



**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

MAUI KAMAOLE PHASE III  
 2777 South Kihei Road  
 Kihei, Maui, Hawaii

Registration No. 2061

Issued: June 23, 1989  
 Expires: July 23, 1990

**Report Purpose:**

This report is based on information and documents submitted by the developer to the Real Estate Commission as of May 26, 19 89, 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.



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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"	30	1/2	849	212
"B"	11	1/2	1039	248
"C"	3	1/2	1053	248
"E"	30	2/2	1052	227
"F"	8	2/2	1214	265
"G"	6	2/2	1244	395

Total Apartments: 88

*\*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>88</u>
Guest Stalls	<u>          </u>
Unassigned Stalls	<u>24</u>
Extra Stalls Available for Purchase	<u>          </u>
Other: _____	<u>          </u>
<b>Total Parking Stalls</b>	<b><u>112</u></b>

**7. Recreational amenities: None**

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: MAUI KAMAOLE ENTERPRISES III,  
a Hawaii limited partnership Phone: (808) 547-5400  
Name (Business)  
c/o Case & Lynch, Suite 2600, Mauka Tower  
Business Address  
737 Bishop Street, Honolulu, Hawaii 96813

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

2 Gs Enterprises, Inc., a Hawaii corporation  
4 Gs Enterprises, Inc., a Hawaii corporation  
(Gordon F. Gibson, President)

Real Estate Sales Agent: Parker & Co. Phone: (808) 242-6401  
Name (Business)  
33 Market Street, Suite 200  
Business Address  
Wailuku, Maui, Hawaii 96793

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

Managing Agent: (Not yet designated) Phone:  
Name (Business)  
Business Address

Attorney for Developer: Case & Lynch (James M. Cribley/Scott D. Radovich)  
Name  
737 Bishop Street, Suite 2600  
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:

- 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:

- 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:

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>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>See § 12.1, Bylaws</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:

See Exhibit "A" attached hereto.



**B. Underlying Land:**

Address: 2777 South Kihei Road Tax Map Key: (2)3-9-04:82(por.),83(po  
Kihei, Maui, Hawaii (TMK)

Address  TMK is expected to change because underlying land will be subdivided.

Land Area: Approx. 6  square feet  acre(s) Zoning: A-1

Fee Owner: MAUI KAMAOLE ENTERPRISES

Name

c/o Case & Lynch, Suites 2500 & 2600

Address

737 Bishop Street, Honolulu, Hawaii 96813

Sublessor: N/A

Name

Address

\*\*\*\*\*  
\* Note: Current fee owners \*  
\* are Maui Kamaole Enter- \*  
\* prises I and Maui Kamaole \*  
\* Enterprises II. Fee title \*  
\* will be conveyed to Maui \*  
\* Kamaole Enterprises prior \*  
\* to the issuance of a \*  
\* Final Public Report on \*  
\* the project. \*  
\*\*\*\*\*

**C Buildings and Other Improvements:**

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

2. Buildings: three (22 "modules") Floors Per Building \_\_\_\_\_

Exhibit B contains further explanations.

3. **Principal Construction Material:**

Concrete  Hollow Tile  Wood

Other plaster, glass, masonry and related materials

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	88	<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 Only small dogs, cats, fish and small birds permitted, with prior written consent of the Board.

Number of Occupants: \_\_\_\_\_

Other: No waterbeds permitted.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Total Apartments 88

Elevators 0

Stairways Yes

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>"A"</u>	<u>30</u>	<u>1/2</u>	<u>849</u>	<u>212</u>
<u>"B"</u>	<u>11</u>	<u>1/2</u>	<u>1039</u>	<u>248</u>
<u>"C"</u>	<u>3</u>	<u>1/2</u>	<u>1053</u>	<u>248</u>
<u>"E"</u>	<u>30</u>	<u>2/2</u>	<u>1052</u>	<u>227</u>
<u>"F"</u>	<u>8</u>	<u>2/2</u>	<u>1214</u>	<u>265</u>
<u>"G"</u>	<u>6</u>	<u>2/2</u>	<u>1244</u>	<u>395</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:** Each apartment includes, but is not limited to, all walls, columns and partitions which are not load-bearing within the apartment's perimeter walls, the inner decorated or finished surfaces of all walls, floors and ceilings, the doors and door frames, lanai railings, windows and window frames along the perimeters, the air space within the perimeters, the lanai air space, and all fixtures originally installed in the apartment. The apartments shall not include the undecorated or unfinished surfaces of the perimeter party or nonparty walls, the interior load-bearing columns, girders, beams and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each apartment or any pipes, shafts, wires, conduits or other utility or service lines running through an apartment which are utilized for or serve more than one apartment.

**Permitted Alterations to Apartments:** Alterations or additions within an apartment, within a limited common element appurtenant to and for the exclusive use of an apartment, or to the exterior of an apartment (including painting, awnings, жалousies and screens), shall require the written consent of the owner's plans by the Board of Directors of the Association of Apartment Owners and the apartment owners directly affected by such alterations or additions, as determined by the Board. Any alteration or addition that is different in any material respect from the Condominium File Plan shall be commenced only pursuant to an amendment of the Declaration. Any necessary amendment of the Declaration may be made by such owners and the Board and recorded with plans certified as built by a registered architect or professional engineer.

The owner of two or more apartments separated by a party wall, floor or ceiling may alter or remove the intervening wall if structural integrity and soundness of the project is not adversely affected. At the termination of the common ownership of adjacent apartments, the altered or removed walls shall be restored by the owner to substantially the same condition as existed prior to the alteration or removal.

7. Parking Stalls:

Total Parking Stalls: 112

	Regular		Compact		Tandem		TOTAL
	covered	open	covered	open	covered	open	
Assigned (for individual units)		88					88
Guest		-					-
Unassigned		24					24
Extra Available for Purchase		-					-
Other:		-					-
Total Covered & Open		<u>112</u>					

Each apartment will have the exclusive use of at least one (1) 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 C 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

(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

N/A

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

N/A

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	X	_____	_____
Structures	X	_____	_____
Lot	X	_____	_____

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   D   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   E  

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   F   describes the common interests for each apartment.

As follows:

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

Exhibit   G   describes the encumbrances against the title contained in the title report dated   March 17, 1989   and issued by   Security Title Corporation  .

Note that said title report covers 21.14 acres, including the approximately 6 acre parcel for this project.

**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.

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>
*1. Mortgage in favor of Pearson Hui	Buyer's interest may be terminated and Buyer will receive a refund of all deposits.
*2. Mortgage in favor of Spuraway Holdings, Ltd.	
3. Mortgage in favor of construction lender	

\* Will be released prior to issuance of Final Public Report on the Project.

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:

not affiliated with the Developer.

the Developer or the Developer's affiliate.

self-managed by the Association of Apartment Owners.

other Not yet selected

**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     H     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:**

The Developer shall require from the general contractor for the project a written warranty with respect to any defects in each apartment and the common elements due to faulty materials and/or workmanship which are discovered and reported within one (1) year from the "Date of Substantial Completion" as defined in the construction contract. The Developer makes no warranties itself; however, the Developer will assign to each apartment owner any and all warranties given the Developer by the general contractor for the project and by any subcontractors or materialmen, and the Developer will cooperate with each apartment owner during the effective period of any such warranties in asserting any claims on such warranties.

**2. Appliances:**

Each apartment owner shall have the direct benefit of any manufacturer's or dealer's warranties covering the appliances in his or her apartment. These warranties will expire at different times, depending on the date of installation of the appliances. The Developer does not adopt the manufacturer's or dealer's warranties, if any, but will assign and pass on to each apartment owner the benefit of such warranties.

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

The project has not yet commenced construction and has no set commencement date for construction nor a set completion date. Depending on sales, the earliest the Developer expects to commence is September, 1989.

**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:**

The Developer and/or Fee Owner have either completed or are currently in the process of constructing a total of 76 apartment units, together with related common elements located on approximately 5.559 acres of land adjacent to this project. In addition, the Developer and/or Fee Owner also have plans to develop land adjacent to the project with an additional 152 apartment units contained in 7 "clusters", in one or more additional phases. The Developer and/or Fee Owner have reserved the right to merge such development(s) with this project for the purposes of administration and use, and possibly for ownership purposes. However, the Developer and/or Fee Owner do not represent or warrant that any such development(s) will be built or that, if built, such development(s) will be merged with this project.

See Declaration of Merger of Condominium Phases recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22185, Page 275, and also on file with the Real Estate Commission, for details of this phasing. Note also sections E.8 and E.9 of the proposed Declaration of Horizontal Property Regime for easements reserved to the Fee Owner and/or Developer with respect to the construction, maintenance and operation of phases. Merger for ownership purposes may include a legal consolidation of land covered by this project with any parcel(s) of land covered by the phases(s) to be merged.

**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 I contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated June 8, 1989

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

Other Specimen Apartment Deed; Specimen Registration of Interest and Reservation Form

#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

1. Maui Kamaole Enterprises I ("MKE I"), a Hawaii limited partnership, and Maui Kamaole Enterprises II ("MKE II"), a Hawaii limited partnership, the general partners of the Fee Owner of the project, filed petitions under Chapter 11 of the Bankruptcy Code on July 10, 1987, commencing bankruptcy reorganization proceedings in the United States Bankruptcy Court, District of Hawaii (Bk. No. 87-00557 and Bk. No. 87-00558). Neither the Fee Owner nor the Developer of the project were Debtors in these Chapter 11 proceedings.

By Order Confirming Amended Joint Plan of Reorganization filed on December 23, 1987, the Bankruptcy Court confirmed an Amended Joint Plan of Reorganization filed by MKE I and MKE II, which was further modified by Modifications to Amended Joint Plan of Reorganization, by Order Granting Motion to Approve Modifications to Amended Joint Plan filed on January 13, 1989, and by Order Granting Debtor's Motion to Approve Modifications to Amended Joint Plan of Reorganization filed on April 14, 1989 (the "Plan of Reorganization"). The Plan of Reorganization authorized and directed MKE I and MKE II to do such things as necessary to consummate the Plan of Reorganization, and closed the MKE I and MKE II Chapter 11 proceedings.

In part relevant to this project (referenced in the Plan of Reorganization as "Phase III" or "Clusters 1, 2 and 3"), the Plan of Reorganization provides for the development of the project as reflected in the project documents and as reported in this Public Report. Copies of the Amended Joint Plan of Reorganization, Modifications to Amended Joint Plan of Reorganization, Order Confirming Amended Joint Plan of Reorganization, Order Granting Motion to Approve Modifications to Amended Joint Plan of Reorganization, and Order Granting Debtor's Motion to Approve Modifications to Amended Joint Plan of Reorganization are on file at the Real Estate Commission and available for the purchaser's review. Specifically, the purchaser's attention is drawn to Article VI, Phase III of the Modifications to Amended Joint Plan of Reorganization (pages 4-5), the Order Granting Motion to Approve Modifications to Amended Joint Plan of Reorganization (pages 7-9) and the Order Granting Debtor's Motion to Approve Modifications to Amended Joint Plan of Reorganization (Exhibit A, pages 4-7) for provisions relevant to this project.

2. Legal access to the project land from Kihei Road is provided by means of State of Hawaii Grant of Easement No. S-4439 across certain State-owned land adjacent to the project. Grant of Easement No. S-4439 grants to the Fee Owner an easement and right-of-way for access and utility purposes across the State-owned land for a term of 55 years, up to and including June 23, 2023. The Fee Owner has assigned its interest in Easement S-4439 to American Trust Co. of Hawaii, Inc., as Trustee of Land Trust No. 90-02070. A portion of the beneficial interest in the Land Trust will be conveyed by the Fee Owner to the Association of Apartment Owners of Maui Kamaole Phase II, to be held by the Association as a common element of the project. Such beneficial interest will entitle all owners of units in the project to non-exclusive use and possession of Easement S-4439. The Fee Owner is also currently requesting State conversion of Easement S-4439 to a fee simple perpetual grant of easement. If converted, the fee simple interest in the grant of easement will be conveyed by the Fee Owner to the Land Trust. A copy of Grant of Easement No. S-4439 and the Land Trust Agreement creating Land Trust No. 90-02070 is on file at the Real Estate Commission and is available for the purchaser's review.

3. The Developer represents that each phase will be on a separately subdivided lot and that the maintenance fees described in Exhibit "H" herein (dated May 3, 1989) are still current and are to be used only for maintenance of the approximately 6 acre parcel that constitutes Phase III. However, Developer and/or Fee Owner have reserved the right to merge the Phase III project with additional phases (see "K" herein) for administration, use, and ownership purposes, at which time the maintenance fees described in Exhibit "H" herein will be allocated pursuant to the Declaration of Merger of Condominium Phases recorded in the Bureau of Conveyances of the State of Hawaii in Liber 22185, Page 275, and also on file with the Real Estate Commission. Merger for ownership purposes may also include a legal consolidation of the land covered by this project with any parcel(s) of land covered by the phase(s) to be merged.

**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 Declaration of Merger of Condominium Phases

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. 2061 filed with the Real Estate Commission on  
May 5, 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.



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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

EXHIBIT "A"

DEVELOPER'S RIGHTS TO CHANGE PROJECT DOCUMENTS

During the sales period, the Developer has reserved the right to make any changes to the project documents and the project as may be required by law, any title insurance company, and institutional lender, or any governmental agency; and, prior to the conveyance or transfer of the first apartment, for any reason and in any manner as the Developer deems necessary, provided that no such change shall substantially impair the prospective use and enjoyment of the Apartment, substantially alter or reduce the usable space within the Apartment, render unenforceable the Buyer's mortgage loan commitment, increase the Buyer's share of common expenses, or reduce the obligations of the Developer for common expenses on unsold apartments.

The Developer and the Fee Owner have also reserved the right to effect the merger of additional condominium projects with this project. In the Developer's and/or the Fee Owner's discretion, any such merger shall be for administrative purposes only or for both administrative purposes and for purposes of allocating ownership of common element areas in the projects to be merged among all of the apartment owners of the merged project. In the event of merger for purposes of allocating ownership interests, each apartment owner's common interest appurtenant to his apartment will be recalculated and may be reduced to reflect that proportion which his apartment's floor area bears to the total floor area for the entire merged project. The Developer and the Fee Owner have the right to execute and record amendments to the Declaration and other documents to effect such a merger, including but not limited to a consolidation of the land covered by this project with any other parcel(s) of land in connection with a merger, in accordance with the terms and provisions of the Declaration of Merger of Condominium Phases, a copy of which is on file with the Commission.

EXHIBIT "B"

DESCRIPTION OF BUILDINGS

The project shall contain three (3) clusters of three-level "modules," each grouped adjacent to a parking area. Cluster "C" (Ginger) shall contain seven (7) modules, Cluster "H" (Hibiscus) shall contain six (6) modules, and Cluster "I" (Ilima) shall contain nine (9) modules. Each module shall contain four residential apartments: two single-level apartments at ground level and two bi-level apartments above. The modules will be constructed principally of concrete, masonry, plaster, wood, glass and related materials, and connected by party walls or trellises to form the cluster.

EXHIBIT "C"

PARKING STALLS

Each apartment shall have appurtenant to it the exclusive right to use the parking stall(s) designated below, located in the parking area as shown on the Condominium File Plan. The Developer hereby reserves the right for itself, its successors and assigns, by way of an amendment to the Declaration of Horizontal Property Regime, to convey or otherwise designate any parking stall not specifically designated herein to be appurtenant to and for the exclusive use of any other apartment in the project.

CLUSTER "G"

CLUSTER "H"

<u>Apartment No.</u>	<u>Parking Stall No.</u>	<u>Apartment No.</u>	<u>Parking Stall No.</u>
G-101	G-29	H-101	H-30
G-102	G-27	H-102	H-28
G-103	G-25	H-103	H-26
G-104	G-23	H-104	H-24
G-105	G-21	H-105	H-22
G-106	G-30	H-106	H-02
G-107	C-32	H-107	H-04
G-108	G-34	H-108	H-06
G-109	G-36	H-109	H-20
G-110	G-18	H-110	H-18
G-111	G-16	H-111	H-16
G-112	G-14	H-112	H-14
G-114	G-12	H-201	H-29
G-115	G-10	H-202	H-27
G-201	G-28	H-203	H-25
G-202	G-26	H-204	H-23
G-203	G-24	H-205	H-01
G-204	G-22	H-206	H-03
G-205	G-20	H-207	H-05
G-206	G-31	H-208	H-07
G-207	G-33	H-209	H-19
G-208	G-35	H-210	H-17
G-209	G-37	H-211	H-15
G-210	G-17	H-212	H-13
G-211	G-15		
G-212	G-13		
G-214	G-11		
G-215	G-09		

CLUSTER "I"

<u>Apartment No.</u>	<u>Parking Stall No.</u>
I-101	I-45
I-102	I-43
I-103	I-41
I-104	I-39
I-105	I-37
I-106	I-21
I-107	I-19
I-108	I-17
I-109	I-35
I-110	I-22
I-111	I-24
I-112	I-26
I-114	I-15
I-115	I-13
I-116	I-11
I-117	I-09
I-118	I-07
I-119	I-05
I-201	I-44
I-202	I-42
I-203	I-40
I-204	I-38
I-205	I-36
I-206	I-20
I-207	I-18
I-208	I-16
I-209	I-34
I-210	I-23
I-211	I-25
I-212	I-27
I-214	I-14
I-215	I-12
I-216	I-10
I-217	I-08
I-218	I-06
I-219	I-04

EXHIBIT "D"

COMMON ELEMENTS

The common elements of the project shall specifically include, but are not limited to, the following:

1. The land described in Exhibit "A" attached to the proposed Declaration of Horizontal Property Regime.

2. All structural components, such as foundations, girders, columns, beams, floor slabs, supports, perimeter walls, load-bearing walls, floors, ceilings (except the inner or decorated surfaces of the perimeter walls, load-bearing walls, floors and ceilings), roofs, stairs and stairways, and entrances and exits of the modules.

3. All yards, grounds, gardens, planters, plants, landscaping, refuse facilities, roads, driveways, walkways, parking areas and recreational facilities, if any.

4. All ducts, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for services such as power, light, water, gas, sewer, telephone and radio and television signal distribution, if any.

5. The planter box areas adjacent to the lower floor of each of the two-bedroom apartments, as shown on the proposed Condominium File Plan.

6. That portion of the Beneficial Interest in Land Trust No. 90-02070 to be transferred to the Association of Apartment of Owners of Maui Kamaole Phase III pursuant to unrecorded Land Trust Agreement regarding State of Hawaii Grant(s) of Easement for access purposes serving the project land.

7. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance and safety, or normally in common use.

EXHIBIT "E"

LIMITED COMMON ELEMENTS

Certain apartments shall have appurtenant thereto easements for the use of certain limited common elements as follows:

1. Courtyards. The walled, open-air courtyard adjacent to the bedroom of certain ground level apartments, as shown on the Condominium File Plan, shall be appurtenant to and for the exclusive use of each such apartment.

2. Atria. The atrium area adjacent to the lower floor of each of the two-bedroom apartments, as shown on the proposed Condominium File Plan, shall be appurtenant to and for the exclusive use of each such apartment.

3. Parking Stalls. Each apartment shall have appurtenant to it the exclusive right to use the parking stall(s) designated in Exhibit "C" attached hereto, located in the parking area as shown on the proposed Condominium File Plan.

EXHIBIT "F"

COMMON INTERESTS

<u>Apartment Type</u>	<u>Apartment No.</u>	<u>Undivided Common Interest of Each Apartment</u>
"A"	G-101; G-102; G-105; G-106; G-107; G-108; G-111; G-112; G-114; G-115; H-101; H-102; H-105; H-106; H-109; H-110; H-111; H-112; I-101; I-102; I-105; I-106; I-107; I-108; I-111; I-112; I-114; I-115; I-118; I-119	0.009654 (0.9654%)
"B"	G-103; G-104; G-109; H-103; H-104; H-108; I-103; I-104; I-110; I-116; I-117	0.011710 (1.1710%)
"C"	G-110; H-107; I-109	0.011830 (1.1830%)
"E"	G-201; G-202; G-205; G-206; G-207; G-208; G-211; G-212; G-214; G-215; H-201; H-202; H-205; H-206; H-209; H-210; H-211; H-212; I-201; I-202; I-205; I-206; I-207; I-208; I-211; I-212; I-214; I-215; I-218; I-219	0.011634 (1.1634%)
"F"	G-203; G-204; H-203; H-204; I-203; I-204; I-216; I-217	0.013450 (1.3490%)
"G"	G-209; G-210; H-207; H-208; I-209; I-210	0.014910 (1.4910%)

EXHIBIT "G"

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may be filed.

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

3. Easement (15 feet wide) for waterline purposes in favor of the Department of Water Supply over, under, across and through a portion of the land described herein, containing an area of 9,953 square feet, more or less.

4. Grant dated April 26, 1972, in favor of the Board of Water Supply of the County of Maui, a board duly created and existing under the laws of the State of Hawaii, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 8292, Page 110, granting an easement for road and utility purposes over, under, across and through a portion of the land described herein.

\* 5. Mortgage dated January 3, 1979, made by Maui Kamaole Enterprises II, a Hawaii limited partnership, as Mortgagor, in favor of Pearson Hui, a Hawaii limited partnership, as Mortgagee, recorded in Liber 13393, Page 735.

\* 6. Additional Charge Mortgage dated April 5, 1983, made by Maui Kamaole Enterprises II, a Hawaii limited partnership, as Mortgagor, in favor of Pearson Hui, a Hawaii limited partnership, as Mortgagee, recorded in Liber 16988, Page 231, creating an additional charge lien to the Mortgage described in item 5 above.

\* 7. Additional Charge Mortgage dated June 18, 1986, made by Maui Kamaole Enterprises II, a Hawaii limited partnership, as Mortgagor, in favor of Pearson Hui, a Hawaii limited partnership, as Mortgagee, recorded in Liber 19673, Page 524, creating an additional charge lien to the Mortgage described in item 5 above.

\* 8. Mortgage dated November 4, 1980, made by Maui Kamaole Enterprises II, a Hawaii limited partnership, as Mortgagor, in favor of Spuraway Holdings, Ltd., a British Columbia corporation, as Mortgagee, recorded in Liber 15357, Page 127. Consent given by Pearson Hui, a Hawaii limited partnership.

Subordination Agreement dated April 5, 1983, recorded in Liber 16988, Page 236, whereby said Mortgage dated November 4, 1980 is subordinated to the Mortgage and Additional Charge Mortgage described in items 5 and 6 above.

Subordination Agreement dated June 18, 1986, recorded in Liber 19673, Page 533, whereby said Mortgage dated November 4, 1980 is subordinated to the Additional Charge Mortgage described in item 7 above.

\* 9. Financing Statement made by Maui Kamaole Enterprises II, as Debtor, recorded in Liber 15995, Page 691. Continuation of Financing Statement recorded in Liber 19582, Page 711.

10. Easement 2 (24 feet wide) for waterline purposes in favor of Lot 4-A, over, under, across and through a portion of the land described herein, containing an area of 14,258 square feet, more or less, as per survey of Robert M. Tanaka, Registered Professional Surveyor, Certificate No. 1754E-S, dated October 8, 1986, revised on March 2, 1987.

11. Bankruptcy No. 87-557, Bankruptcy Court of the Hawaii District of the U. S. District Court - Chapter 11, Maui Kamaole Enterprises I, Debtor, filed on July 10, 1987.

12. Bankruptcy No. 87-558, Bankruptcy Court of the Hawaii District of the U.S. District Court - Chapter 11, Maui Kamaole Enterprises II, Debtor, filed on July 10, 1987.

13. Declaration of Merger of Condominium Phases, Maui Kamaole dated June 1, 1988, recorded in Liber 22185, Page 275.

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\* NOTE:

Items 5, 6, 7, 8 and 9 will be released prior to the issuance of a Final Public Report on the project.

## EXHIBIT "H"

ESTIMATE OF INITIAL MAINTENANCE FEES

<u>Apartment Type (Apt. No.)</u>	<u>Undivided Common Interest (Per Apartment)</u>	<u>Monthly Fee (Per Apartment)</u>	<u>Yearly Total (Per Apartment)</u>
"A" (G-101; G-102; G-105; G-106; G-107; G-108; G-111; G-112; G-114; G-115; H-101; H-102; H-105; H-106; H-109; H-110; H-111; H-112) I-101; I-102; I-105; I-106; I-107; I-108; I-111; I-112; I-114; I-115; I-118; I-119)	0.009654	\$127.14	\$1,525.68
"B" (G-103; G-104; G-109; H-103; H-104; H-108; I-103; I-104; I-110; I-116; I-117)	0.011710	\$154.22	\$1,850.64
"C" (G-110; H-107; I-109)	0.011830	\$155.80	\$1,869.60
"E" (G-201; G-202; G-205; G-206; G-207; G-208; G-211; G-212; G-214; G-215; H-201; H-202; H-205; H-206; H-209; H-210; H-211; H-212; I-201; I-202; I-205; I-206; I-207; I-208; I-211; I-212; I-214; I-215; I-218; I-219)	0.011634	\$153.22	\$1,838.64
"F" (G-203; G-204; H-203; H-204; I-203; I-204; I-216; I-217)	0.013450	\$177.14	\$2,125.68
"G" (G-209; G-210; H-207; H-208; I-209; I-210)	0.014910	\$196.36	\$2,356.32

THE REAL ESTATE COMMISSION HAS NOT REVIEWED THE ESTIMATES OF MAINTENANCE FEE ASSESSMENTS AND DISBURSEMENTS FOR THEIR ACCURACY OR SUFFICIENCY.

**Estimate of Maintenance Fee Disbursements:**

Monthly x 12 months = Yearly Total

**Utilities and Services**

Air Conditioning	0	0
Electricity		
<input checked="" type="checkbox"/> common elements only	\$ 974.00	\$ 11,688.00
<input type="checkbox"/> common elements and apartments		
Gas	\$ 165.00	\$ 1,980.00
Refuse Collection	\$ 25.00	\$ 300.00
Telephone	\$ 2,732.00	\$ 32,784.00
Water and Sewer		

**Maintenance, Repairs and Supplies**

Building	\$ 805.00	\$ 9,660.00
Grounds	\$ 550.00	\$ 6,600.00

**Management**

Management Fee	\$ 900.00	\$ 10,800.00
Payroll and Payroll Taxes	\$ 1,428.00	\$ 17,136.00
Office Expenses	\$ 25.00	\$ 300.00

**Insurance** \$ 2,070.00 \$ 24,840.00

\$ 920.00 \$ 11,040.00

**Reserves**

**Taxes and Government Assessments** 0 0

**Audit Fees** \$ 100.00 \$ 1,200.00

**Other**

Manager's Apartment Expense	\$ 1,000.00	\$ 12,000.00
Pest Control	\$ 785.00	\$ 9,420.00
Cable T.V.	\$ 616.00	\$ 7,392.00
Association Meeting Expense	\$ 40.00	\$ 480.00
Miscellaneous	\$ 35.00	\$ 420.00

**TOTAL** \$13,170.00 \$158,040.00

I, GORDON F. GIBSON, as Developer 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.

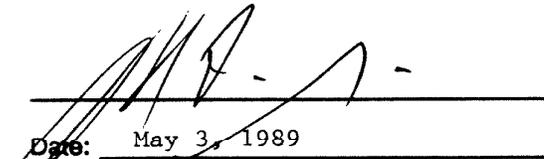
  
 \_\_\_\_\_  
 Date: May 3, 1989

EXHIBIT "I"

SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

The Deposit Receipt and Sales Contract contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Deposit Receipt and Sales Contract states:

(a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.

(b) That the purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Deposit Receipt and Sales Contract.

(c) That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefit to be derived from the purchase of an apartment.

(d) That the Sales Contract may be subordinate to the lien of a construction lender.

(e) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(f) Requirements relating to the purchaser's financing of the purchase of an apartment.

(g) That the apartment and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.

(h) That the Developer makes no warranties regarding the apartment, the Project or anything installed or contained in the apartment or the Project.

(i) That the Project will be subject to ongoing construction and sales activities which may result in certain annoyances to the purchaser.

(j) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

The Deposit Receipt and Sales Contract contains various other important provisions relating to the purchase of an apartment in the Project. It is incumbent upon purchasers and prospective purchasers to read with care the specimen Deposit Receipt and Sales Contract on file with the Real Estate Commission.

EXHIBIT "J"

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) The purchaser will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a purchaser's funds and says what will happen to the funds upon a default under the Sales Contract. The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. It is incumbent upon purchasers and prospective purchasers to read with care the executed Escrow Agreement on file with the Real Estate Commission.