



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

NIUMALU GARDENS
 Niunalu Road
 Lihue, Kauai, Hawaii 96766

Registration No. 2085 (Partial Conversion)

Issued: February 6, 1990
 Expires: March 6, 1991

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of January 12, _____, 19 90, 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 Agricultural
3. High Rise (5 stories or more) Low Rise
4. Single or Multiple Buildings
5. Apartment Description Also see Exhibit "A".

Apt. xType	Structures xQuantity	BR/Bath	Net Living Area (sf)*	Lanai/Patio (sf)
1	1	(B)2/1	701	---
2	1	shed	80	---
3	1	shed	80	---
4	2 Bldgs.	(A)3½ (C)2/1	(A)740 (C)1166	---
5	3 Bldgs	(E)2/1 (F)Storage (G)4/1½	(E)713 (F)998 (G)1421	---
6	1	(D)1/1	136	---
7-11	1 ea.	sheds	80 each	---
Total Apartments: <u>11</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.

6. Parking: Owners may park anywhere within the limited common land area of their respective unit.

	<u>Number of Stalls</u>
Assigned Stalls (Individual Units)	_____
Guest Stalls	_____
Unassigned Stalls	_____
Extra Stalls Available for Purchase	_____
Other: _____	_____

Total Parking Stalls There shall be at least two stalls for each apartment at all times.

7. Recreational amenities: None

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: JACQUELINE JAYE GARDNER
SANDRA KAYE MARCY
Name _____
P. O. Box 3560
2503 Niunalu Road
Business Address _____
Lihue, Kauai Hawaii 96766
Phone: 245-7803

(Business)

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

Real Estate Sales Agent: CAROL W. AKI, dba
Tri Associates
Name _____
3145 Akahi Street
Business Address _____
Lihue, Kauai Hawaii 96766
Phone: 246-0657

(Business)

Escrow: Security Title Corporation
Name _____
12th Floor, 1001 Bishop Street
Business Address _____
Honolulu, Hawaii 96813
Phone: 521-9511

(Business)

Managing Agent: None - To be self managed
Name _____
(However, there must be compliance
with all condominium management laws)
Business Address _____

Attorney for Developer: HIROSHI SAKAI, Esq.
MICHAEL H. SAKAI, Esq.
Name _____
201 Merchant Street, Suite 902
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 1639314

Amendment date(s) and recording/filing information:

Amendment to the Declaration of Condominium Property Regime,
Filed as Document No. 1695959

- 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. 715

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 1639315

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>Majority of Directors</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:

None

B. Underlying Land:

Address: NIUMALU ROAD Tax Map Key: (4) 3-2-3-08
Lihue, Kauai, Hawaii 96766 (TMK) Lots 65, 66, 67

Address TMK is expected to change because _____

Land Area: 33.435 square feet acre(s) Zoning: Agricultural

Fee Owner: SANDRA KAYE MARCY and JACQUELINE JAYE GARDNER

Name

2503 Niualu Road, P. O. Box 3560

Address

Lihue, Kauai, Hawaii 96766

Sublessor:

Name

Address

C Buildings and Other Improvements:

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

2. Buildings: 14 Floors Per Building 1

Exhibit A contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other Metal

4. Permitted Uses:

	<u>No. of Apts.</u>		<u>No. of Apts.</u>
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Industrial	_____
<input type="checkbox"/> Residential	_____	<input checked="" type="checkbox"/> Agricultural	<u>11</u>
<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 11

Elevators none

Stairways none

Trash Chutes none

Also See Exhibit "A".

<u>Apt. Type</u>	<u>Structures Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>1</u>	<u>1</u>	<u>(B)2/1</u>	<u>701</u>	<u>---</u>
<u>2</u>	<u>1</u>	<u>shed</u>	<u>80</u>	<u>---</u>
<u>3</u>	<u>1</u>	<u>shed</u>	<u>80</u>	<u>---</u>
<u>4</u>	<u>2 Bldgs.</u>	<u>(A) 3/1/2 (C) 2/1</u>	<u>(A) 740 (C) 1166</u>	<u>---</u>
<u>5</u>	<u>3 Bldgs.</u>	<u>(E) 2/1 (F) storage (G) 4/1 1/2</u>	<u>(E) 713 (F) 998 (G) 1421</u>	<u>---</u>
<u>6</u>	<u>1</u>	<u>(D) 1/1</u>	<u>136</u>	<u>---</u>
<u>7 - 11</u>	<u>1 each</u>	<u>sheds</u>	<u>80 each</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:

The boundary of each unit is the exterior finished surfaces of the units' perimeter walls, roofs, foundations, windows and frames, floors and/or beams.

Permitted Alterations to Apartments:

Construction, restoration, or replacement of individual units in the project may be undertaken by the Developer for units that it owns or any unit owner without the approval of the Association or other unit owners except that a unit owner can increase the total square footage of his structures, add structures, alter the location of his structures and/or subdivide in accordance with the building code, zoning and subdivision ordinances. Each unit owner, prior to construction or making any physical alterations, must obtain all applicable governmental approvals and permits.

7. Parking Stalls:

Total Parking Stalls: Each unit shall have at least two parking stalls at all times.
 See Exhibit I (Building Rules).

	<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)	_____	_____	_____	_____	_____	_____	_____
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra Available for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total	_____	_____	_____	_____	_____	_____	_____
Covered & Open	_____	_____	_____	_____	_____	_____	_____

Each apartment will have the exclusive use of at least two 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 _____ 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
- Recreation Area
- Tennis Court
- Storage Area
- Laundry Area
- 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

The structural components, mechanical and electrical installations of existing Unit 4 (Buildings A and C), Unit 1 (Building B), Unit 6 (Building D), Unit 5 (Buildings E, F and G) are in poor condition. The estimated useful life is less than 10 years.

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

Developer is not aware of any code violations. A letter from the County Planning Department dated May 22, 1989 states "...we are uncertain as to whether the existing improvements are in compliance with all ordinances, codes, rules and other requirements that were in force at the time of construction".

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 B 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 C

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 D 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 E describes the encumbrances against the title contained in the title report dated September 28, 1989 and issued by Security Title Corporation.

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>
Mortgage in favor of Kauai Community Federal Credit Union	No closing of an Apartment may take place unless the lien is released. If Developer defaults, the mortgage would be foreclosed and Buyer would not be able to purchase an Apartment.

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.

[x] 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 F 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 type="checkbox"/> Water & Sewer |
| <input type="checkbox"/> Other _____ | |
| <input checked="" 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:** None. There are no express or implied warranties given by the Developer.

2. **Appliances:** None. There are no express or implied warranties given by the Developer.

IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

1. Agricultural Condominium. This is an agricultural condominium project. The structures for units 2, 3, 7, 8, 9, 10 and 11 will consist of galvanized steel storage and/or tool sheds. These sheds have been constructed in October, 1989.
2. Not a Subdivision. Purchasers should be aware that this project is not a subdivision. Each Purchaser will own an apartment unit and an undivided interest in the entire property upon which the project is situated. Each apartment does have a limited common land area for its exclusive use. Your attention is directed to Paragraph 5.3 of the Declaration for further information.
3. Building Permits and Improvements. Paragraph 22.0 of the Declaration contains restrictions and provisions relating to the obtaining of building permits for the construction of improvements located within a common element and the limited common elements (land area) of a unit. Purchasers should read Paragraph 22.0 of the Declaration to become familiar with and understand the terms thereof.
4. See Building Rules and Letter from Kauai County Planning Department. Prospective buyers should read all documentation carefully, especially the Building Rules (Exhibit I) and the letter from Kauai County, as amended (Exhibit J), to insure that their expectations can be realized.

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.

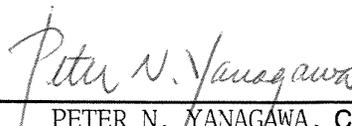
Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS, and Hawaii Administrative Rules, Chapter 16-107)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

This Public Report is a part of Registration No. 2085 filed with the Real Estate Commission on
June 22, 1989.

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

yellow paper stock white paper stock pink paper stock

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.



PETER N. YANAGAWA, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

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

EXHIBIT "A"

Description of Apartments

A. Unit 1 - Building B. One freehold estate of a single story wood frame building and wood siding with galvanized roof located on posts consisting of two bedrooms, living room, kitchen-dining room, one bathroom and one porch of 701 square feet and a carport. The land area surrounding Building B is delineated and described in the Condominium Map as Unit 1 is a limited common element for Unit 1 and is for the exclusive use for Unit 1.

B. Unit 2. One freehold estate consisting of a single story storage building without a basement consisting of a galvanized steel building with a galvanized roof on a concrete footing foundation of 80 square feet. The land area surrounding Unit 2 as delineated and described in the Condominium Map as Unit 2 is a limited common element for Unit 2 and is for the exclusive use for Unit 2.

C. Unit 3. One freehold estate consisting of a single story storage building without a basement consisting of a galvanized steel building with a galvanized roof on a concrete footing foundation. The net area of Building 3 is 80 square feet. The land area surrounding Unit 3 as delineated and described in the Condominium Map as Unit 3 is a limited common element for Unit 3 and is for the exclusive use of Unit 3.

D. Unit 4 - Buildings A and C. One freehold estate consisting of two buildings. Building A is a single story wood frame building and wood siding with galvanized roof located on posts consisting of three bedrooms, living room, kitchen-dining room, 1/2 bathroom, 2 porches and a storage room of 740 square feet and a carport. Building C is a single story wood frame building with wood siding with galvanized roof located on posts consisting of 2 bedrooms, living room, kitchen-dining room, 1 bathroom, 2 porches, laundry room, and workroom of 1,166 square feet and a carport. The land area surrounding Buildings A and C as delineated and described in the Condominium Map as Unit 2 is a limited common element of Unit 2 and is for the exclusive use of Unit 2.

E. Unit 5 - Buildings E, F and G. One freehold estate consisting of three buildings. Building E is a single story wood frame building with wood siding and galvanized roof located on posts consisting of 2 bedrooms, living room, dining room, kitchen, 1 bathroom, storage and 2 porches of 713 square feet. Building F is a single story wood frame building with wood siding and galvanized roof located on the ground consisting of three sided enclosed structure and a covered roof area of 998 square feet. Building G is a single story wood frame building with wood siding and galvanized roof located on posts consisting of 4 bedrooms, living room, dining room, kitchen, storage, laundry, 1-1/2 bathroom, and 1 porch of 1,421 square feet. The land area surrounding Buildings E, F and G as delineated and described in the Condominium Map as Unit 5 is a limited common element for Unit 5 and is for the exclusive use of Unit 5.

F. Unit 6 - Building D. One freehold estate of a single story wood frame building and wood siding with galvanized roof located on posts consisting of one bedroom, one living room and one bathroom of 136 square feet. The land area surrounding Building D as delineated and described in the Condominium Map as Unit 6 is a limited common element for Unit 6 and is for the exclusive use for Unit 6.

G. Units 7 Through 11 Inclusive. Each of the unit area has one freehold estate consisting of a single story storage building without a basement consisting of a galvanized steel building with a galvanized roof on a concrete footing foundation of 80 square feet. The land area surrounding each Unit as delineated and described in the Condominium Map is a limited common element for each unit and is for the exclusive use of each unit.

EXHIBIT "B"

Common Elements

The common elements of the Project and which the units have immediate access to include:

- a. The land in fee simple.
- b. The roadway area designated as Common Area #1 which provides access to Units 2, 3, 4 and 5 in the Project.
- c. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, drainage, hot and cold water and like utilities.
- d. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project.

EXHIBIT "C"

Limited Common Elements

The land area delineated and designated in the Condominium Map are limited common elements of a unit and consist of the following:

A. Unit 1. The land area designated as Unit 1 surrounding and under Unit 1 is a limited common element of Unit 1 and is for the exclusive use of Unit 1 and consists of 1.241 acres.

B. Unit 2. The land area designated as Unit 2 surrounding and under Unit 2 is a limited common element of Unit 2 and is for the exclusive use of Unit 2 and consists of 2.976 acres.

C. Unit 3. The land area designated as Unit 3 surrounding and under Unit 3 is a limited common element of Unit 3 and is for the exclusive use of Unit 3 and consist of 2.931 acres.

D. Unit 4. The land area designated as Unit 4 surrounding and under Unit 4 is a limited common element of Unit 4 and is for the exclusive use of Unit 4 and consist of 2.156 acres.

E. Unit 5. The land area designated as Unit 5 surrounding and under Unit 5 is a limited common element of Unit 5 and is for the exclusive use of Unit 5 and consist of 2.731 acres.

F. Unit 6. The land area designated as Unit 6 surrounding and under Unit 6 is a limited common element of Unit 6 and is for the exclusive use of Unit 6 and consist of 2.495 acres.

G. Unit 7. The land area designated as Unit 7 surrounding and under Unit 7 is a limited common element of Unit 7 and is for the exclusive use of Unit 1 and consists of 3.700 acres and subject to roadway and Utility Easement X. acres.

H. Unit 8. The land area designated as Unit 8 surrounding and under Unit 8 is a limited common element of Unit 8 and is for the exclusive use of Unit 8 and consists of 3.134 acres and subject to roadway and Utility Easement X.

C. Unit 9. The land area designated as Unit 9 surrounding and under Unit 9 is a limited common element of Unit 9 and is for the exclusive use of Unit 9 and consist of 4.872 acres and subject to raodway and Utility Easement Y.

D. Unit 10. The land area designated as Unit 10 surrounding and under Unit 10 is a limited common element of Unit 10 and is for the exclusive use of Unit 10 and consist of 2.925 acres and subject to roadway and Utility Easement Y..

E. Unit 11. The land area designated as Unit 11 surrounding and under Unit 11 is a limited common element of Unit 11 and is for the exclusive use of Unit 11 and consist of 2.674 acres and subject to Roadway Easement S.

EXHIBIT "D"

Common Interests

Each unit shall have the following appurtenant common interest and the same shall be determinative for all purposes including voting and the allocation of the common profits and expenses:

<u>Unit</u>	<u>Percentage Interest</u>
1	9.091
2	9.091
3	9.091
4	9.091
5	9.091
6	9.091
7	9.091
8	9.091
9	9.091
10	9.091
11	<u>9.090</u>
	100.000%

The percentage common interest for each unit was determined by allocating an equal percentage to each unit with slight rounding. For purposes of condemnation and for purposes of reconstructing any improvements located on the unit the common interest set forth above shall not control and each owner is free to build such improvements as it desires subject to meeting the County of Kauai ordinances and any other applicable laws and rules.

EXHIBIT "E"

Encumbrances Against Title

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

2. Any variations in and along the boundaries of the land herein described running along Niumalu Stream, as may be caused by natural deviation of said stream.

3. Easement X, 20-foot wide, for vehicular access and utility purposes, as shown on Map 29, as set forth by Land Court Order No. 88836, filed on March 16, 1988.

4. Easement Y, 20-foot wide, for vehicular access and utility purposes, as shown on Map 29, as set forth by Land Court Order No. 88836, filed on March 16, 1988.

5. Mortgage dated June 28, 1988, in favor of Kauai Community Federal Credit Union, a federally chartered organization, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1561767.

6. Mortgage dated June 28, 1988, in favor of Kauai Community Federal Credit Union, a federally chartered organization, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1561768.

7. Mortgage dated April 19, 1989, in favor of First Hawaiian Bank, filed as Document No. 1628971.

8. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions easements set forth in the Declaration of Condominium Property Regime filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1639314, as amended by instrument, filed in said Office, as Document 1695959, and By-Laws filed in said Office, as Document No. 1639315, as shown on Condominium File Plan No. 715.

9. For real property taxes due and owing, your attention is directed to the Director of Finance, County of Kauai, State of Hawaii.

EXHIBIT "F"

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
1	128.60 1,543.20
2	128.60 1,543.20
3	128.60 1,543.20
4	128.60 1,543.20
5	128.60 1,543.20
6	128.60 1,543.20
7	128.60 1,543.20
8	128.60 1,543.20
9	128.60 1,543.20
10	128.60 1,543.20
11	128.59 1,543.08

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

Electricity

common elements only

105.00

\$ 1,260.00

common elements
and apartments

Gas

Refuse Collection

60.42

725.04

Telephone

Water and Sewer

126.60

1,519.20

Maintenance, Repairs and Supplies

Building

40.00

480.00

Grounds

135.80

1,629.60

Management

Management Fee

200.00

2,400.00

Payroll and Payroll Taxes

75.00

900.00

Office Expenses

50.00

600.00

Insurance

54.75

657.00

Reserves

100.00

1,200.00

Taxes and Government Assessments

503.00

6,036.00

Audit Fees

39.08

469.00

Other

TOTAL

1,414.65

\$16,975.84

The Association of Home Owners, by
I/We, Sandra Kaye Marcy, Jacqueline Jaye Gardner, 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. ASSOCIATION OF HOME OWNERS

Sandra Kaye Marcy
Jacqueline Jaye Gardner

Date: May 15, 1989

EXHIBIT "G"

Summary of Sales Contract

The 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 Sales Contract says:

(a) A buyer must obtain his own financing. Buyer acknowledges that this Sales Contract is contingent on any financing after the issuance of the final public report.

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

(c) That interest on deposits shall belong to the buyer so long as said funds are held in escrow.

(d) That the unit will be subject to various other legal documents which the buyer certifies that he has examined.

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

The Sales Contract contains various other provisions with which the purchaser should become acquainted.

EXHIBIT "H"

Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under 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 purchasers know when payments are due.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement says under what conditions a refund will be made to a purchaser.

(d) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

EXHIBIT "I"

BUILDING RULES

NIUMALU GARDENS

The purpose of these Building Rules is to protect all owners and occupants from annoyance and nuisance caused by improper conduct and improper use of the NIUMALU GARDENS Condominium, hereinafter referred to as "Project", and to provide for the maximum enjoyment of the premises. All owners and occupants, their agents, employees and invitees shall be bound by these Building Rules and standards of reasonable conduct whether covered by these Building Rules or not.

1. Definitions. As used herein:

a. The "Land Limited Common Elements" refers to the land set aside as a Limited Common Element for the use of each owner as a limited common element.

b. The "unit" refers to the structure or structures and the land designated as limited common element for the owner and any subsequent improvements built within the Land Limited Common Element.

2. Building Permit. Any owner desiring to construct a single family dwelling in a unit will have to comply with the building and zoning ordinances as the same may be changed from time to time of a minimum living area of 100 square feet. The requirements of the County of Kauai Ordinance No. 317 approved on June 27, 1977 is required to be observed.

3. Water and Utilities. The water, electricity and telephone lines will be drawn from Niupalu Road to each unit at the cost and expense of each owner.

4. Cesspools. There are no sewer lines and a sanitary sewer system. Each owner will have to have his own cesspool to be located within his own area.

5. Roadway. The roadways shall be dirt roads which the Association is to maintain. Each owner will be responsible for a 5-foot setback area clear of all vegetation in order that the roadway will not be obstructed.

6. Setbacks. Any dwelling and/or structure placed in an Area by an owner will observe a 5-foot setback from the perimeter boundaries of each unit.

7. Height Restriction. Only as provided in the Building Code.

8. Materials Used. No second hand dwelling and/or quonset type structure shall be moved and posted into the area. No second hand and/or used materials shall be utilized in the construction of a dwelling except for portions that are not visible from the exterior or the material is painted over so that the material cannot be noticed as being second hand or used material.

9. Parking. Each owner shall provide for at least two parking spaces within his own area and shall not permit the occupants and/or tenants to park in the roadway.

10. Upkeep of Area. Each owner will be responsible for the landscaping and upkeep of its own Area and shall not permit its area to be overgrown with weeds and/or place used vehicles and/or storage of materials to make the Area become unsightly. Each owner will provide for and maintain a minimum of landscaping of his Area.

11. Common Element Expenses and Enforcement. The Association shall provide for such common expenses that will maintain and upkeep the Project and for the failure of any owner to observe these Building Rules the Association shall have the power to enforce these Rules including the assessment of charges related to any violation by any owner which the Association may expend funds to correct and such expenses including reasonable attorney's fees for enforcement shall constitute a lien against the unit as a special assessment.

Adopted at Lihue, Kauai, Hawaii, this 22nd day of May, 1989.

Sandra Kaye Marcy
SANDRA KAY MARCY
KAYE
Jacqueline Jaye Gardner
JACQUELINE JAYE GARDNER

NG
B R

EXHIBIT "J"

JOANN A. YUKIMURA
MAYOR



TOM H. SHIGEMOTO
PLANNING DIRECTOR

ROLAND D. SAGUM, III
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4290 RICE STREET
LIHUE, KAUAI, HAWAII 96766

July 6, 1989

Mr. Calvin Kimura, Executive Secretary
Real Estate Commission
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
P. O. Box 3469
Honolulu, Hawaii 96801

Subject: Comments on Niimalu Gardens Condominium Report
Registration No. 2085 at Niimalu, Kauai, Hawaii
Tax Map Key: 3-2-03:8

After reviewing the subject document, we have the following comments to offer:

The amount of limited common elements as identified on Exhibit "A" and "C" does not correspond to the allowable unit density permitted by the CZO. The subject property is zoned Agriculture District (A) and qualifies for three (3) units.

When applying for Zoning Permits with the Planning Department, the owners must be made aware that 75% of the owners, or their assignee, are required to sign the permit form(s). Should an assignee be designated, such assignee shall present proof of authorization from the 75% of the owners at the time a permit is applied for. This is a requirement because the Planning Department does not recognize the Condominium Report to be a legal subdivision of land.

The uses on the limited common elements shall be limited to those listed as permissible within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Farm dwellings on the lot shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

Mr. Calvin Kimura, Executive Secretary
Real Estate Commission
Page 2
July 6, 1989

The declaration of protective covenants states that certain types of animals are restricted. While this is a private matter, it appears to detract from the stated purpose of agricultural lands.

There should be a disclosure provision written into this and all ensuing condominium reports stating that approval of the report should not be misconstrued to mean that all County Codes and Ordinances have been complied with. Subsequent development and use shall comply with all applicable County Codes and Ordinances. It should also be made clear that the Horizontal Property Regime (HPR) does not necessarily mean that all County requirements pertaining to subdivision of lands have been met. Therefore, such facilities/improvements that are normally associated with County-approved subdivisions such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emerging traffic, drainage facilities, etc., may not necessarily be provided for. Further, such services as County street maintenance and trash collection will not be available for interior road/roadways.

Because there are more than one farm dwelling proposed/permitted, the land-owners pursuant to the County Farm Dwelling Agreement, should be made aware that any dwelling(s) constructed after the first one will require an inspection of the property by the Planning Department to verify whether agricultural activities are being conducted on the property. If not, such permits to construct additional farm dwellings could be denied.

Should you have any questions, please feel free to contact Bryan Mamaclay of my staff at 245-3919.


TOM H. SHIGEMOTO
Planning Director

MICHAEL H. SAKAI

ATTORNEY AT LAW
SUITE 602 CITY BANK BUILDING
810 RICHARDS STREET
HONOLULU, HAWAII 96813

TEL. 808-531-4171

FAX. 808-521-1369

NEW ADDRESS
City Financial Tower, Suite 902
201 Merchant Street
Honolulu, Hawaii 96813

September 25, 1989

Mr. Tom Shigemoto
Planning Director
County of Kauai
4250 Rice Street
Lihue, Kauai Hawaii 96788

Dear Mr. Shigemoto:

Re: Niumalu Gardens Condominium
Report Reg. No. 2085
Tax Map Key No. 3-2-03:8
(Lots 65, 66 and 67)

Reference is made to your letter of July 6, 1989 addressed to Mr. Calvin Kimura, Executive Secretary, Real Estate Commission, with reference to the comments on the Niumalu Garden condominium project. Mr. Earle Edwards did contact you on September 22, 1989 with reference to the above project and it was clarified that the Tax Map Key: 3-2-03:8 did contain three subdivided parcels of land, to-wit, Lots 65, 66 and 67, and not just one parcel of land. By virtue of the three subdivided parcels of land, the unit density for the condominium project will consist of a total of 11 units and you agreed with that unit count with Mr. Edwards. It is therefore requested that you confirm the unit density permitted by the CZO is eleven (11) by your acknowledgment below.

As to the other comments relating to the condominium registration that you have raised can be incorporated as part of the disclosures in the condominium report.

Your acknowledgment below of the foregoing will be appreciated.

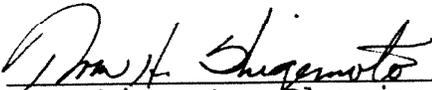
Very truly yours,



MICHAEL H. SAKAI

Mr. Tom Shigemoto
September 25, 1989
Page 2

Acknowledgment of the density of 11 units in the Niumalu Gardens condominium project this 25th day of September, 1989.



Tom Shigemoto, Planning Director
County of Kauai

MHS:psm
cc: Calvin Kimura, Real Estate Commission
Earle Edwards