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R-535 STATE OF HAWAII
BUREAU OF CONVEYANCES
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JUL 20, 2005 08:01 AM
Doc No(s) 2005-143463 Thru 2005-143464



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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LAND COURT SYSTEM REGULAR SYSTEM

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Kulana\amendment cpr removing remnant 3 dr2.wpd

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Jeffrey S. Grad, Esq.
841 Bishop St., #1800
Honolulu, HI 96813

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This Document contains 20 pages.

Tax Map Key Nos. (4) 4-4-3-05, 21 22

AMENDMENT TO
DECLARATION AND TO
CONDOMINIUM MAP OF THE
CONDOMINIUM PROPERTY REGIME

"KULANA"

(Condominium File Plan No. 3902)

and

QUITCLAIM DEEDS

Jeffrey S. Grad
Attorney At Law
A Law Corporation

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THIS Instrument is made this 15th day of July, 2005, by KAPAA 382, LLC, a Hawaii limited liability company, whose post office address is 4569 Kukui Street, Suite 200, Kapaa, Hawaii 96746, hereinafter referred to as the "Declarant" and KŪLANA PARTNERS, LLC, a Hawaii limited liability company ("Remnant 3 Owner"), whose post office address is 6580 Maid Marion, Alphretta, Georgia 30005;

W I T N E S S E T H :

WHEREAS, a condominium project named "KŪLANA" (herein called "Project"), was created by a Declaration of Condominium Property Regime, herein called "Declaration", which was recorded with the Bureau of Conveyances of the State of Hawaii as Document No. 2004-252101; and

WHEREAS, the Declaration was further amended and restated by instrument entitled "Amended and Restated Declaration of Condominium Property Regime", which was recorded January 27, 2005 with the Bureau as Document No. 2005-015753 ("Restated Declaration"); and

WHEREAS, the Declaration, as amended, encumbered the property described in Exhibit "A" attached thereto and incorporated herein by this reference (called therein and herein, the "Property" or "CPR Project Property") and such is further shown on Condominium File Plan No. 3902 (the "Condominium Map"); and

WHEREAS, all of the CPR Project Property other than that portion thereof more particularly described in Exhibit A attached hereto is owned by Declarant; and

WHEREAS, that portion of the Property which is more particularly described in Exhibit A attached hereto (which may be referred to herein as either as "Remnant 3" or as "Lot 26") is owned by Remnant 3 Owner; and

WHEREAS, the CPR Project Property other than Remnant 3 may be referred to hereinafter as the "Property Remaining Subject to the CPR Regime"; and

WHEREAS, the Project consists of 108 condominium units ("units"), of which 103 units are located on the portion of the

land owned by Declarant, and the remaining five (5) units are located on Remnant 3; and

WHEREAS, Declarant and Remnant 3 Owner wish to amend the Project Documents so as to accomplish, among other things: (i) removal of Remnant 3 (and the units located thereon) from the Project, so that Remnant 3 and the units located thereon shall no longer be burdened by nor receive the benefits of the Declaration, Bylaws or the Condominium Map ("Project Documents"), except as hereafter provided; and (ii) to make other changes to the Project Documents which would result from the foregoing removal of Remnant 3; and

WHEREAS, in connection with the removal of Remnant 3 from the CPR Project Property, (i) Remnant 3 Owner wishes to quitclaim to the Declarant any rights such Remnant 3 Owner may have in the Property Remaining Subject to the CPR Regime; and (ii) Declarant wishes to quitclaim to the Remnant 3 Owner any rights Declarant may have in Remnant 3, subject to the terms and conditions hereinafter provided.

NOW, THEREFORE,

I. Removal of Remnant 3 from the Project.

(a) Notice is hereby given that pursuant to Paragraph 20.5 of the Declaration that Remnant 3 (including for purposes hereof, the condominium units designated as Units 26A through 26E, inclusive, being the condominium units located on Remnant 3) is hereby removed and withdrawn from the Project. Hereafter, except as hereinafter set forth, neither Remnant 3 nor such condominium units shall be burdened by nor receive the benefits of the Declaration, Bylaws or the Condominium Map ("Project Documents").

(b) After removal of Remnant 3, the land remaining subject to the Project condominium property regime shall be that defined above as the "Property Remaining Subject to the CPR Regime."

(c) In connection with the foregoing the common interest appurtenant to each unit as set forth in Section 7 of the Declaration shall be changed from 1/108th to 1/103rd.

(d) Notwithstanding the removal of Remnant 3 from the Project, Remnant 3 shall have the perpetual nonexclusive right with unit owners within the Project to utilize the roadways and other common elements of the Project (including the easements appurtenant to such Remnant 3) subject to the terms and conditions of the Project Documents and subject to those certain terms and conditions of the Project Documents requiring the careful and proper use of such elements of the Project and confirming the user's liability for damage caused by Remnant 3 and its owners, agents, contractors, licensee and permittees.

II. Removal of Remnant 3 from the Condominium Project as Permitted by Chapter 514A, HRS. Remnant 3 (including for purposes hereof, the condominium units designated as Units 26A through 26E, inclusive, being the condominium units located on Remnant 3) is hereby removed from under the provisions of the Declaration of Condominium Property Regime, Bylaws and Covenants, Conditions and Restrictions, all as such may have been amended, as permitted by the provisions of Section 514A-21, H.R.S.. The undersigned are the owners of all of the common interests in the Project. Nothing contained herein limits or removes any rights, including easements of record, of the Owner of Remnant 3 which were granted with the purchase of Remnant 3 and were recorded at the closing of such purchase.

III. Amendment to Project Documents. Unless the context would indicate to the contrary, the Project Documents are amended as follows: (a) to delete all references to Remnant 3 or to Lot 26; (b) to delete all references to any of condominium units 26A through 26E inclusive and (c) wherever there is contained a reference to "108 condominium units", such shall be amended to refer to "103 condominium units."

By way of illustration and not limitation, the Declaration is hereby amended as follows:

1. The definition of "Lot" contained in the section entitled "Introductory Definitions and Interpretation"

"shall mean any portion of the Property which is treated under the CZO as a separate zoning lot, such Lots being presently described as Lots 1 through 23 and Remnant Lots 4 and 7 in Exhibit "A" attached to the Declaration."

2. The definition of "Property" or "Land" contained in the section entitled "Introductory Definitions and Interpretation" "shall mean those parcels of land which are more particularly described as Lots 1 through 23 and Remnant Lots

4 and 7 in Exhibit "A" attached to the Declaration, which lots are also shown on the Subdivision Map for the KŪLANA Subdivision dated March 14, 2004 which was approved by the Planning Commission of the County of Kauai in Subdivision Application No. S-99-49 on August 24, 2004."

3. The definition of "Remnant Lots" contained in the section entitled "Introductory Definitions and Interpretation" shall mean those lots described in Exhibit "A" to this Declaration as Remnant Lot 4 and Remnant Lot 7."

4. Section 1.3 of the Substantive Provisions shall be amended to read: "1.3 Tax Map Key Nos.: TMK (4)4-3-003:005 (por) (Kulana Subdivision); TMK(4)4-3-003:021 (Remnant 4) and TMK(4)4-3-003:005 (por) (Remnant 7)"

5. The first two subparagraphs of Section 2 of the Substantive Provisions shall be amended to read:

"2. DESCRIPTION OF PROJECT.

The Project consists of the Land together with appurtenant rights thereto and 103 shade structures described below and other improvements or replacements therefor made in accordance with this Declaration.

The Land consists of Lots 1 through 20 within the KŪLANA Subdivision, two Remnant Lots and three Roadway Lots. The Roadway Lots will be used for roadway purposes and may be dedicated to the County. All of such Lots are owned by Declarant."

6. Section 3.1 of the Substantive Provisions shall be amended to read:

"3.1 Buildings. Each of the 103 sheds constitutes an initial condominium unit. Each shed is constructed of four metal posts with shade cloth on the top. The net area of each shed is approximately 16 square feet. "

7. Section 3.3 of the Substantive Provisions shall be amended to read:

"3.3. Description of Units: One (1) freehold estate is hereby designated in each of the 103 Condominium Units contained in the Project. The boundary for each of the Units is set forth in Section 4 below. A Unit Owner has the right to replace or to make other changes to his Unit in accordance with this Declaration."

8. Section 7(a) of the Substantive Provisions shall be amended to read:

"7. FRACTIONAL UNDIVIDED INTEREST IN THE COMMON ELEMENTS.

(a) Subject to (b) below, the fractional undivided interest in the Common Elements appurtenant to each of the Units shall be 1/103rd."

9. Except as amended herein, the Declaration and other Project Documents remain unchanged and in full force and effect.

IV. QUITCLAIM DEEDS.

KNOW ALL MEN BY THESE PRESENTS:

(i) That KAPAA 382, LLC, a Hawaii limited liability company, of Kapaa, Hawaii, Hawaii, hereinafter called the "Grantor", for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid to Grantor by KŪLANA PARTNERS, LLC, a Hawaii limited liability company, whose post office address is 6580 Maid Marion, Alphretta, Georgia 30005, hereinafter called the "Grantee KPLLC", receipt whereof is hereby acknowledged, do by these presents REMISE, RELEASE AND QUITCLAIM, unto Grantee KPLLC, its successors and assigns, absolutely and in fee simple forever, all of grantor's right, title or interest in Remnant Lot 3, subject,

however, to the encumbrances, exceptions, reservations and other matters, if any, set forth therein or herein;

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity therein and thereto.

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 Grantee, in the tenancy aforesaid, absolutely and in fee simple; and,

(ii) That KŪLANA PARTNERS, LLC, a Hawaii limited liability company, of Alphretta, Georgia, hereinafter called the "Grantor", for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid to Grantor by KAPAA 382, LLC, a Hawaii limited liability company, whose post office address is 4569 Kukui Street, Suite 200, Kapaa, Hawaii 96746, hereinafter called the "Grantee Kapaa 382", receipt whereof is hereby acknowledged, do by these presents REMISE, RELEASE AND QUITCLAIM, unto Grantee Kapaa 382, its successors and assigns, absolutely and in fee simple forever, all of Grantor's right, title and interest in the Property Remaining Subject to the CPR Regime, subject, however, to the encumbrances,

exceptions, reservations and other matters, if any, set forth therein or herein;

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity therein and thereto.


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 Grantee, in the tenancy aforesaid, absolutely and in fee simple.

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

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

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

KULANA PARTNERS, LLC, a Hawaii limited liability company

By 
its *MANAGING MEMBER*
"Remnant 3 Owner"

KAPAA 382, LLC, a Hawaii limited liability company

By KAUAI LEASE AND LOAN LTD.
Its Member

By WILLIAM R. HANCOCK
Its President
"Declarant"

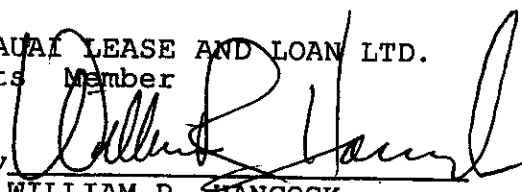
IN WITNESS WHEREOF, the parties have executed these presents on the day and year first above written.

KULANA PARTNERS, LLC, a Hawaii limited liability company

By _____
Its
"Remnant 3 Owner"

KAPAA 382, LLC, a Hawaii limited liability company

By KAUAL LEASE AND LOAN LTD.
Its Member

By 
WILLIAM R. HANCOCK
Its President
"Declarant"

STATE OF HAWAII

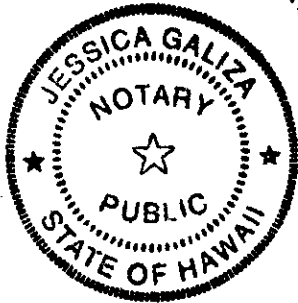
)

) SS.

COUNTY OF KAUAI

)

On this 15th day of July, 2005, before me personally appeared WILLIAM R. HANCOCK, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



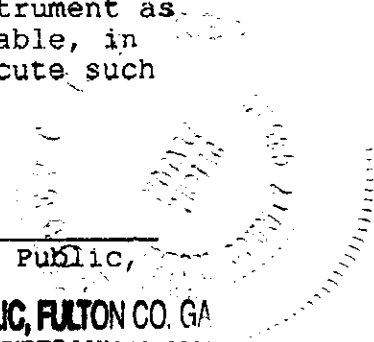
Jessica Galiza
JESSICA GALIZA, Notary Public,
above mentioned State

My Commission expires: 11/18/05

STATE OF GEORGIA)
) SS.
FULTON COUNTY)

On this 14th day of JULY, 2005, before me personally appeared DUSTIN CRANE and _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

[Signature]
ROBERT T. BAKER, Notary Public,
 above mentioned State



My Commission expires: NOTARY PUBLIC, FULTON CO. GA
MY COMM. EXPIRES MAY 10, 2009

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EXHIBIT "A"

REMNANT 3

LAND SITUATED APPROXIMATELY 3,300 FEET
NORTHEAST OF THE INTERSECTION
OF
HAUIKI AND OLOHENA ROAD

AT KAPAA AND WAIPOULL, KAWAIIHAU
ISLAND OF KAUAL, HAWAII

BEING A PORTION OF LOT B
AND
BEING ALSO A PORTION OF GRANT 5266
TO RUFUS P. SPALDING

Beginning at the West corner of this parcel of land on the North side of the State ditch, same being also the East side of Lot 77-K, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 10,884.72 feet North and 2,098.58 feet East and thence running by azimuths measured clockwise from true South:

- | | | | |
|----|----------|----------|---|
| 1. | 225° 14' | 479.80 | feet along Lot 77-K of Sea Mountain Estates, and along Lot 77-J of Grinpas Farm, same being portions of Lot 77 of Kapaa Homesteads, 1 st Series, same being also portion of Grant 8,726 to Lawrence S. Mundon; |
| 2. | 230° 28' | 55.10 | feet along Lots 3, 4, 5A-4, 5, and 2 of Kapahi Farm Lots; |
| 3. | 305° 27' | 1,531.51 | feet along Lots 3, 4, 5-A-4, 5, and 2 of Kapahi Farm Lots; |
| 4. | 89° 50' | 12.84 | feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series; |
| 5. | 115° 18' | 78.37 | feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series; |
| 6. | 114° 23' | 64.87 | feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series; |

7.	73° 20'	42.82	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
8.	43° 18'	40.75	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
9.	62° 21'	106.65	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
10.	93° 30'	23.01	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
11.	135° 50'	149.00	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
12.	107° 22'	27.83	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
13.	93° 17'	76.91	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
14.	123° 23'	92.07	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
15.	92° 20'	45.20	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
16.	105° 50'	64.96	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
17.	93° 00'	165.75	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
18.	50° 41'	94.84	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;

19.	21° 40'	71.92	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
20.	352° 10'	80.77	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
21.	38° 30'	34.99	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
22.	65° 30'	40.37	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
23.	33° 14'	100.00	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
24.	65° 26'	32.54	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
25.	135° 50'	42.34	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
26.	170° 50'	107.39	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
27.	174° 35'	116.45	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
28.	164° 00'	48.83	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;

29.	106° 16'	96.67	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
30.	155° 50'	85.19	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
31.	116° 52'	74.03	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
32.	126° 18'	116.76	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
33.	135° 50'	56.97	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
34.	141° 05'	76.73	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
35.	145° 31'	96.71	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series;
36.	125° 48' 30"	13.57	feet along North side of State ditch, same being a portion of Kapaa Homesteads, 1 st Series, to the point of beginning containing an Area of 14.632 acres.

TOGETHER WITH Easements "AU-6" through "AU-14", "AU-17" through "AU-23", "AU-25" through "AU-30", and "AU-46", as more fully described in the Declaration of Grant and Reservation of Easements for the Kulana Subdivision, dated February 13, 2004 recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-214158.

WHEREAS, the "Declarant" under such Declaration was and is KAPAA 382, LLC, a Hawaii limited liability company, ("Kapaa 382" or "Declarant") whose post office address is 4569 Kukui Street, Suite 200, Kapaa, Hawaii 96746; and

WHEREAS, the Declaration encumbers the property described in Exhibit "A" attached to the Declaration and incorporated herein by this reference (called therein and herein, the "Property") and such was further described on Condominium File Plan No. 3902 (the "Condominium Map"); and

WHEREAS, a portion of the Property is described as either as Remnant Lot 3 or as Lot 26, and such lot (referred to herein as "Lot 26") is owned by Lot 26 Owner; and

WHEREAS, the Project consists of 108 condominium units, of which 103 are located on lands owned by Declarant, and the remaining five units "Lot 26 CPR Units") are located on Lot 26 and are owned by the Lot 26 Owner;

WHEREAS, the Lot 26 Owner is willing, subject to certain conditions, to grant to said KAPAA 382, a limited power of attorney to act on behalf of the Lot 26 Owner in connection with the sale of condominium units other than the Lot 26 CPR Units;

Now Therefore,

Lot 26 Owner does hereby appoint KAPAA 382, LLC, a Hawaii limited liability company, as its true and lawful attorney, for it and in its name, place and stead, and for its use and benefit, to sign, execute, and deliver any and all contracts, receipts, acknowledgments, sales contracts for the sale of condominium units in the Project (other than Lot 26 CPR Units), conveyance documents for condominium units in the Project (other than Lot 26 CPR Units) and any and all other documents and instruments necessary or convenient and to take such actions necessary or convenient in furtherance of the development of the Project or the offering for sale of the condominium units in the Project, except as aforesaid;

Provided, however, that KAPAA 382, LLC shall have no power and authority on behalf of Lot 26 Owner to enter into agreements to sell or to sign and deliver conveyance documents for the transfer of the Lot 26 CPR Units; and

Provided, further, that notwithstanding such grant of this limited power of attorney, the Lot 26 Owner shall not be considered a partner or joint venturer of the Declarant with

respect to the development of the Project; shall not be responsible to the Association of Unit Owners, its Board of Directors, any Unit Owner or any other person for any design or construction defects in any portion of the Project or for any other claims or liabilities arising therefrom or for any redesign, reconstruction or repair hereafter required to any portion of the Project (including the common elements or any Unit), excepting, however, that such Lot 26 Owner shall be responsible for such claims or liabilities arising out of or connected in any way with the Lot 26 Owner development of Lot 26 or its sale of Lot 26 CPR Units.

GIVING AND GRANTING unto its said attorney full power and authority to do and perform any and all acts and deeds as fully and effectually to all intents and purposes as such Third Party Owner might or could do if personally present; and hereby confirm all that its said attorney shall lawfully do or cause to be done by virtue of these presents.

The power of its attorney-in-fact to act in accordance with the foregoing shall not be affected by any disability or incapacity suffered by it after its execution of this instrument. All acts done by its attorney-in-fact pursuant to this power during any period of disability or incompetency shall have the same effect and inure to the benefit of and bind it, its heirs, devisees and personal representatives as if Third Party Owner were fully competent and not disabled.

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

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