



**REAL ESTATE COMMISSION**  
 STATE OF HAWAII  
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
 PROFESSIONAL AND VOCATIONAL LICENSING DIVISION  
 1010 Richards Street - P. O. Box 3469  
 Honolulu, Hawaii 96801

**CONDOMINIUM PUBLIC REPORT**

on

1178 ULUNIU  
 1178 Uluniu Road  
 Kihei, Hawaii 96753

Registration No. 2044

Issued: June 1, 1989  
 Expires: July 1, 1990

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of May 3, 1989, and is issued by the Commission for informational purposes only. It represents neither approval nor disapproval of the project. Buyers are encouraged to read this report carefully.

Type of Report:

- PRELIMINARY:** The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued when complete information is filed.  
*(yellow)*
- FINAL:** The developer has legally created a condominium and has filed complete information with the Commission.  
*(white)*
- No prior reports have been issued  
 Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_
- 
- SUPPLEMENTARY:** Updates information contained in the  
*(pink)*
- Prelim. Public Report dated \_\_\_\_\_  
 Final Public Report dated \_\_\_\_\_  
 Supp. Public Report dated \_\_\_\_\_
- And  Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_
- This report reactivates the \_\_\_\_\_  
 public report(s) which expired on \_\_\_\_\_

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required       Not Required - disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

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

No prior reports have been issued by the Commission.

Changes made are as follows:

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## GENERAL INFORMATION ON CONDOMINIUMS

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of Hawaii's "Condominium Property Act" (Chapter 514A, Hawaii Revised Statutes) must be followed.

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

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

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

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

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

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

### Operation of the Condominium Project

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

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without a vote of the owners. Some of these actions may significantly impact the quality of life for all apartment owners.

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

## SUMMARY OF THE CONDOMINIUM PROJECT

**Interest to be Conveyed to Buyer:**

- Fee simple interest in an apartment and an undivided feehold interest in the common elements.
- Leasehold interest in an apartment and an undivided leasehold interest in the common elements.
- Fee simple interest in an apartment and an undivided leasehold interest in the common elements.

**Types of Project:**

1.  New Building(s)  Conversion  
 Both New Building(s) and Conversion
2.  Residential  Commercial  
 Mixed Residential and Commercial  
 Other \_\_\_\_\_
3.  High Rise (5 stories or more)  Low Rise
4.  Single or  Multiple Buildings
5. Apartment Description

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
A	1	3/2.5	2,075	0
B	1	3/2.5	2,019	0
C	1	3/2.5	2,075	0
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 3

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

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

**6. Parking:**

	<u>Number of Stalls</u>
Assigned Stalls (Individual Units)	<u>6</u>
Guest Stalls	<u>0</u>
Unassigned Stalls	<u>0</u>
Extra Stalls Available for Purchase	<u>0</u>
Other: _____	<u>N/A</u>
Total Parking Stalls	<u>6</u>

**7. Recreational amenities:**

None

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: William B. Moffett and Carol Lee Hong Phone: (808) 667-9390  
Name (Business)  
P.O. Box 635  
Business Address  
Lahaina, Hawaii 96767-0635

Names of officers or general partners of developers who are corporations or partnerships:

Not Applicable  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Sales Agent: Billfisher Realty, Inc. Phone: (808) 667-9390  
Name (Business)  
277 Wili Ko Place, No. 232  
Business Address  
Lahaina, Hawaii 96761

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211  
Name (Business)  
235 Queen Street, 1st Floor  
Business Address  
Honolulu, Hawaii 96813

Managing Agent: Oihana Property Management & Sales, Inc. Phone: (808) 244-7684  
Name (Business)  
840 Alua Street, Suite 202  
Business Address  
Wailuku, Hawaii 96793

Attorney for Developer: Hong, Iwai and Hulbert (Attn: Carol Lee Hong)  
Name  
2200 Pauahi Tower, 1001 Bishop Street  
Business Address  
Honolulu, Hawaii 96813

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

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners.

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

The Declaration for this condominium is:

- Proposed  
 Recorded - Bureau of Conveyances - Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document Number \_\_\_\_\_

Amendment date(s) and recording/filing information:

Not Applicable

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

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyance Condo Map No. \_\_\_\_\_  
 Filed - Land Court Condo Map No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

Not Applicable

- C. Bylaws of the Association of Apartment Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the way in which meetings will be conducted, and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances - Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document Number \_\_\_\_\_

Amendment date(s) and recording/filing information:

Not Applicable

The Condominium Statute (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The House Rules for this condominium are:

Proposed                       Adopted

Developer does not plan to adopt house rules.

E. **Changes to Condominium Documents**

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

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

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

The percentages for individual condominium projects may be more than the minimum set by law.

2. **Developer:** The developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws, or House Rules:

The Developer has reserved the right to change the Declaration, By-Laws, Apartment Deed, Escrow Agreement and the Condominium Map; provided that no such change shall (a) substantially change the Developer's obligation under the Sale Contract; (b) require a substantial change in the design, location or size of the apartment; (c) increase the buyer's undivided percentage common interest; or (d) reduce the Developer's obligation for common expenses on any unsold apartment in the Project.



**B. Underlying Land:**

Address: 1178 Uluniu Road Tax Map Key: 3-9-007-002(2)  
Kihei, Hawaii 96753 (TMK)

Address  TMK is expected to change because \_\_\_\_\_

Land Area: 0.298  square feet  acre(s) Zoning: A-1

Fee Owner: William B. Moffett and Carol Lee Hong  
Name

P.O. Box 635  
Address

Lahaina, Hawaii 96767-0635

Sublessor: Not Applicable  
Name

Address

**C Buildings and Other Improvements:**

1.  New Building(s)  Conversion of Existing Building(s)  
 Both New Building(s) and Conversion

2. Buildings: 3 Floors Per Building 2

Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other \_\_\_\_\_

4. Permitted Uses:

	<u>No. of Apts.</u>		<u>No. of Apts.</u>
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Industrial	_____
<input checked="" type="checkbox"/> Residential	<u>3</u>	<input type="checkbox"/> Agricultural	_____
<input type="checkbox"/> Timeshare/Hotel	_____	<input type="checkbox"/> Recreational	_____
<input type="checkbox"/> Other:	_____		_____

5. Special Use Restrictions:

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

[ ] Pets \_\_\_\_\_

[ ] Number of Occupants: \_\_\_\_\_

[ ] Other: \_\_\_\_\_

[ X ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Total Apartments 3

Elevators 0                      Stairways 3                      Trash Chutes 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>I</u>	<u>1</u>	<u>3/2.5</u>	<u>2,075</u>	<u>0</u>
<u>II</u>	<u>1</u>	<u>3/2.5</u>	<u>2,019</u>	<u>0</u>
<u>I-R</u>	<u>1</u>	<u>3/2.5</u>	<u>2,075</u>	<u>0</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

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

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

**Boundaries of Each Apartment:** There are three apartment spaces in the Project, respectively designated Apartments "A," "B" and "C" which are located in three separate buildings to be constructed on a north-south alignment on the Land. Each Apartment space shall include the entire two-story building in which it is located comprised on (i) the interior and exterior of all walls and partitions, (ii) floors and floor coverings, (iii) ceilings and roofs, (iv) doors and door frame, (v) windows, window glass and frames, (vi) all fixtures contained or installed in each apartment space, and (vii) any pipes, wires, and conduits or other utility or service lines running through such apartment space which are utilized for or service only such apartment.

**Permitted Alterations to Apartments:** Any alteration or additions solely within an Apartment or within a limited common element (such as the surrounding yard) appurtenant to an Apartment, including, but not limited to, any modification to any driveway or parking area which is a limited common element the use of which is restricted to Apartment, the installation or modification of any lighting or sprinkler system, or the construction of any swimming pool or other recreational structure within a yard, so long as the utilities cost (if a common expense) is not increased may freely occur without the consent of the other Apartment owners. All alterations, etc., have to conform with applicable building and/or zoning codes.

7. Parking Stalls:

Total Parking Stalls: 6

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for individual units)		<u>6</u>					<u>6</u>
Guest		<u>0</u>					<u>0</u>
Unassigned		<u>0</u>					<u>0</u>
Extra Available for Purchase		<u>0</u>					<u>0</u>
Other:		<u>0</u>					<u>0</u>
Total Covered & Open		<u>6</u>					

Each apartment will have the exclusive use of at least 2 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities.

There are no recreational or common facilities.

Swimming pool

Storage Area

Recreation Area

Laundry Area

Tennis Court

Trash Chute

Other: \_\_\_\_\_

\_\_\_\_\_

9. Present Condition of Improvements Not Applicable  
 (For conversions of residential apartments in existence for at least five years):

a. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

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

10. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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

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

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

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

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

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

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

1. **Common Elements:** Common Elements are those parts of the condominium project intended to be used by all apartment owners. They are owned jointly by all apartment owners.

Exhibit     A     describes the common elements.

As follows:

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

There are no limited common elements in this project.

The limited common elements and the apartments which may use them are:

described in Exhibit     B    

as follows:

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

Exhibit                      describes the common interests for each apartment.

As follows:

Apartment A has an undivided 34% interest; Apartment B has an undivided 32% interest, and Apartment C has an undivided 34% interest in the common elements.

**E. Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property.

Exhibit C describes the encumbrances against the title contained in the title report dated January 27, 1989 and issued by Title Guaranty of Hawaii

**Blanket Liens:**

A blanket lien is a mortgage on a condominium project that secures a construction loan. It is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest If Developer Defaults</u>
First and Second Mortgage	There are no partial release provisions in either Mortgage. Hence, no Apartment conveyance may occur prior to repayment. If a construction loan is obtained, it is expected that partial releases will be permitted. If so, then Developer's default after conveyance will not affect Buyer's interest. If Developer defaults before conveyance, there is no assurance that Buyer's Sales Contract will be honored by the construction lender. However, Buyer will be entitled to return of his deposit(s).

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

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

The initial managing agent for this condominium is: Oihana Property Management & Sales, Inc.

[ X ] not affiliated with the Developer.

[ ] the Developer or the Developer's affiliate.

[ ] self-managed by the Association of Apartment Owners.

[ ] other \_\_\_\_\_

**G. Estimate of Initial Maintenance Fees:**

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

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

Exhibit     D     contains a schedule of maintenance fees and maintenance fee disbursements.

**H. Utility Charges for Apartments:**

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

- |   |   |
|---|---|
| <input type="checkbox"/> Electricity    | <input type="checkbox"/> Television Cable         |
| <input type="checkbox"/> Gas            | <input checked="" type="checkbox"/> Water & Sewer |
| <input type="checkbox"/> Other _____    |   |
| <input type="checkbox"/> Not applicable |   |

**I. Construction Warranties:**

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

**1. Building and Other Improvements:**

There are no warranties for any of the individual Apartments or for the common elements. The Developer has not entered into any construction contract at present and there are, therefore, no beginning or ending dates for any warranties.

**2. Appliances:**

None exist at the present time: the Developer has not purchased any appliances.

**J. Status of Construction and Estimated Completion Date:**

Construction has not commenced. The Developer has no construction contract, and no funds by which to commence construction at the present time. If, as and when construction financing is obtained (which will generally be contingent upon the obtaining of one or more pre-sales of the Apartment) it is estimated that all construction will be completed within six to nine months.

**K. Project Phases:**

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

Summary of Developer's Present Plans for Future Development:

**L. Sales Documents Filed With the Real Estate Commission:**

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

Notice to Owner Occupants

Specimen Sales Contract

Exhibit  E  contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated  February 25, 1989

Exhibit  F  contains a summary of the pertinent provisions of the escrow contract.

Other \_\_\_\_\_

#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

1. The Commission is aware of certain discrepancies between information herein, which it deems correct, and in the Owner-Occupant Presale Notice regarding the area of units and the maintenance fees. While the unit areas may not be material (about 3% discrepancy), the maintenance fees are (about \$300/mo. herein vs. \$100 in the Notice). Prospective purchasers should ascertain this before signing a sales contract.
2. The Planning Department of Maui County granted the Developer a Special Management Area Use Permit on January 19, 1989, subject to certain conditions which may be relevant to a buyer's expectations. A copy of the approval letter is attached as EXH. G. The Commission, on April 5, 1989, gave Maui's Planning Department further opportunity to comment on the proposed project, but as of the date of this Public Report, no comments have been received. Should any comments later be received that the Commission deems material, a copy of the Department's letter will be attached to the next Public Report.
3. References to "yard areas" and depiction thereof with solid lines on the site plan are not meant to imply that they are legally subdivided lots. This is a condominium project on a single lot, not three separate lots.

**Buyer's Right to Cancel Sales Contract:**

**A. Rights Under the Condominium Statute:**

**Preliminary Report:** Sales made by the Developer are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

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

**Final Report, Supplementary Report to a Final Report:** Sales made by the Developer are binding if:

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

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

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

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

**B. Rights Under the Sales Contract:**

Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the condominium. These include but are not limited to the:

1. Condominium Public Reports issued by the Hawaii Real Estate Commission.
2. Declaration of Condominium Property Regime and Condominium Map.
3. Bylaws of the Association of Apartment Owners.
4. House Rules.
5. Escrow Agreement.
6. Hawaii's Condominium Law (Chapter 514A, HRS, as amended; Hawaii Administrative Rules, Chapter 16-107, adopted by the Real Estate Commission).
7. Other \_\_\_\_\_

If these documents are not in final form, the buyer should ask to see the most recent draft.

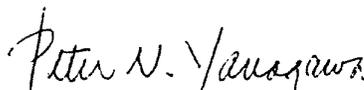
Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS, and Hawaii Administrative Rules, Chapter 16-107) are available at the Department of Commerce and Consumer Affairs.

This Public Report is a part of Registration No. 2044 filed with the Real Estate Commission on  
March 13, 1989.

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

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Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the date of issuance unless a Supplementary Public Report is issued or unless the Commission issues an order extending the effective period for the report.



\_\_\_\_\_  
for GLORIA DAMRON, Chairman  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

Bureau of Conveyances  
Department of Finance, County of Maui  
Planning Department, County of Maui  
Federal Housing Administration  
Escrow Agent

### Common Elements

There will be designated one freehold estate consisting of the remaining portion and appurtenances of the Project, being the common areas and facilities and referred to hereinafter as "common elements." The common elements shall include, but are not limited to, the following:

- (a) The Land in fee simple;
- (b) All areas, structures or facilities of the Project which are for common use or which serve more than one apartment space or the common elements, such as water pumping equipment and sprinkler facilities, fences, walls, and utilities conduits;
- (c) All central and appurtenant installations serving more than one apartment space for power, light, gas, water, telephone, radio and television signal distributions and all pipes, wires, conduits, ducts, vents and other service utility lines, which serve more than one apartment space;
- (d) All tanks, pumps, motors, fans and in general, all apparatus and installations for common use or for use in the maintenance of any area for which the Association of Apartment Owners may be required to improve and/or maintain, and all other parts of the Project necessary or convenient to its existence, maintenance or safety and normally in common use; and
- (e) All other parts of the Project which are not included in the definition of an apartment space.

### Limited Common Elements

Certain of the common elements are hereby designated as "limited common elements" and are set aside and reserved for the use of certain apartment spaces, each of which apartment spaces shall have appurtenant thereto an exclusive easement for the use of such limited common elements. The limited common elements so set aside and so reserved are as follows:

(a) **Yards.** The area surrounding each of the buildings on the south, west and north of each of said buildings are herein referred to as the "yards." Each of the yards will be landscaped, but the responsibility of all further cleaning and landscaping, including the trimming of trees and shrubbery and the replanting, if necessary, of groundcover, trees and shrubs, will be the sole responsibility of the owners of the buildings comprising Apartments A, B and C, which are respectively bounded by said yards.

(b) **Driveways and Parking Areas.** Apartments A and B shall share a common driveway dividing two concrete-paved parking areas, each of which is 31 feet deep from the Uluniu Road boundary of the property to the west side of said Apartments A and B, and each of which parking area is 40 feet wide measured from north to south. The parking areas are separated by a nine-foot wide common driveway, and each parking area will have room to park two automobiles, although the stalls will not be marked. The parking area immediately separating Apartment A and the parking area immediately separating Apartment B, from the Uluniu Road boundary of the Land shall be a limited common element, the rights to the use of which shall be exclusive to Apartment A and to Apartment B, respectively, while the driveway running between said parking areas shall be a limited common element, the use of which is equally shared by the owners of Apartments A and B. Apartment C shall have its own driveway, and the parking area designated as a limited common element for the sole and exclusive use of said Apartment C shall be separated by a stuccoed wall from the yard and parking area which comprises a limited common element appurtenant to Apartment B. The concrete driveway and parking area wholly enclosed within the walls surrounding Apartment C and its yard will contain two unmarked parking stalls the use of which shall be exclusive to the owner of Apartment C.

(c) **Perimeter Walls.** The walls constructed on the perimeters of each yard shall constitute limited common elements. One such perimeter wall shall be constructed along the Uluniu street boundary of the Land; two perimeter walls will be

constructed along the south and north boundaries of the Land, and two perimeter walls will be constructed between each of the three (3) two story-buildings comprising the apartment spaces in the Project, in order to separate the Land into three (3) 50-foot wide yards surrounding each of said apartment spaces. Apartment A shall be bounded by two parallel walls: one wall shall run east-west along the southern boundary of the Land for 55 feet to the ocean-side boundary of the Land, while the other will be constructed 50 feet north of the first wall and shall constitute a limited common element the interests in which shall be equally shared by Apartment A and Apartment B. There is to be one perimeter wall separating the parking area appurtenant to Apartment A from the Uluniu Road boundary of the Land, which wall will be separated from a similar wall dividing the parking area appurtenant to Apartment B from Uluniu Road by the common driveway shared by Apartments A and B. There is to be another dividing wall to be constructed between the parking area and the yard surrounding Apartment A, which wall is a limited common element, all interests in which shall be appurtenant to Apartment A. No wall will be built on the western boundary of the Land. Apartment B shall be similarly bounded by two parallel 55 foot east-west walls. The first is that previously described separating the yard surrounding Apartment B from the yard surrounding Apartment A, while the second wall runs 55 feet in an east-west direction separating the yard surrounding Apartment B from the yard surrounding Apartment C. Each of said east-west walls will be shared between the owners of Apartments A and B or B and C, with the southern most east-west wall being a limited common element the use of which is jointly shared by Apartments A and B, while the northern-most east-west wall is a limited common element, the use of which is jointly shared by Apartments B and C. Apartment B shall also be bounded, on the north, by a wall constructed between the parking area and the Uluniu Road boundary of the Land, as well as by another dividing wall to be constructed between the parking area and the yard surrounding Apartment B, which wall is a limited common element, all interests in which shall be appurtenant to Apartment B. No wall will divide the yard surrounding Apartment B from the ocean-side western boundary of the Land. The southern most east-west wall separating the yard surrounding Apartment C from the yard surrounding Apartment B will be, as previously described, a limited common element shared by Apartments B and C. The northern most east-west wall, however, will be a limited common element, the use of which shall be exclusive to Apartment C, which shall also possess a limited common interest in the north-south wall separating the parking area and yard surrounding Apartment C from Uluniu Road. Generally, the wall constructed between any two yards shall be limited common elements the use of which shall belong equally to the owners of the Apartments whose yards abut said dividing walls and each apartment owner shall

have the exclusive right to use the interior face and one-half of the top of any wall dividing any two yards.

(d) **Mailboxes and Refuse Collection Area.** The mailbox assigned to an apartment space shall be limited to the use of such apartment space even if such mailbox may be constructed within or atop any dividing wall or fence as shall constitute a limited common element, the use of which is shared by two or more Apartment owners. To the extent that refuse collection areas designated for the use of more than one apartment space shall be constructed, each of the owners of the Apartments for which such refuse collection area shall be designated shall have the right to use said area in common with all others entitled thereto.

(e) **Other.** All other common elements of the Project which are rationally related to less than all of the apartment spaces shall be limited to the use of such apartment space or apartment spaces to which the same are related.

### Encumbrances Against Title

A Preliminary Report issued by Title Guaranty of Hawaii, Incorporated, dated January 27, 1989, identifies the following encumbrances on the land:

1. For real property taxes as may be due and owing, inquiry should be made with the Department of Finance, Property Assessment Division, County of Maui.

2. That certain Tenant Lease dated June 24, 1988, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22624, at Page 313.

3. That certain mortgage, dated November 28, 1988, given by William B. Moffett and Carol Lee Hong, husband and wife, as Mortgagor, to Hawaii National Bank, as Mortgagee, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22624, at Page 319, securing a loan in the amount of \$412,500.00.

4. That certain mortgage, dated November 28, 1988, given by William B. Moffett and Carol Lee Hong, husband and wife, as Mortgagor, to Hawaii National Bank, as Mortgagee, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22624, at Page 324, securing a loan in the amount of \$137,500.00.

#### ADDITIONAL ENCUMBRANCES:

The following, which are not identified in the Preliminary Report mentioned above, will be encumbrances on the Land:

A. The exceptions and reservations in favor of the Developer of the Project, as follows:

(1) The right to dedicate to the County of Maui (or any agency or instrumentality thereof), that eight-foot wide strip fronting the Uluniu Road boundary of the Land designated on the Condominium Map as the "Dedication to Maui County," containing an area of 1,300 square feet, more or less.

(2) The right to designate, use, enjoy and grant or dedicate to any public utility, service company or governmental authority such rights of way and easements as the Developer in its sole discretion may from time to time determine for transmission facilities and appurtenances for electricity, gas, telephone, electromagnetic signal distribution, and any other utility or similar distribution system including but not limited to,

microwave, radio and television antennas, water, sewers, drainage, flowage and any other public utility or public service company purposes, services, and substances whatsoever over, across, under and through the premises hereinbefore described, including the right to enter to construct, reconstruct, install, operate, maintain, repair, and replace such lines, facilities, and appurtenances, and the right to designate, use, enjoy, and grant or dedicate rights of way for access and egress to others over the demised premises, these reserved rights to be exercised in such manner as will cause the least practicable interference with the apartment owners' use and occupancy of the premises.

(3) The right to impose restrictions on the use of the Apartments for owner-occupancy or long-term residency purposes (defined as leases of such Apartment for terms of six months or more), if required by the County of Maui, or any instrumentality thereof, as a condition of the issuance of a Special Management Area Permit or Building Permit.



Estimate of Maintenance Fee Disbursements:

1178 ULUNI

Monthly x 12 months = Yearly Total

Utilities and Services

Air Conditioning	0.	0.
Electricity	0.	0.
[ ] common elements only		
[ ] common elements and apartments		
Gas	0.	0.
Refuse Collection	55.	660.
Telephone	0.	
Water and Sewer	200.	2,400.

Maintenance, Repairs and Supplies

Building	0.	0.
Grounds	235.	2,820.

Management

Management Fee	150.	1,800.
Payroll and Payroll Taxes	0.	0.
Office Expenses	0.	0.

Insurance

Fire/Liability	165.	1,980.
Flood	111.	1,332.

Reserves

	0.	0.
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Taxes and Government Assessments

	0.	0.
--	----	----

Audit Fees

	0.	0.
--	----	----

Other

	0.	0.
--	----	----

TOTAL	\$916.	\$10,992.
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I/We, OTHANA PROPERTY MANAGEMENT & SALES, INC., as managing agents for the condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
\_\_\_\_\_  
Dick Weaver, CPM President  
Date: March 8, 1989

### Summary of Provisions of the Sales Contract

The Sales Contract (also known as the "DROA" and the Addendum or Addenda attached thereto) sets forth the terms of sale.

Among other things, the Sales Contract contains provisions stating the following:

1. If a Sales Contract is signed by both Seller and Buyer before the issuance by the Real Estate Commission of the State of Hawaii of a Final Report for the Project, it is a "reservation" only and not a binding contract of sale. Either Seller or Buyer may cancel the Sales Contract at any time before it becomes a binding contract of sale without penalty, although if Buyer cancels, Buyer may then be charged cancellation fees not to exceed \$250.00. If, however, Seller cancels, Buyer shall be entitled to a full refund, within 14 days of cancellation, of all deposits paid, plus interest in the amount which Escrow is to pay to Seller, and no cancellation charges will be assessed.

2. Seller has reserved the right to dedicate certain portions of the Project to Maui County or to other entities for purposes of street widening or utilities.

3. Seller has reserved the right to impress the Project with use restrictions, such as limiting the use of the Apartments for owner-occupant or long-term rental (e.g. under leases having a term of six months or more) purposes, as may be required by Maui County as a condition of approving building permits or other required documents.

4. Seller has specifically reserved the right to make changes to the design or location of the Apartment or any limited common elements, including walls, driveways and parking stalls, and to change the Declaration or Bylaws. However, if the changes are material in nature, and substantially and adversely affect the use or value of (i) Buyer's Apartment and appurtenant limited common elements, or (ii) those amenities in the Project available for Buyer's use, and if the Sales Contract is final and binding because Seller has provided Buyer with a copy of the Real Estate Commission's Final Report, Seller has to file a Supplementary Public Report. Buyer has the right to cancel the DROA if Buyer does not accept the changes. But, Buyer's right to cancel will not exist if: (i) Buyer accepts the changes; or (ii) Buyer does not reject the changes within 30 days after receipt of a Supplementary Report; or (iii) Buyer accepts or occupies the Apartment and 90 days pass.

5. Seller makes no warranties, express or implied, with respect to the Apartments, the Project, or consumer products, equipment, fixtures or other things installed in any Apartment. Seller has expressly disclaimed any warranties as to the condition, soundness, construction or habitability of any improvements comprising the Apartment or the Project.

Summary of Provisions of the Escrow Agreement

The Escrow Agreement establishes how the proceeds from the sale of the Apartments will be held in trust until closing, and the manner in which funds will be disbursed.

Among other provisions, the Escrow Agreement includes the following:

1. Escrow shall deposit any and all funds received and held in escrow in interest bearing accounts in federally-insured lending institutions designated by Developer or may use such funds for the purchase of time certificates of deposit. Any and all interest earned on such funds while Escrow holds them shall belong to Developer.

2. Subject to such deductions as may be provided in the Sales Contract and further subject to the escrow cancellation fee, if Buyer shall cancel the Sales Contract, Buyer shall be entitled to a return of Buyer's funds, and Escrow shall pay Buyer the funds upon the happening of any of the following:

(a) The Developer notifies Escrow to return to Buyer all of Buyer's funds held by Escrow;

(b) The conditions provided for a refund under §§514A-62, 514A-63 or 514A-105 of the Condominium Property Act (as amended on the date upon which the Sales Contract becomes binding and effective) have been met, and written notice thereof has been provided by Developer, and Developer and Buyer shall advise Escrow to refund Buyer's funds;

(c) Developer notifies Escrow in writing of Buyer's exercise of the right to rescind or cancel the Sales Contract under the terms set forth therein; or

(d) Escrow receives written notice from Buyer holding a nonbinding reservation (or, in the case of multiple Buyers of a single Apartment, notice from all of such Buyers) terminating the reservation, and releasing all rights and interest in the subject Apartment, provided Escrow shall notify Developer of such termination prior to making any refund to Buyer.

3. Escrow shall make no disbursements of any Buyer's funds, except by way of refunds thereof, until such Buyer's Sales Contract has "become effective" under the requirements of §§ 514A-39, 514A-62 and 514A-63 of the Condominium Property Act have been met, and Developer shall provide Escrow with a written opinion from Developer's attorney to such effect. No disbursements of Buyer's funds shall be made by Escrow for payments of

construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by Developer's mortgagee or a financially disinterested person.

4. Subject to the provisions of paragraphs 2 and 3 above, and upon written request of the Developer, disbursements of Buyer's funds may be made by Escrow from time to time to pay for construction costs in proportion to the valuation of the work completed by the contractor as certified by a registered architect or professional engineer, and approved by Developer's mortgagee, and to pay for architectural, engineering, finance and legal fees and other incidental expenses of the Project as approved by Developer's mortgagee. No disbursements of any Buyer's funds shall be made from the balance of the escrow after payment of the foregoing costs until Escrow receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute.

The foregoing are only a summary of certain provisions in the Escrow Agreement. It is incumbent upon the prospective buyer to read the entire Escrow Agreement with care.

HANNIBAL TAVARES  
Mayor



CHRISTOPHER L. HART  
Planning Director  
RALPH N. MASUDA  
Deputy Planning Director

**COUNTY OF MAUI**  
**PLANNING DEPARTMENT**  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

January 19, 1989

Mr. W. B. Moffett  
P.O. Box 635  
Lahaina, HI 96761

Dear Mr. Moffett:

Re: Request for a Special Management Area Use Permit to construct a Multi-Family Use project consisting of three (3) detached units, TMK 3-9-07:2, Kihei, Maui.

At its regular meeting of January 10, 1989, the Maui Planning Commission reviewed the above request, and after due deliberation, voted to grant Special Management Area Use Permit approval, subject to the following conditions:

1. That the conditions of this Special Management Area Use Permit shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Planning Commission that there is prima facie evidence that a breach has occurred the permit shall be automatically suspended pending a hearing on the continuity of such Special Management Area Use Permit, provided that written request for such a hearing is filed with the department within ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten (10) day period, the Planning Commission may revoke said Special Management Area Use Permit.
2. That the subject Special Management Area Use Permit shall not be transferred without the prior written approval of the Planning Commission. However, in the event that a contested case hearing preceded issuance of said Special Management Area Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
3. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Special Management Area Use Permit and shall hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this permit.
4. That full compliance with all applicable governmental requirements shall be rendered.

EXH. G

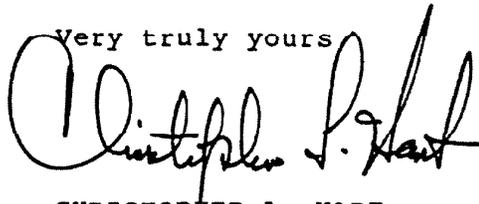
Mr. W. B. Moffett  
January 19, 1989  
Page 2

5. That the construction of the proposed project shall be initiated within a period of two (2) years from the date of the granting of the Special Management Area Use Permit.
6. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels, and traffic disruptions.
7. That full compliance with the requirements of the Department of Land and Natural Resources, as identified by letter dated January 3, 1989, shall be rendered.
8. That full compliance with the conditions of the Urban Design Review Board, as identified by letter dated December 28, 1988, shall be rendered.
9. That full compliance with the conditions of the Department of Public Works, as identified by memo dated December 29, 1988, shall be rendered, unless written verification has been obtained that these conditions have been either modified or deleted.
10. That this SMA Use Permit is issued expressly upon applicant's representation that this project is intended and shall be used solely for long-term residential purposes. Long term in this provision shall mean owner occupancy or leased through written leases of six (6) months or more.
11. That any changes and or modifications to this project shall be referred to the Maui Planning Commission for its review and approval.

A copy of the Director's Report dated January 10, 1989 is enclosed for your reference.

If futher clarification is necessary please contact this office.

Very truly yours



CHRISTOPHER L. HART  
Planning Director

encl.  
PO:cm  
cc: SMA file  
LUCA  
DLNR  
P. Ohta