

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: THOMAS K. AKUTAGAWA
Address: P. O. Box 434, Kapaa, Kauai, Hawaii 96746

Project Name(\*): MOANA IKENA CONDOMINIUM
Address: Kilauea, Kauai, Hawaii

Registration No. 2125

Effective date: November 29, 2001
Expiration date: December 29, 2002

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, in any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

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

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

- PRELIMINARY: (yellow) 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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] SUPPLEMENTARY: (pink) This report updates information contained in the:
[X] Final Public Report dated: August 25, 1989

(\*) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

Required and attached to this report                       Not required - Disclosures covered in this report.

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

1.        The Attorney for Developer has changed.
2.        The Real Estate Broker has been changed.
3.        The Declaration of Condominium Property Regime of Moana Ikena was amended to include a provision regarding the right to construct a Guest House by the owner of Unit 3.

**NOTE:** The Public Report format currently in use by the Real Estate Commission is different from that upon which the Final Public Report for this project was issued. Although the Supplementary Report must be read together with the Final Public Report, if a prospective purchaser desires to compare the previous report to the supplementary information contained on a specific page, the Supplementary Report will not coincide to the same page number in the Final Public Report. Therefore, it is suggested that the table of contents be referred to when making comparisons between reports.

An approximate ten (10) year lapse in the effective date for the developer's Public Report, from November 16, 1991 to the effective date of this Supplementary Report is acknowledged. Pursuant to Section 16-107-19, Hawaii Administrative Rules, sales contracts executed during the period that the public report was not in effect may be rescinded at the option of the purchaser and all monies refunded to purchaser. Purchaser's rights to rescind under this rule shall be void thirty calendar days after receipt of written notification of these rights from the developer or his agent.

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**I. PERSONS CONNECTED WITH THE PROJECT**

**Developer:** THOMAS K. AKUTAGAWA Phone: (808) 822-4345  
P. O. Box 434  
Kapaa, Kauai, Hawaii 96746

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Real Estate Broker:** O'CONNOR REALTY LLC Phone: (808) 828-1464  
4270 Kilauea Road  
Kilauea, Kauai, Hawaii 96754

**Escrow:** TITLE GUARANTY ESCROW SERVICES, INC. Phone: (808) 521-0211  
235 Queen Street  
Honolulu, Hawaii 96813

**General Contractor:** N/A Phone: \_\_\_\_\_

**Condominium Managing Agent:** Self-managed by the Association of Unit Owners Phone: \_\_\_\_\_

**Attorney for Developer:** Max W. J. Graham, Jr. Phone: (808) 245-4705  
Belles Graham Proudfoot & Wilson  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766

\*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**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. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and 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.

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: Document No. 90-107002

Book \_\_\_\_\_ Page \_\_\_\_\_

Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]: First Amendment to Declaration of Condominium Property Regime of Moana Ikena Condominium dated June 20, 2001, and recorded as Document No. 2001-100770.

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 Conveyances Condo Map No. 1347

Filed - Land Court Condo Map No. \_\_\_\_\_

The Condominium Map has been amended by the following instruments [state name of document, date 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 manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed

Recorded - Bureau of Conveyances: Document No. 90-107003

Book \_\_\_\_\_ Page \_\_\_\_\_

Filed - Land Court: Document No. \_\_\_\_\_

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

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 use them, as described in the Declaration, are:

described in Exhibit E.

as follows:

The portion of land set aside for the use of each owner of a Unit as set forth in Exhibit A, subject to the roadway and utility easement.

3. Common Interests: Each apartment will have an undivided fractional interests in all of the common elements. This interest is called the "common interests." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit C.

as follows:

- E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property on or your purchase and ownership of an apartment in the project.

Exhibit F describes the encumbrances against the title contained in the title report dated July 31, 2001 and issued by Title Guaranty of Hawaii, Inc.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all the documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other \_\_\_\_\_

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 Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541, Honolulu HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 2125 filed with the Real Estate Commission on August 25, 1989.

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

YELLOW paper stock                       WHITE paper stock                       PINK paper stock

C. **Additional Information Not Covered Above:**

1. Purchasers should be aware that Chapter 205, Hawaii Revised Statutes ("H.R.S."), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

The term "farm dwelling" is defined in H.R.S. Chapter 205-4.5(a)(4) as a "single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwelling permitted within agricultural parks developed by the State or where agricultural activity provides income to the family occupying the dwelling."

The penalty for violation of H.R.S. Section 205-4.5, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

In order for any purchaser to obtain a building permit to construct a single family residential unit (farm dwelling), the County of Kauai will require the purchase to sign a Farm Dwelling Agreement in the form attached hereto as Exhibit "I".

2. The Property is not currently dedicated for Agricultural Use with the Real Property Division, Department of Finance, County of Kauai, however, if the property is dedicated for Agricultural Use in the future, pursuant to Chapter 5A of the Kauai County Code, 1987, and if the requirements of said Chapter 5A concerning such Agricultural Use are not met, then the property may have its agricultural dedication revoked and/or may be subject to rollback taxes and other penalties as set forth in said Chapter 5A.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A- ] (The developer is required to make this declaration for issuance of an effective date for a final public report.
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

THOMAS K. AKUTAGAWA

Name of Developer

  
THOMAS K. AKUTAGAWA

11/26/01

Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

**\*Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner, Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.**

## EXHIBIT F

### ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.

-Note:- Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community dated August 31, 1983, recorded in said Bureau in Liber 17405 at Page 411.

Said Declaration was amended by instruments dated --- (acknowledged March 1, 1988), recorded in Liber 21704 at Page 1, dated September 9, 1988, recorded in Liber 22367 at Page 21, and dated December 28, 1988, recorded in Liber 22766 at Page 559.

4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Agreement dated April 30, 1962, between Kilauea Sugar Company, Limited, and the United States of America, acting through the Fourteenth Coast Guard District allowing the Coast Guard to maintain existing two inch water pipeline and take surplus water from the end of the eight inch water main at Kilauea Sugar Company, Limited's mill.
5. Requirements for drainageways bridging drainage culverts, as set forth in Section 3.03(c) of Declaration of Covenants, Conditions and Restrictions recorded in said Bureau in Liber 17405 at Page 411.
6. Restriction of access into and from Kilauea Lighthouse Road, as shown on surveyor's map prepared by Cesar C. Portugal, Surveyor, revised July 1983.
7. Designation of Easement "D-2" (15 feet wide) for irrigation and drainage purposes.
8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Declaration of Re Electrical Use dated July 25, 1988, recorded in said Bureau in Liber 22226 at Page 340.

9. Right-of-Entry in favor of Citizens Utilities Company and GTE Hawaiian Telephone Company Incorporated, dated October 12, 1988, recorded in Liber 22768 at Page 454; granting a right-of-entry for the purpose of building, constructing, repairing, maintaining and operating pole and wire lines, and/or underground lines, etc., for the transmission and distribution of electricity.

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

Declaration of Condominium Property Regime For The "Moana Ikena Condominium" Project dated July 10, 1990, recorded in said Bureau as Document No. 90-107002.

Condominium Map No. 1347, and any amendments thereto.

Said Declaration was amended by that certain First Amendment to Declaration of Condominium Property Regime of Moana Ikena Condominium dated June 26, 2001, and recorded in said Bureau as Document No. 2001-100770.

11. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Bylaws of the Association of Apartment Owners dated July 10, 1990, and recorded in said Bureau as Document No. 90-17003.

12. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

EXHIBIT "L"

LAND COURT SYSTEM

REGULAR SYSTEM

RETURN BY: MAIL [ ] PICKUP [ ] To:

County of Kauai  
Planning Department  
4280 Rice Street  
Lihue, Kauai, Hawaii 96766

FARM DWELLING AGREEMENT

This agreement made and entered into as of the \_\_\_\_\_ day of

\_\_\_\_\_, 19 \_\_\_\_\_, by and between \_\_\_\_\_

whose mailing address is \_\_\_\_\_

Hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI, Planning Department, whose business and mailing address is 4280 Rice Street, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT",

W I T N E S S E T H :

WHEREAS, the APPLICANT(S) warrant and represent that they are the \_\_\_\_\_ of that certain parcel of land, Tax Map Key No. \_\_\_\_\_ more particularly described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, this document pertains only to \_\_\_\_\_ as shown in Exhibit "B" and made part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use Commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, the parcel identified by Tax Map Key No. \_\_\_\_\_ is entitled to \_\_\_\_\_ residential units and one guest house; and

WHEREAS, this agreement is evidenced that \_\_\_\_\_ is entitled to one of those residential units; and

WHEREAS, a "family" as used in the definition of a "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the State Land Use District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes; and

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on that certain parcel of land described in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

NOW THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District Regulations and as recited herein, who derive income from the agricultural activity on the parcel; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this agreement; and

4. That this agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S); and

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself/herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principal place of business is 4396 Rice Street, Lihue, Hawaii, 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

11. This Agreement shall be a covenant running with the portion of land described in Exhibit A, and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors, and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnity agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

APPROVED:

Applicant(s)

\_\_\_\_\_  
Planning Director

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
County Attorney

STATE OF HAWAII        )  
                              ) ss.  
COUNTY OF KAUAI     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me personally appeared \_\_\_\_\_

to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

\_\_\_\_\_  
Notary Public, Fifth Judicial Circuit  
State of Hawaii

My commission expires:

EXHIBIT "K"

DISCLOSURE ABSTRACT FOR  
MOANA IKENA CONDOMINIUM

Pursuant to Hawaii Revised Statutes, Section 514A-61, the developer of the MOANA IKENA CONDOMINIUM makes the following disclosures:

1. The attorney for the project is Max W. J. Graham, Jr., of Belles Graham Proudfoot & Wilson, whose mailing address is 4334 Rice Street, Suite 202, Lihue, Kauai, Hawaii, Telephone No.: (808) 245-4705.
2. The real estate broker of the project is O'CONNOR REALTY LLC, a Hawaii limited liability company, whose mailing address is 4270 Kilauea Road, Kilauea, Kauai, Hawaii 96754, Telephone No.: (808) 828-1464.
3. Exhibit "F" of the Public Report, which shows encumbrances against title, is replaced by an updated report of encumbrances against title attached hereto and incorporated herein as Exhibit "F".
4. There have been no changes to the maintenance fees and disbursements as listed on Exhibit "G" to the Public Report.

  
\_\_\_\_\_  
THOMAS AKUTAGAWA

Dated: Jan. 19, 2001

RECEIPT

The undersigned has received a copy of the foregoing disclosure abstract this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Purchaser(s):

\_\_\_\_\_  
\_\_\_\_\_