inouyes hereby acknowledge and agree that they are not members of said KNECA and do not have any voting rights in said KNECA.

8. In the event KNECA dedicates and the County of Maui accepts, the dedication of said private water system, the Inouyes hereby agree to execute and join in, as necessary, any documents for said dedication. The Inouyes understand and agree that they will receive no compensation for said joinder or execution. Upon the acceptance of the dedication of said private water system by the County of Maui, this agreement shall terminate.

9. In the event either party brings legal action against the other to enforce any of the foregoing terms and conditions, the prevailing party shall be entitled to recover its costs, including a reasonable attorney's fees, from the other party.

IN WITNESS WHEREOF, the parties hereto have executed this on the day and year first above written.

KULA NANI ESTATES COMMUNITY
ASSOCIATION,
a Hawaii non-profit corporation

By _____
Its:

By _____
Its:

YOSHIO INOUE FARM, INC.,
a Hawaii corporation

By _____
Its:

By _____
Its:

YOSHIO INOUE

MATSUYO INOUE

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) ss.

On this _____ day of _____, 19____,
before me appeared _____ and _____
_____, to me personally known, who, being by me duly
sworn, did say that they are the _____ and
_____, respectively, of KULA NANI ESTATES
COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, and
that the seal affixed to the foregoing instrument is the
corporate seal of said corporation and that the instrument
was signed and sealed in behalf of said corporation by
authority of its Board of Directors, and said _____
_____ and _____ ac-
knowledged the instrument to be the free act and deed of
said corporation.

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 19____,
before me appeared _____ and _____
_____, to me personally known, who, being by me duly
sworn, did say that they are the _____ and
_____, respectively, of YOSHIO INOUYE FARM, INC.,
a Hawaii corporation, and that the seal affixed to the
foregoing instrument is the corporate seal of said corpor-
ation and that the instrument was signed and sealed in
behalf of said corporation by authority of its Board of
Directors, and said _____ and
_____ acknowledged the instrument
to be the free act and deed of said corporation.

Notary Public, State of Hawaii

My commission expires:

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 19____,
before me personally appeared YOSHIO INOUYE and MATSUYO
INOUYE, to me known to be the persons described in and who
executed the foregoing instrument and acknowledged that they
executed the same as their free act and deed.

Notary Public, State of Hawaii

My commission expires: