



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

**CONDOMINIUM PUBLIC REPORT**

DYNASTY ACRES LOT NO. 6  
 Off Lohe Street, Kalaheo, Kauai, Hawaii

Registration No. 2548

Issued: December 27, 1991  
 Expires: January 27, 1993

**Report Purpose:**

This report is based on information and documents submitted by the developer to the Real Estate Commission as of December 13, 1991, 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:**  
*(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 when complete information is filed.
- FINAL:**  
*(white)* The developer has legally created a condominium and has filed complete information with the Commission.  
 No prior reports have been issued  
 Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_
- SUPPLEMENTARY:**  
*(pink)* Updates information contained in the  
 Prelim. Public Report dated \_\_\_\_\_  
 Final Public Report dated \_\_\_\_\_  
 Supp. Public Report dated \_\_\_\_\_
- And  Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_
- This report reactivates the \_\_\_\_\_  
 public report(s) which expired on \_\_\_\_\_

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

- Required       Not Required - disclosures covered in this report.

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

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

No prior reports have been issued by the Commission.

Changes made are as follows:

\* \* \* \* \*  
\* **SPECIAL NOTICE:** \*  
\* \* \* \* \*  
\* THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF \*  
\* RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH \*  
\* MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE \*  
\* PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL \*  
\* DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL \*  
\* BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE \*  
\* PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER \*  
\* WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL \*  
\* STRUCTURE TO A RESIDENTIAL USE. THE PURCHASER SHOULD \*  
\* CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO \*  
\* DETERMINE WHETHER THE PURCHASER MAY BUILD A RESIDENTIAL \*  
\* DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, UPON THE \*  
\* PROPERTY. \*  
\* \* \* \* \*  
\* 1. THERE ARE PRESENTLY NO RESIDENTIAL STRUCTURES ON \*  
\* THE PROPERTY. THE ONLY BUILDINGS ON THE PROPERTY \*  
\* IS A STORAGE SHED AND A GAZEBO, EACH OF WHICH IS \*  
\* DEFINED AS AN APARTMENT UNDER THE CONDOMINIUM \*  
\* PROPERTY ACT. \*  
\* \* \* \* \*  
\* 2. This Public Report does not constitute an approval \*  
\* of the project nor that all County Codes, \*  
\* Ordinances and subdivision requirements have been \*  
\* complied with. \*  
\* \* \* \* \*  
\* 3. This project does not involve the sale of \*  
\* individual subdivided lots. The dotted lines on \*  
\* the Condominium Map are for illustration purposes \*  
\* only. \*  
\* \* \* \* \*  
\* 4. 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. \*  
\* \* \* \* \*

\* 5. In addition to the foregoing matters, the Kauai \*  
 \* County Planning Department has advised as to the \*  
 \* following matters. You are requested to read the \*  
 \* following with care and seek advice from the \*  
 \* Kauai Planning Department, your architect/engineer \*  
 \* and your attorney, if necessary: \*  
 \* \*  
 \* A. The Kauai County CZC standards presently \*  
 \* require a minimum of two (2) parking stalls \*  
 \* for each residential dwelling unit. \*  
 \* \*  
 \* B. When applying for zoning permits with the \*  
 \* Planning Department, 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 authority \*  
 \* from 75% of the owners at the time a permit is \*  
 \* applied for. \*  
 \* \*  
 \* C. The use of the limited common elements shall \*  
 \* be limited to those listed as permissible \*  
 \* within the "A" Agricultural District in the \*  
 \* State Land Use Commission's Rules and \*  
 \* Regulations. (See Exhibit "F", including \*  
 \* Exhibit "A" of the Declaration of Restrictive \*  
 \* Covenants, Conditions) \*  
 \* \*  
 \* D. Any dwelling constructed after the first one \*  
 \* will require an inspection of the property by \*  
 \* the Kauai 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. \*  
 \* \*  
 \* **THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY** \*  
 \* **REVIEW THE DOCUMENTS FOR FURTHER INFORMATION WITH** \*  
 \* **REGARD TO THE FOREGOING.** \*  
 \* \*  
 \* \* \* \* \*

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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.

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.

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<sup>\*</sup> 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.

### 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  Ohana  
 Mixed Residential and Commercial  Agricultural  
 Other \_\_\_\_\_
  
3.  High Rise (5 stories or more)  Low Rise
  
4.  Single or  Multiple Buildings
  
5. Apartment Description

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
A	1	N/A	73 sq. ft.	N/A
B	1	N/A	43 sq. ft.	N/A

Total Apartments: 2

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

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

**6. Parking:**

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

Undesignated Stalls  
 By Ordinance at least two (2) parking stalls are required per apartment.

7. Recreational amenities: None

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: David Elpern and Dale Lanctot and 332-9917 Elperns  
Martha E. Elpern Melody Lanctot 332-7868 Lanctots  
Name Phone: (Business)  
3950 Waha Road P. O. Box 1008  
Business Address  
Kalaheo, HI 96741 Koloa, HI 96756

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

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

Real Estate Rick Shaw (Makai Properties) Phone: 742-7561  
Broker: Name (Business)  
P. O. Box 905  
Business Address  
Koloa, Hawaii 96756

Escrow: Title Guaranty Escrow Services, Inc. Phone: 245-3381  
Name (Business)  
4414 Kukui Grove Street, Suite 104  
Business Address  
Lihue, Hawaii 96766

General Owner/Builder Phone:  
Contractor: Name (Business)  
Business Address

Condominium Self management by Association of  
Managing Apartment Owners Phone:  
Agent: Name (Business)  
Business Address

Attorney for Hiroshi Sakai, Attorney at Law,  
Developer: A Law Corporation Phone: 531-4171  
Name (Business)  
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 - Document No. 91-139547  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

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

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyance Condo Map No. 1565  
 Filed - Land Court Condo Map No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

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

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances - Document No. 91-139548  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

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>N/A</u>

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

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules

Developer has reserved the right under Paragraph 15.0 of the Declaration to alter the units in the Project which it owns without the approval of the Association or the other apartment owner and to amend the Condominium Map to note changes resulting from the exercise of the Developer's reserved rights under Paragraph 15.0. Developer has also reserved the right under Paragraph 16.0 to record any "as built" statements as required by law.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements which includes the underlying land will be in fee simple.
- Leasehold or Subleasehold: Individual apartments and the common elements which includes the underlying land will be leasehold.

The leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_  
Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     Monthly                                     Quarterly  
    Semi-Annually                                     Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  
 Month                                     Year.

- Individual Apartments in Fee Simple Common Interest in the Underlying Land in Leasehold or Subleasehold:

The leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners - tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_  
Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     Monthly                                     Quarterly  
    Semi-Annually                                     Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  
 Month                                     Year.

- Other:

For Subleaseholds:

- Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is  
 Cancelled       Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is cancelled or foreclosed.

**B. Underlying Land:**

Address: Off Lohe Street, Kalaheo, Kauai, Hawaii Tax Map Key: (4) 2-3-009: 98  
(TMK)

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

Land Area: 3.0       square feet       acre(s)      Zoning: Agriculture

Fee Owner: David Elpern and Dale Lanctot and  
Martha E. Elpern      Melody Lanctot  
Name

3950 Waha Road      P. O. Box 1008  
Address

Kalaheo, HI 96741      Koloa, HI 96756

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: 2      Floors Per Building 1 Floor

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

3. Principal Construction Material:

Concrete       Hollow Tile       Wood

Other \_\_\_\_\_

4. Permitted Uses by Zoning:

	<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>		<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>
<input type="checkbox"/> Commercial	_____	_____	<input type="checkbox"/> Industrial	_____	_____
<input type="checkbox"/> Residential	_____	_____	<input checked="" type="checkbox"/> Agricultural	<u>2</u>	<u>Yes</u>
<input type="checkbox"/> Timeshare/Hotel	_____	_____	<input type="checkbox"/> Recreational	_____	_____
<input type="checkbox"/> Other: _____				_____	_____

Is/Are this/these use(s) specifically permitted by the project's declaration or bylaws?  
 Yes                       No

5. Special Use Restrictions:

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

- Pets: Only in reasonable numbers and reasonable conditions so as not to become a nuisance to the neighbors.
- Number of Occupants: \_\_\_\_\_
- Other: See Exhibit "F", Declaration of Restrictive Covenants and Conditions
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators N/A                      Stairways N/A                      Trash Chutes N/A

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>A</u>	<u>1</u>	<u>N/A</u>	<u>73 sq. ft.</u>	<u>N/A</u>
<u>B</u>	<u>1</u>	<u>N/A</u>	<u>43 sq. ft.</u>	<u>N/A</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 2

*\*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 apartment is the exterior surface of the structures and it also has appurtenant to it the limited common element land area as set forth in the Condominium Map for its own exclusive use.

**Permitted Alterations to Apartments:**

Either apartment owner can increase the total square footage of his structure, add additional structures, alter the location of his structures and/or (subject to enactment) subdivide in accordance with the building code, zoning and subdivision ordinances. A second dwelling unit may be constructed per "Additional Dwelling Unit Facilities Clearance" granted by the Planning Department on January 15, 1991.

**7. Parking Stalls:**

Not designated. A residential dwelling requires two (2) Total Parking Stalls: parking stalls when a building permit application is filed.

	<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 Not Designated 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

Storage Area

Recreation Area

Laundry Area

Tennis Court

Trash Chute

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

\_\_\_\_\_

9. Present Condition of Improvements

(For conversions of residential apartments in existence for at least five years):

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

N/A

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

N/A

10. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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

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

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

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

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

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

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

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

Exhibit     A     describes the common elements.

As follows:

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

There are no limited common elements in this project.

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

described in Exhibit \_\_\_\_\_

as follows:

The land area of each apartment consisting of the land beneath it as shown and delineated on the Condominium Map, is a limited common element for the use of the owner of each respective apartment.

Apartment A - 1.310 acres

Apartment B - 1.412 acres

**NOTE:** Each unit is not a legally subdivided lot and until a change permitting subdivision of the lot is enacted the apartment owner cannot subdivide as referred to under Permitted Alterations to Apartments on Page 12 of this Report.

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

Exhibit \_\_\_\_\_ describes the common interests for each apartment.

As follows:

Apartment A - 50% appurtenant common interest

Apartment B - 50% appurtenant common interest

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

Exhibit  B  describes the encumbrances against the title contained in the title report dated  October 14, 1991  and issued by  Title Guaranty of Hawaii, Incorporated .

**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 dated March 27, 1991, recorded as Document No. 91-041339 in the Bureau of Conveyances, State of Hawaii.	Though the Developer will seek to obtain a release or partial release for buyer so as to enable buyer to receive clean title, buyer should realize said mortgage has higher priority than a sales contract. If lender terminates buyer's interest, buyer shall be entitled to a return of his deposit.

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     E     contains a schedule of maintenance fees and maintenance fee disbursements.

NOTE: No maintenance fees are immediately contemplated. Paragraph 13.0 of the Declaration provides that the Association will allow each apartment owner to maintain his own insurance and name the Association as an additional insured.

**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:

Not applicable

Electricity

Television Cable

Gas

Water & Sewer

Other \_\_\_\_\_

**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

2. Appliances: None

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

The apartments were completed on September 27, 1991.

K. **Project Phases:**

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

Summary of Developer's Present Plans for Future Development:

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

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

Notice to Owner Occupants

Specimen Sales Contract

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

Escrow Agreement dated       September 17, 1991      

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

Other \_\_\_\_\_

#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

1. Purchasers should examine Exhibit "F" carefully. Each purchaser must obtain a building permit should he desire to construct a dwelling on the premises, pull purchaser's own utility lines and install purchaser's own cesspool. The moving on to the project of used homes and quonset huts is prohibited.
2. Purchasers should be aware that the land is subject to agricultural activities being pursued as required by Chapter 205, Hawaii Revised Statutes, as amended.
3. Purchasers should be aware that the land is subject to Restrictive Covenants and Conditions relating to the use of the land (Exhibit "F").
4. PURCHASERS SHOULD BE AWARE OF BUILDING PERMIT REQUIREMENTS IMPOSED BY THE COUNTY OF KAUAI AS WELL AS THE DECLARATION OF CONDOMINIUM REGIME, BY LAWS AND BUILDING RULES AND DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS (EXHIBIT "F"), THE AVAILABILITY OF UTILITIES AND THE SIZE AND LOCATION OF CONNECTIONS AND BUILDING PERMITS AND CONSTRUCTION OF IMPROVEMENTS AND ALL OTHER MATTERS RELATING TO THE COST, USE AND ENJOYMENT OF THE CONDOMINIUM UNITS PRIOR TO THEIR ENTERING INTO A PURCHASE CONTRACT. THE COMMISSION, BY ISSUING THIS REPORT, IS NOT APPROVING OR DISAPPROVING THE PROJECT, NOR IS IT WARRANTING THE CORRECTNESS OR COMPLETENESS OF INFORMATION SUPPLIED TO IT BY ANY PARTY OR PARTIES.
5. Buyers should be aware that 75% of the owners must concur on any application for building permit.

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

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

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

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

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

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

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

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

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

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

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

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

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, 1010 Richards Street, P. O. Box 541, Honolulu, HI 96809.

This Public Report is a part of Registration No. 2548 filed with the Real Estate Commission on November 7, 1991.

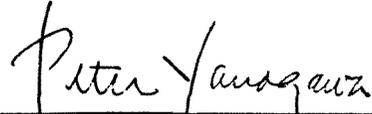
Reproduction of Report. When reproduced, this report must be on:

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.



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PETER 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

EXHIBIT "A"

Common Elements. The common elements of the project which the apartments have access include:

a. The land in fee simple. The common element driveway of 0.276 acres bisecting the project which may be a further extension of Lohe Street.

b. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, hot and cold water and like utilities.

c. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the project.

EXHIBIT "B"

The encumbrances against title are as follows:

1. Real Property Taxes as may be due and owing - Check with the Director of Finance, County of Kauai.
2. Setback for building and drainage purpose as shown on survey map dated April 18, 1990, prepared by Dennis M. Esaki, Registered Professional Land Surveyor.
3. A 44 feet wide future road widening reserve. There shall be no new structures permitted within the reserve, new structures shall be setback from the reserve, per survey of Dennis M. Esaki dated April 28, 1990.
4. Covenants, conditions and restrictions set forth in Declaration dated May 9, 1990, recorded as Document No. 90-085932.
5. Right-of-Entry to Citizens Utilities Company dated November 21, 1990, recorded as Document No. 90-191760 granting right-of-entry shall be used by the Grantee for the purpose of building, constructing, repairing, maintaining and operating pole and wire lines, etc., for the transmission and distribution of electricity.
6. Mortgage by and between Dale Lanctot and Melody Lanctot, husband and wife, and David J. Elpern and Martha E. Elpern, husband and wife, as Mortgagor, and Dynasty Developments, a Hawaii general partnership, as Mortgagee, dated March 27, 1991, recorded as Document No. 91-041339 in the amount of \$147,500.00.
7. The restrictions on use and other restrictions and all other of the covenants, agreements, obligations, conditions, reservations, easements and other provisions set forth in Declaration of Condominium Property Regime dated August 27, 1991, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-139547, as the same may hereafter be amended in accordance with law or with said Declaration. (Project covered by Condominium Map No. 1565).
8. By-Laws of the Association of Apartment Owners of the Condominium Project known as "DYNASTY ACRES LOT NO. 6" dated August 27, 1991, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-139548, as the same may hereafter be amended.

EXHIBIT "C"

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 "D"

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) Developer 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 "E"

DYNASTY ACRES LOT NO. 6

REGISTRATION NO. 2548

DISCLOSURE STATEMENT AS OF AUGUST 27, 1991

1. Name of Project: DYNASTY ACRES LOT NO. 6
2. Address: Off Lohe Street, Kalaheo, Kauai, Hawaii
3. Names of Developer: David Elpern and Martha E. Elpern and Dale Lanctot and Melody Lanctot
4. Addresses of Developer: 3950 Waha Road, Kalaheo, Hawaii 96741 and P. O. Box 1008, Koloa, Hawaii 96756, respectively
5. Telephone Numbers: (808) 332-9917 and (808) 332-7868
6. Project Manager or Agent: David Elpern, Martha E. Elpern, Dale Lanctot and Melody Lanctot
7. Addresses: 3950 Waha Road, Kalaheo, Hawaii 96741 and P. O. Box 1008, Koloa, Hawaii 96756
8. Maintenance Fees: None at present. In the future as the need and necessity arises for maintenance fees it shall be based upon generally accepted accounting principles.
9. Commencement of Maintenance Fees: At such time that the Association decides to assess maintenance fees.
10. Warranties: The Project is a fee simple condominium project and there are no warranties.
11. Project: The Project consists of 2 condominium apartments, the land areas of which are to be utilized for agricultural, residential and other uses permitted under the zoning ordinances for the County of Kauai.

DATED: Kalaheo, Hawaii, August 27, 1991.

David Elpern  
DAVID ELPERN

Martha E. Elpern  
MARTHA E. ELPERN

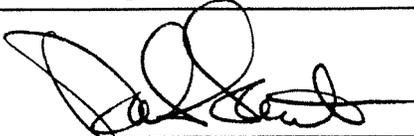
Subscribed and sworn to before me  
this 27th day of August, 1991.

Sheryl D. Ruiz  
NOTARY PUBLIC, STATE OF HAWAII

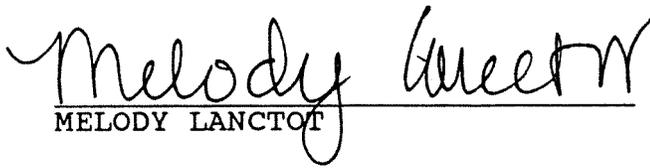
My commission expires: 7-23-92

LS\*

DATED: Koloa, Hawaii, August 27, 1991.



DALE LANCTOT



MELODY LANCTOT

Subscribed and sworn to before me  
this 27th day of August, 1991.



NOTARY PUBLIC, STATE OF HAWAII

LS

My commission expires: 7-23-92

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90-085932

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

'90 JUN 8 AM 8 01

S. FUKUKAWA, REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( x ) Pickup ( ) To:

DYNASTY DEVELOPMENTS  
P. O. BOX 1727  
LIHUE, HI 96766

TG: 31584  
TGE: 8940102540004  
FAY RAPOZO

DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, DYNASTY DEVELOPMENTS, a Hawaii general partnership, whose principal place of business is Lihue, Kauai, Hawaii, and whose mailing address is P. O. Box 1727, Lihue, HI 96766, hereinafter called the "Declarant", is the owner in fee simple and developer of that certain land situate at Kalaheo Homesteads Second Series, Kalaheo, Island and County of Kauai, State of Hawaii, more particularly identified as Kauai Tax Map Key: 2-3-09-21, containing an area of 22.97 acres, more or less; and

WHEREAS, the Declarant is developing the parcel into an agricultural subdivision known as "Dynasty Acres"; and

WHEREAS, the Declarant desires to impose certain restrictive covenants and conditions upon all lots in the said subdivision for the purpose of enhancing and protecting the value, desirability and attractiveness of the subdivision and the surrounding environment,

NOW, THEREFORE, the Declarant does hereby declare that Lots 4 through 10, inclusive, of Dynasty Acres resulting from the subdivision of the above-described property shall be subject to the following conditions, covenants and restrictions from the date hereof until removed as contained herein:

1. General Restrictive Covenants. Each lot within Dynasty Acres and any private or co-tenancy area appurtenant thereto shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restrictions:

(a) No improvement or other work which in any way significantly alters any lot from its natural or improved state existing on the date such lot was first conveyed by the Declarant to an Owner shall be made or done except upon

EXHIBIT "F"

strict compliance with and within the restrictions of this Declaration;

(b) So long as the zoning of the lots in Dynasty Acres remains unchanged, only farm dwellings, as may be permitted by applicable law, shall be constructed on any lot. In keeping with the intent of the State Land Use Law (Chapter 205, Hawaii Revised Statute, as may be amended), agricultural activity must be established before any additional farm dwellings in excess of one (1) per parcel will be permitted by the County of Kauai;

(c) To protect views and to maximize a blending of structures with the natural environment, no structure erected on any of the said lots shall exceed a building height limit of thirty (30) feet, measured from grade at all points along the structure to the roof peak. All utility lines on the lots shall be placed underground.

(d) Notwithstanding any other law to the contrary, there shall be no more than two (2) farm dwellings permitted on any lot within the subdivision, except in accordance with the terms and conditions of this Declaration. For the purposes of this Declaration, farm dwelling units shall mean a detached dwelling unit designed for the use and occupancy of a single family (as opposed to a multi-family unit), and includes an "ohana" unit if permitted by the appropriate governmental authorities. However, farm dwelling unit shall not include a guest house, as the same is defined and may be permitted by the appropriate governmental authorities;

(e) One of the two permitted farm dwellings on the lot shall contain not less than 2,000 square feet of liveable floor area, exclusive of lanais, patios, servant's quarters, attached guest house or facility, garage, storage space, and workshop. The second of the two permitted farm dwellings on the lot shall contain not less than 1,000 square feet of liveable floor area, exclusive of lanais, patios, servant's quarters, attached guest house or facility, garage, storage space, and workshop. Each farm dwelling shall have appurtenant to it a garage designed to accommodate at least two automobiles which is architecturally harmonious with the farm dwelling to which it is appurtenant;

(f) All structures must not exceed two stories, and the total floor area (including lanais, decks and balconies) of the second story on any such structure shall not exceed fifty percent (50%) of the floor area under roof of the first story, it being the intention of the Declarant to create a stairstep effect for 2-story structures. A third level, or basement, may be permitted if the same is cut below the existing grade and the completed structure does not exceed the 30 height limit measured from grade at all points around the structure;

(g) All structures shall be built entirely of new materials, and no old and/or "quonset" or "geodesic dome" type of building shall be erected, placed or maintained on any of said lots. The structures existing as of the date of

this Declaration on Lot 8 shall be removed either upon the construction of the first farm dwelling on Lot 8, or the third (3rd) anniversary date of this Declaration, whichever shall first occur;

(h) No structure erected on the lots shall use mirrored glass, reflective sun screens, or other highly reflective materials for any exterior windows;

(i) The roofs of all structures erected on the lots shall be surfaced with wood shakes or tile. The use of any roofing materials such as corrugated iron, metal, rolled or build-up composition roof, Architect 80, and the like shall be prohibited;

(j) All structures erected on the lots, including the roof, shall have an earthen tone exterior color, or have a finish or earthen tone color;

(k) The area around each structure exceeding 2,000 square feet in floor area shall be landscaped with trees, shrubbery, and/or plantings in an appropriate fashion so as to minimize the visual intrusion of such structure to the neighboring lots in the subdivision;

(l) Any bare areas resulting from excavation or fill shall be revegetated immediately to avoid erosion and visual impacts;

(m) No fences, corrals, and the like shall be painted or contain a finish other than earthen tones;

(n) No chain link fences shall be permitted except minimally around the vicinity of the farm dwelling as may reasonably be necessary to confine pets or for security purposes, provided, however, that any such chain link fence shall be screened through hedges and other plantings so as not to be visible to the neighboring property;

(o) Each farm dwelling shall be occupied and used only as a farm dwelling by the respective owner thereof, his tenants (other than transient vacation renters), family, employees and guests, and for no other purpose. The dwellings shall not be used for any bed and breakfast or other short term or transient vacation rental business;

(p) Each farm dwelling and any and all improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create any fire, safety or health hazard to Dynasty Acres or any part thereof, all at such Owner's sole cost and expense;

(q) No signs whatsoever, including without limitation, commercial, political or similar signs, visible from neighboring property, shall be erected or maintained upon any lot except:

(1) Such signs as may be required by legal proceedings;

(2) Residential identification signs of combined total face area of three (3) square feet or less for each dwelling;

(3) During the time of construction of any farm dwelling or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen; and

(4) Not more than one (1) "For Sale" or "For Rent" sign having a maximum face area of two (2) square feet, such sign to refer only to the premises on which it is situated;

(r) No house trailer, mobile home, permanent tent or similar facility or structure shall be kept, placed or maintained upon any lot at any time, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted on the lot;

(s) No vehicle of more than one (1) ton capacity shall be kept, placed or maintained upon any lot in such a manner that such vehicle is visible from the adjoining street and neighboring property, unless such vehicle is necessary to and regularly used for agricultural activities conducted on the lot, provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted on the lot;

(t) No accessories, structures or buildings shall be constructed, placed or maintained upon any lot prior to the construction of the main structure of the farm dwelling, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of the main structure of the farm dwelling, nor apply to facilities reasonably required in the conducting of agricultural activities on the lot or the maintaining of the lot in its natural state. Guest houses (as allowed by law) may be permitted to be constructed prior to the construction of the main structure of the farm dwelling if, and only if, such guest house is part of the master plan for the construction of the farm dwelling(s) on the lot and the farm dwelling(s) shown on such master plan is built in accordance therewith within a reasonable time not to exceed two (2) years;

(u) No trailer, vehicle or boat shall be constructed, reconstructed or repaired upon any lot in such a manner that such construction, reconstruction or repair is visible from the neighboring properties, nor shall any vehicle, trailer or boat not in good operating condition be maintained upon any lot so as to be visible from any adjoining street or neighboring properties in the

subdivision, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his own trailer, vehicle or boat in his garage;

(v) No open storage of boats, vehicles, furniture, fixtures, appliances and other goods and chattels will be permitted. These items may only be stored in an enclosed structure. No outside clothes line or other outside clothes drying or airing facilities shall be permitted except within a fenced service yard and not visible from the neighboring property;

(w) No garbage or trash shall be permitted on any lot except in closed receptacles screen from view from any adjoining street and neighboring property, and no accumulated waste plant materials will be permitted on any lot, except as part of an established compost pile maintained in such a manner as not to be visible from neighboring property or as a necessary part of the agricultural activities conducted on such lot;

(x) No Owner shall violate or permit the violation on his lot of any applicable law or ordinance pertaining to zoning, building, fires, signs or other matter relating to the use and development of his lot or farm dwelling.

(y) No garage shall be for other than the parking of vehicles and boats, unless the same be enclosed so as not to be visible from neighboring properties by a partition, wall, door or screen, normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage not so enclosed shall be used for laundry or for storage purposes;

(z) All driveways between the street and the farm dwelling(s) on any lot in the subdivision shall be of concrete or asphalt. No dirt, coral or gravel driveways shall be permitted, provided that this paragraph shall not apply to temporary driveways and access for a period not to exceed one (1) year during and used exclusively in connection with the construction of the farm dwelling on the lot;

(aa) Dogs, cats and other typical household pets may be kept but only in reasonable numbers and under reasonable conditions so as not to become a nuisance to the neighboring lot owners. All animals kept or maintained on a lot, whether domestic pets, livestock, game and fish or any other animal or aquatic life propagated for economic or personal use shall be kept and maintained only in a density compatible with the neighboring residential and agricultural use and shall be cared for in conformance with practices of good animal husbandry, including but not limited to: (a) prompt removal of excess amounts of manure and other waste; (b) disposal in an ecologically sound manner of any effluent from the practice of agriculture or other processes; (c) control of flies, insects, worms and other pests; (d) control of weeds and other noxious grasses; (e) adequate fencing and animal housing facilities adequate to restrict

such animals to the lot where maintained; and (f) control of noise and noxious odors to levels which are customary under practices of good animal husbandry and which are compatible with neighboring residential and agricultural use. Storage of hay, fodder and other food supplies shall be accomplished in such manner as to prevent scattering of such materials by the wind and water runoff. Notwithstanding the foregoing, the keeping and maintaining of pigs, chickens (except in limited numbers for personal use and consumption), fighting chickens and exotic birds are expressly prohibited as being incompatible with the neighboring residential and agricultural use;

(bb) No noxious or offensive activities shall be carried on upon any lot in the subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All occupants shall exercise extreme care about making noise and in the use of musical instruments, radios, televisions, and amplifiers that may disturb the neighboring occupants;

(cc) Cottage industries and businesses which can be conducted within the confines of structures on any lot; which do not result in increased noise, fumes, odors and waste generation; which do not require the presence of customers and employees on site with resulting additional traffic; and which does not pose a nuisance to the neighboring lots in the subdivision, may be permitted if also allowed by the governmental authorities having jurisdiction thereover;

(dd) The right of an Owner to construct, reconstruct, refinish or alter any improvement upon, under or above any lot or to make or create any excavation or fill thereon for any improvements, or to make any change in the natural or existing surface drainage thereof, or to install any wiring for electrical, telephone or other utility line, television antenna, machines or air-conditioning units, or other equipment or appurtenances whatsoever on the lot or protruding through the walls, windows or roof of any improvement constructed thereon, is prohibited until and unless the Owner of such lot has obtained prior written approval therefor from the Design Committee as herein provided and has otherwise complied with all of the provisions of this Section;

(ee) Any Owner proposing to perform any work which under the provisions of paragraph (dd) above requires prior approval of the Design Committee shall apply to the Design Committee for approval thereof as follows:

(1) The Owner shall submit to the Design Committee for approval prior to commencing such work preliminary plans for the proposed work, prepared by an architect, unless otherwise permitted by the Design Committee, and showing in detail with dimensions the nature of the improvements. The Design Committee shall review any such preliminary plans within forty-five (45) days after the submission of them to it and shall return such plans to the Owner either with approval or with disapproval, in which latter case the general nature of the objections shall be

indicated. Failure to make such return within said forty-five (45) day period shall be deemed to mean that the plans are approved.

(2) Thereafter and still prior to commencement of such work, the Owner shall submit three (3) sets of the final plans and specifications of the proposed work to the Design Committee, including where appropriate and without limitation, a plot plan showing easements and set back and contour lines, the location of all existing and/or proposed improvements, the proposed drainage plan, the proposed sanitary disposal facilities, the location of all existing trees having a height in excess of twenty-five (25) feet and a trunk measuring eighteen (18) inches or more in diameter at ground level and indicating which (if any) the Owner plans to remove, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. Also, the Owner shall indicate his proposed construction schedule.

(3) The Design Committee shall review the final plans and specifications submitted to it pursuant to subparagraph (2) and shall either approve the same or disapprove the same in writing within forty-five (45) days. Any disapproval shall set forth in writing the reasons for disapproval. Failure to so approve or disapprove within said forty-five (45) day period shall be deemed approval. On request of an Owner, at any time, the chairman or any member of the Design Committee shall give to the Owner a certificate in writing evidencing the approval of any plans which have been so approved.

(4) Nothing herein shall be deemed to require an Owner to obtain approval from the Design Committee as to any interior improvements or alterations, or as to any exterior alterations or improvements which are not visible from neighboring property, nor shall an Owner be required to obtain approval from the Design Committee when simply reconstructing or refinishing in accordance with the color and design of previous improvements made by the Declarant or previously approved by the Design Committee.

(5) Approval as hereinbefore provided shall be effective for a period of one (1) year and shall be deemed revoked if the Owner shall not have commenced such work within said one (1) year period and shall not thereafter complete the same within one (1) year after the commencement of such construction. If the Owner shall not so commence within said one (1) year period, the Owner shall be required to resubmit said final plans and specifications for approval, and the Design Committee shall not be bound by any previous decision in reviewing again such plans and specifications, but shall either approve or disapprove the same in writing within forty-five (45) days after such resubmission.

(6) Upon the completion of any work for which approved plans are required pursuant to this Section, the Owner shall give written notice thereof to the Design Committee which shall within thirty (30) days inspect such

work to determine whether it was completed in substantial compliance with the approved plans and specifications. If the Design Committee finds that such work was not done in substantial compliance with such approved plans and specifications, it shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance. If the Owner shall have failed to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required, provided that the Owner has in good faith commenced action to remedy within said sixty (60) day period, the Design Committee may either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Design Committee for all expenses incurred in connection therewith. If for any reason the Design Committee shall fail to notify the Owner of any such noncompliance within thirty (30) days after receipt of such notice of completion thereof from the Owner, the improvement shall be deemed to have been completed in accordance with said approved plans.

(7) The Design Committee shall have no power either deliberately or through inadvertence to vary any of the standards and restrictions set forth in this Declaration, except as may be specifically permitted therein, and in the event of violation of any of such standards and restrictions by an Owner, whether or not the Design Committee shall have approved the plans and specifications, any other Owner shall have the right to commence and pursue any remedy provided in this Declaration for the violation by an Owner of any such restrictions.

(8) In reviewing plans and specifications, the Design Committee shall consider the requirements and restrictions set forth in this Declaration and also shall consider whether the proposed improvement:

(i) is compatible and in harmony as to quality and type of materials and workmanship and as to external design and appearance with reference to existing structures and other improvements in the area and with reference to the location of the proposed improvement with respect to topography and ground elevations;

(ii) constitutes a suitable and adequate development of the homesite;

(iii) will not, because of its design unreasonably interfere with the light and air or view of adjoining lots.

(ff) The condominiumizing of any lot within the Dynasty Acres subdivision may be permitted if such condominiumizing does not result in a number of units or interest larger than the maximum number of two (2) farm dwellings permitted under this Declaration, notwithstanding that a larger number of units or interests than two may be permitted by law;

(gg) For a period of twenty (20) years from the date hereof, no Owner of any lot within the Dynasty Acres

subdivision shall apply for or seek, directly or indirectly, any land use reclassification, zoning amendment, subdivision, variance or other governmental approval which would permit or result in a greater density of more than two (2) farm dwellings on the lot. After the said 20 year period, no Owner of any lot within the Dynasty Acres subdivision shall apply for or seek, directly or indirectly, any land use reclassification, zoning amendment, subdivision, variance or other governmental approval which would permit or result in a greater density of more than two (2) farm dwellings on the lot without first obtaining the written approval of no less than ninety percent (90%) of the then owners of Lots 4 through 10, inclusive, of the Dynasty Acres subdivision;

2. Design Committee: Organization, Power of Appointment and Removal of Members:

(a) There shall be a Design Committee consisting of three (3) members. No member shall be required to meet any qualification for membership on the Design Committee.

(b) The following persons are hereby designated as the initial members of the Design Committee:

(1) Wayne R. Daniel

(2) Walton D. Y. Hong

(3) Charles Nagata

Each of the said persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as herein set forth.

(c) Except as provided in paragraph (d) below, the right from time to time to appoint and remove all members of the Design Committee shall be and is hereby reserved and vested solely in the Declarant.

(d) The majority of the then owners of Lot 4 through 10 of the Dynasty Acres Subdivision (based on 1 lot, 1 vote) shall have the right to appoint and remove all members of the Design Committee from and after fifteen (15) years from the date of this Declaration, provided, however, that if the Declarant fails to exercise its rights under paragraph (c) above, or records a declaration waiving such rights, the then majority of the owners of Lots 4 through 10 shall thereupon and thereafter have the right to appoint and remove all members of the Design Committee.

(e) Any member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant, or to the lot owners, whichever then has the right to appoint and remove members.

(f) It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions of paragraphs 1(dd) and 1(ee) above.

(g) The Design Committee shall meet from time to time as necessary properly to perform its duties hereunder. The vote or written consent of any two (2) members shall constitute the act of the Design Committee, unless the unanimous action of its members is otherwise required by this Declaration. The Design Committee shall keep and maintain a record of all actions from time to time taken by the Design Committee at such meetings or otherwise. The members of the Design Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any design Committee function.

(h) The approval by the Design Committee of any plans and specifications for any work done or proposed or in connection with any other matter requiring the approval of the Design Committee shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whatever subsequently or additionally submitted for approval.

(i) Neither the Design Committee nor any member thereof shall be liable to any Owner or to any person for any damage, loss or prejudice suffered or claimed on account of (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications, or (c) the development or manner of development of any property within the Dynasty Acres Subdivision, provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Design Committee, or any member thereof may, but is not required to, consult with or hear any owner or his architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Committee.

3. Agricultural Use Pursuant to Chapter 205: Pursuant to Act 199, Session Laws of Hawaii 1976, the use of lots within the Dynasty Acres subdivision shall be primarily in pursuit of agricultural activities and only for those uses permissible in an agricultural district as contained in Chapter 205, Hawaii Revised Statutes, as amended, as set forth in Exhibit "A", attached hereto and made a part hereof;

4. Papalina Road Road Widening Setback: Lots 1, 2, 3, 4, 5, 7, 8, 9, and 10 of the Dynasty Acres Subdivision shall be subject to a thirteen (13) feet road widening setback along Papalina Road fronting the respective lots. No new structures shall be permitted to be constructed within the 13 feet setback. All new structures to be constructed on the said lots shall be placed an appropriate distance from the 13 feet setback so as to conform to all applicable zoning setback requirements as though the 13 feet setback was part of the County road.

5. Mutual Utility Easements - Lots 2 and 3: There shall be joint and mutual utility access easements over and

across the pole portions of Lots 2 and 3 of the Dynasty Acres Subdivision in favor of the each lot for the purposes of providing utilities to Lots 2 and 3. The utility access easements shall be non-exclusive and in perpetuity;

6. Future Road Reserve For Lohe Street Extension: Lot 6 shall be subject to a forty-four (44) feet wide future road reserve, for the future extension of Lohe Street to Papalina Road, as shown on the subdivision map for the Dynasty Acres Subdivision. Lots 7 and 8 shall be subject to a twenty-two (22) feet future road reserve, for the future extension of Lohe Street to Papalina Road, as also shown on the subdivision map for the Dynasty Acres Subdivision. If a private developer is required to construct the Lohe Street extension as a result of further development, the then owners of Lots 6, 7 and 8 shall not refuse the sale of the land upon their respective lots encompassed by the said road reserve to such private developer, provided that the sale price shall be reasonable and reflective of the fair market value of the land at that time. In the event that the County of Kauai desires to construct the Lohe Street extension as a public improvement, the then owners of Lots 6, 7 and 8 shall dedicate the land upon their respective lots encompassed by the said road reserve to the County of Kauai without compensation therefor.

7. Building Setback Line for Drainage: Lots 5, 6, 7 and 9 shall be subject to the building setback line shown on the subdivision map for the Dynasty Acres Subdivision for the purposes of preserving a drainage way for surface water runoff. With respect to the drainage setback, the following restrictions and conditions shall apply:

(a) The respective lot owners shall preserve and maintain the existing drainage pattern, and are prohibited from constructing any improvements within the setback area such as walls, which would be a barrier that may alter the drainage pattern;

(b) Periodic flooding within the setback areas during times of heavy storm and rain conditions may be possible, during which time due care and precaution shall be exercised;

(c) The respective lots owners shall accept storm runoff, shall preserve and maintain the drainage pattern through the setback area, and shall accept the consequences from the runoff through the setback area;

(d) The County of Kauai shall not assume any obligation for storm flowages, damages, or for installing an improved channel or culvert system;

8. Future Subdivision of Lot 6: With respect to Lot 6 only of the Dynasty Acres subdivision, the following supplemental restrictions and covenants shall apply:

(a) One of the maximum two farm dwellings permitted under this Declaration to be built on Lot 6 shall be confined to that portion of the said lot which is west (or above) the reserve for future roadway which bisects the

lot. The other permissible farm dwelling for Lot 6 shall be built below that portion of Lot 6 which is to the east (or below) the reserve for future roadway;

(b) In the event that the Lohe Street extension is constructed, the subdivision of Lot 6 into two resulting parcels from the Lohe Street extension shall not be prohibited under the restrictive covenants contained in this Declaration;

(c) In the event that the Lohe Street extension is constructed, resulting in the further subdivision of Lot 6 into two parcels, and notwithstanding any other law to the contrary, neither of the resulting two parcels shall be permitted more than one farm dwelling each to be constructed thereon. All other restrictive covenants contained in this Declaration not inconsistent with this Paragraph 8 and subparagraphs hereof shall continue to be applicable to the two parcels resulting from the construction of the Lohe Street extension and subdivision of Lot 6;

9. Reservation in Declarant for Future Easements: The Declarant reserves, and shall have the right to grant any further and other easements as may be deemed necessary by the appropriate public utility or utilities or governmental agency or agencies for the purposes of providing access or utility services to and from the lots in the Dynasty Acres Subdivision;

10. These covenants and restrictions are to run with the land and shall be binding upon all parties and all persons claiming under them from the date hereof until the first day of January, 2010, after which time said covenants and restrictions shall be automatically extended for successive periods of 10 years each unless an instrument signed by no less than ninety percent (90%) of the then owners of Lots 4 through 10, inclusive, in the Dynasty Acres subdivision has been recorded, agreeing to change said covenants in whole or in part;

11. Each and all of the foregoing covenants and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in and to any lot in the Dynasty Acres subdivision, and jurisdiction may be taken in equity at suit of the Declarant or its successors and assigns, or of any other owner of any of the said lots in the Dynasty Acres subdivision, to restrict or prevent by injunction, mandatory or restraining, any violation of any of said covenants upon the part of the lot owners to be observed and performed, without prejudice to the right of the Declarant or its successors and assigns, or of any other owner of any of the said lots in the subdivision, to adopt or pursue any other remedy simultaneously or thereafter for the same breach or failure, or for any subsequent breach or failure, or to take any action to recover damages for any such breach or failure; and

12. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has hereunto set forth its hand as of this 9th day of May, 1990.

DYNASTY DEVELOPMENTS

By Wayne K. Daniel  
WAYNE K. DANIEL  
Its General Partner

By Walton D. Y. Hong  
WALTON D. Y. HONG  
Its General Partner

STATE OF HAWAII     )  
                          ) ss.  
COUNTY OF KAUAI    )

On this 1<sup>st</sup> day of June, 1990, before me appeared WAYNE K. DANIEL and WALTON D. Y. HONG, to me personally known, who, being by me duly sworn, did say that they are the General Partners of DYNASTY DEVELOPMENTS, a Hawaii general partnership; that said instrument was signed in behalf of the said partnership by authority of the partners; and they acknowledged the instrument to be the free act and deed of said partnership.

L.S.

Charles K. Lujan  
Notary Public, State of Hawaii  
My commission expires: 7-9-91

WH6

EXHIBIT "A"

1. Pursuant to Act 199, Session Laws of Hawaii 1976, the use of the subject parcel shall be primarily in pursuit of agricultural activities and only for those uses permissible in an agricultural district as contained in Chapter 205, Hawaii Revised Statutes, as amended, which provides as follows:

"Section 205 - Permissible uses within the agricultural districts.

(a) Within the agricultural district all lands with soil classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry;

Farm dwelling as used herein 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;

- (5) Public institutions and buildings which are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses including day camps, picnic grounds, parks and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, solid waste transfer stations, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures;

- (8) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-mentioned uses; or
- (11) Agricultural parks."

2. All of the aforementioned restrictive covenants and conditions shall run with the land until such time as the land is reclassified to a Land Use District other than Agriculture.

3. Any violation of the above restrictive covenants and conditions shall be subject to a citation and a fine of not more than \$5,000 pursuant to Chapter 205, Hawaii Revised Statutes, as amended.