

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: A. LARRY WHARTON, et al. Address: P. O. Box 39 Kilauea, Kauai, Hawaii 96754

Project Name(\*): KOLO KAI Address: 1980 Kolo Road Kilauea, Kauai, Hawaii

Registration No. 2490 (Partial Conversion)

Effective date: March 27, 2003 Expiration date: April 27, 2004

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. A final Public Report will be issued by the developer when complete information is filed.

FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission. [X] No prior reports have been issued. [ ] This report supersedes all prior public reports. [ ] This report must be read together with

THIRD X SUPPLEMENTARY: (pink) This report updates information contained in the: [ ] Preliminary Public Report dated: [ ] Final Public Report dated: [X] Supplementary Public Report dated: April 27, 2001

And [ ] Supersedes all prior public reports [X] Must be read together with the Second Supplementary Report dated April 27, 2001 [ ] This report reactivates the public report(s) which expired on

(\* ) Exactly as named in the Declaration

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

[ X ] Required and attached to this report as Exhibit "G" [ ] 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.

[ X ] Changes made are as follows:

1. Easement E-7 and Easement E-8 were granted to the adjoining lot owner of Parcel 19 to provide vehicular, pedestrian and utility access to Parcel 19 over a portion of Unit 4.
2. The Condominium Map No. 1533 was amended to note item 1 above.
3. A Second Amendment To Amended And Restated Declaration Of Condominium Property Regime Of Kolo Kai was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-155395, to note the above change.
4. Exhibit "A" to the Second Supplementary Public Report has been replaced with the Amended Condominium Map.
5. Exhibit "F" to the Second Supplementary Public Report has been amended to note the filing of the Second Amendment To Amended And Restated Declaration Of Condominium Property Regime of Kolo Kai noted as item 3 above.
5. Special Notice. The developer's Second Supplementary Public Report expired on September 1, 2002. Pursuant to Section 16-107-19, Hawaii Administrative Rules, sales contracts executed during the period that the Final Public Report was not in effect may be rescinded at the option of the purchaser and all monies refunded to the purchaser. The Purchaser's right to rescind under this rule shall be void thirty (30) calendar days after receipt of written notification of these rights from the developer or his real estate agent.

**SPECIAL ATTENTION**

This is a **CONDOMINIUM PROJECT**, not a subdivision. It does not involve the sale of individual subdivided lots. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

1. This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency, nor does it ensure that all applicable County codes, ordinances and subdivision requirements have been complied with.

2. Facilities and improvements normally associated with county approved subdivision, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

**THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.**

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**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. 91-099490

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]: Amended and Restated Declaration of Condominium Property Regime dated July 17, 1997, recorded as Document No. 97-110372; First Amendment To Amended And Restated Declaration of Condominium Property Regime dated January 12, 2001, recorded in said Bureau as Document No. 2001-057842; Second Amendment To Amended And Restated Declaration of Condominium Property Regime dated August 27, 2002, recorded in said Bureau as Document No. 2002-155395.

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. 1533

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]: Amended and Restated Declaration of Condominium Property Regime dated July 17, 1997, recorded as Document No. 97-110372; First Amendment To Amended And Restated Declaration of Condominium Property Regime dated January 12, 2001, recorded in said Bureau as Document No. 2001-057842; Second Amendment To Amended And Restated Declaration of Condominium Property Regime dated August 27, 2002, recorded in said Bureau as Document No. 2002-155395.

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. 91-099491

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]: Amended and Restated Bylaws dated July 17, 1997, recorded as Document No. 97-110373.

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 the 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, if any.

NOTE: Land areas referenced herein are not legally subdivided lots.

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 November 18, 2002, January 9 and 10, 2003 and issued by Title Guaranty of Hawaii, Inc.

**Blanket Liens:**

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien 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. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage as to Unit 1 only	Lender has priority over Buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. Should the lender terminate Buyer's sales contract, Buyer shall be entitled to a refund of all deposits, less escrow cancellation fee.

**F. 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

2. Appliances:

None

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 Farm Dwelling Agreements

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. 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. 2490 filed with the Real Estate Commission on August 5, 1991.

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WHITE paper stock

PINK paper stock

- 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.

A. LARRY WHARTON  
Owner/Developer

  
A. LARRY WHARTON

FEB. 7 2003  
Date

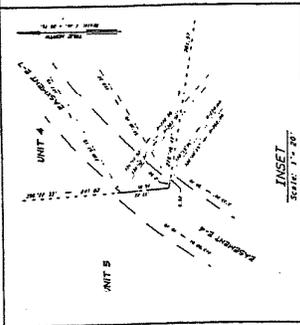
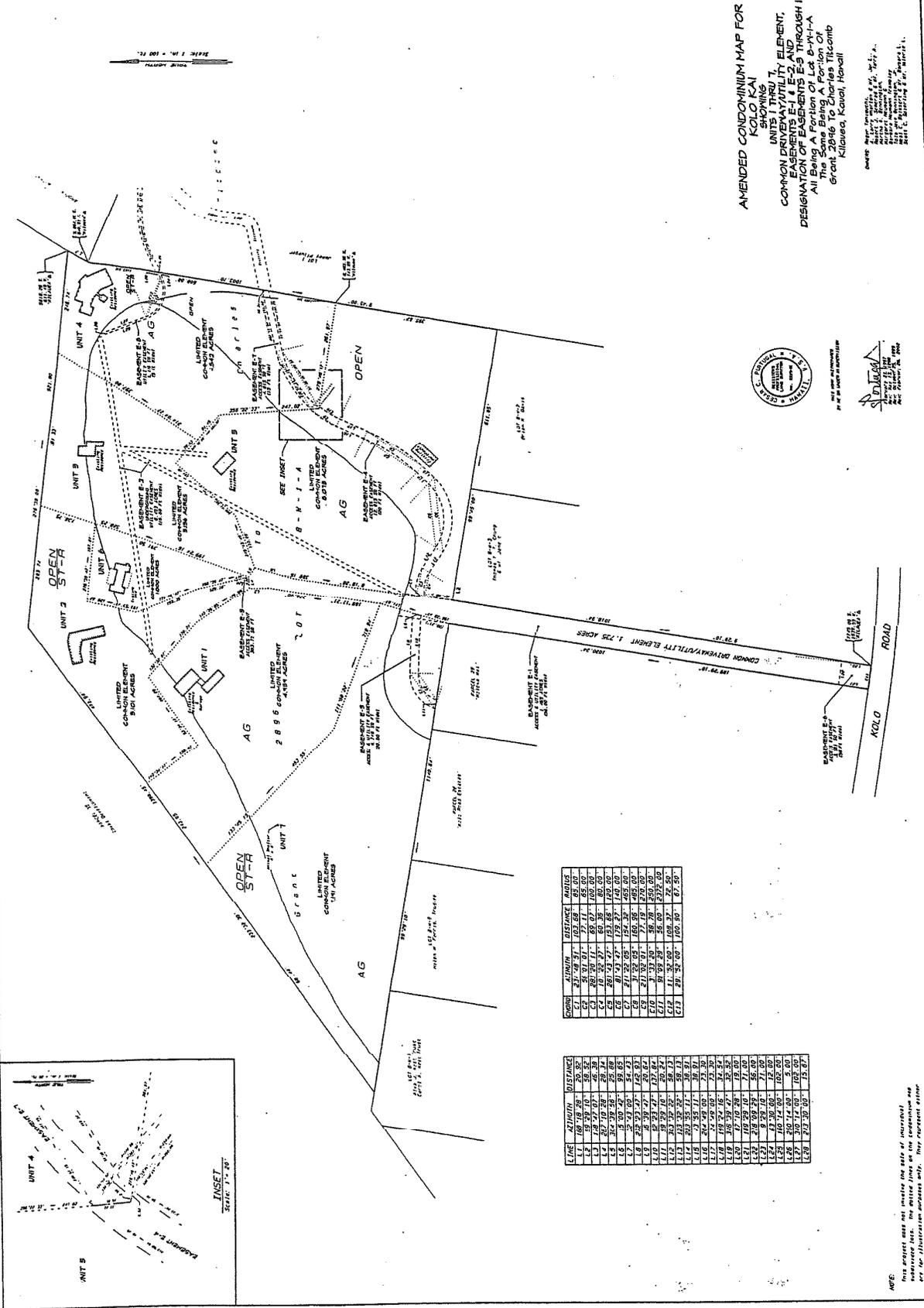
Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

# EXHIBIT A

## CONDOMINIUM MAP AND LIMITED COMMON ELEMENT LOCATIONS



POINT	ALTIMETER	DISTANCE	RADIUS
C1	27.48.97	102.69	85.00
C2	28.29.71	102.69	85.00
C3	29.10.45	102.69	85.00
C4	29.91.19	102.69	85.00
C5	30.71.93	102.69	85.00
C6	31.52.67	102.69	85.00
C7	32.33.41	102.69	85.00
C8	33.14.15	102.69	85.00
C9	33.94.89	102.69	85.00
C10	34.75.63	102.69	85.00
C11	35.56.37	102.69	85.00
C12	36.37.11	102.69	85.00
C13	37.17.85	102.69	85.00
C14	37.98.59	102.69	85.00
C15	38.79.33	102.69	85.00
C16	39.60.07	102.69	85.00
C17	40.40.81	102.69	85.00
C18	41.21.55	102.69	85.00
C19	42.02.29	102.69	85.00
C20	42.83.03	102.69	85.00
C21	43.63.77	102.69	85.00
C22	44.44.51	102.69	85.00
C23	45.25.25	102.69	85.00
C24	46.05.99	102.69	85.00
C25	46.86.73	102.69	85.00
C26	47.67.47	102.69	85.00
C27	48.48.21	102.69	85.00
C28	49.28.95	102.69	85.00
C29	50.09.69	102.69	85.00
C30	50.90.43	102.69	85.00
C31	51.71.17	102.69	85.00
C32	52.51.91	102.69	85.00
C33	53.32.65	102.69	85.00
C34	54.13.39	102.69	85.00
C35	54.94.13	102.69	85.00
C36	55.74.87	102.69	85.00
C37	56.55.61	102.69	85.00
C38	57.36.35	102.69	85.00
C39	58.17.09	102.69	85.00
C40	58.97.83	102.69	85.00
C41	59.78.57	102.69	85.00
C42	60.59.31	102.69	85.00
C43	61.40.05	102.69	85.00
C44	62.20.79	102.69	85.00
C45	63.01.53	102.69	85.00
C46	63.82.27	102.69	85.00
C47	64.63.01	102.69	85.00
C48	65.43.75	102.69	85.00
C49	66.24.49	102.69	85.00
C50	67.05.23	102.69	85.00
C51	67.85.97	102.69	85.00
C52	68.66.71	102.69	85.00
C53	69.47.45	102.69	85.00
C54	70.28.19	102.69	85.00
C55	71.08.93	102.69	85.00
C56	71.89.67	102.69	85.00
C57	72.70.41	102.69	85.00
C58	73.51.15	102.69	85.00
C59	74.31.89	102.69	85.00
C60	75.12.63	102.69	85.00
C61	75.93.37	102.69	85.00
C62	76.74.11	102.69	85.00
C63	77.54.85	102.69	85.00
C64	78.35.59	102.69	85.00
C65	79.16.33	102.69	85.00
C66	79.97.07	102.69	85.00
C67	80.77.81	102.69	85.00
C68	81.58.55	102.69	85.00
C69	82.39.29	102.69	85.00
C70	83.20.03	102.69	85.00
C71	84.00.77	102.69	85.00
C72	84.81.51	102.69	85.00
C73	85.62.25	102.69	85.00
C74	86.43.00	102.69	85.00
C75	87.23.74	102.69	85.00
C76	88.04.48	102.69	85.00
C77	88.85.22	102.69	85.00
C78	89.65.96	102.69	85.00
C79	90.46.70	102.69	85.00
C80	91.27.44	102.69	85.00
C81	92.08.18	102.69	85.00
C82	92.88.92	102.69	85.00
C83	93.69.66	102.69	85.00
C84	94.50.40	102.69	85.00
C85	95.31.14	102.69	85.00
C86	96.11.88	102.69	85.00
C87	96.92.62	102.69	85.00
C88	97.73.36	102.69	85.00
C89	98.54.10	102.69	85.00
C90	99.34.84	102.69	85.00
C91	100.15.58	102.69	85.00
C92	100.96.32	102.69	85.00
C93	101.77.06	102.69	85.00
C94	102.57.80	102.69	85.00
C95	103.38.54	102.69	85.00
C96	104.19.28	102.69	85.00
C97	105.00.02	102.69	85.00
C98	105.80.76	102.69	85.00
C99	106.61.50	102.69	85.00
C100	107.42.24	102.69	85.00

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C43	61.40.05	102.69	85.00
C44	62.20.79	102.69	85.00
C45	63.01.53	102.69	85.00
C46	63.82.27	102.69	85.00
C47	64.63.01	102.69	85.00
C48	65.43.75	102.69	85.00
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C96	104.19.28	102.69	85.00
C97	105.00.02	102.69	85.00
C98	105.80.76	102.69	85.00
C99	106.61.50	102.69	85.00
C100	107.42.24	102.69	85.00

AMENDED CONDOMINIUM MAP FOR  
**KOLO KAI**  
 SHOWING  
 UNITS 1 THRU 5, ELEMENT,  
 COMMON DRIVEWAY/UTILITY AND  
 DESIGNATION OF ELEMENTS THROUGH I  
 All Being A Portion Of Lot B-11-A  
 Grant 3816 To Charles Titcomb  
 Kilauea, Kauai, Hawaii



Surveyor: [Name], License No. [Number], State of Hawaii  
 Engineer: [Name], License No. [Number], State of Hawaii

NOTE: Applicant may not include the title of instrument  
 on this map. The title lines in the instrument map  
 are for illustration purposes only. Any subsequent error  
 in the instrument map shall be the responsibility of the  
 instrument maker.

EXHIBIT "F"

ENCUMBRANCES AGAINST TITLE

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Free flowage of the Kilauea Stream, as shown on Tax Map.
3. A 100-year flood building setback line as shown on the map prepared by Masao Fujishige, Registered Professional Surveyor, dated February 17, 1977.
4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Farm Dwelling Agreement dated January 22, 1982 and recorded in said Bureau in Liber 16185 at Page 507, by and between LARRY C. McKNIGHT and TERRY A. McKNIGHT, "Applicants", and the COUNTY OF KAUAI Planning Department, "Department"
5. Grant to Citizens Utilities Company, a Delaware corporation, and Hawaiian Telephone Company, now known as GTE Hawaiian Telephone Company Incorporated dated May 20, 1981, and recorded in said Bureau in Liber 16524 at Page 648, granting a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines and/or underground lines, etc., for the transmission and distribution of electricity, etc., over and across Easement "E-1".
6. Grant to Citizens Utilities Company, a Delaware corporation, and Hawaiian Telephone Company, now known as GTE Hawaiian Telephone Company Incorporated dated December 21, 1981, and recorded in said Bureau in Liber 16524 at Page 658, granting a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines and/or underground lines, etc., for the transmission and distribution of electricity, etc., over and across Easement "E-2".
7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Farm Dwelling Agreement dated September 16, 1988, and recorded in said Bureau in Liber 22512 at Page 48, by and between T. JACK BENNINGTON, husband of Rita Bennington, and MARTHA ANN BENNINGTON, unmarried, "Applicants", and the COUNTY OF KAUAI Planning Department, "Department".
8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

Amended And Restated Declaration Of Condominium Property Regime For "Kolo Kai" (formerly known as Kolo Kai Agricultural Condominium) dated July 17, 1997, recorded in said Bureau as Document No. 97-110372.

Condominium Map No. 1533 and any amendments thereto.

The foregoing Restated Declaration restates the original Declaration dated June 28, 1991, recorded as Document No. 91-099490, and any amendments thereto.

Said Restated Declaration was amended by instruments dated April 17, 2001, recorded as Document No. 2001-057842, and dated August 27, 2002, recorded as Document No. 2002-155395.

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

Amended and Restated Bylaws of "Kolo Kai" (formerly known as Kolo Kai Agricultural Condominium) dated July 17, 1997, recorded as Document No. 97-110373.

The foregoing Restated By-Laws restates the original By-Laws dated June 28, 1991, and recorded as Document No. 91-099491, and any amendments thereto.

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Apartment Deed dated April 13, 2001, recorded as Document No. 2001-057843.