

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer KALEPA KONA PARTNERS
Address 109 Poloke Place, Honolulu, HI 96822
Project Name(\*): POMAIKA'I BUSINESS CENTER
Address: Kipimana Street, Shipman Industrial Park
Keaau, Hawaii 96749
Registration No. 2759
Effective date: June 21, 1993
Expiration date: July 21, 1994

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, if any, of the project or of purchasing an apartment in the project.

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the:
And [ ] Supersedes all prior public reports

(\* ) Exactly as named in the Declaration

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

[ ] Required and attached to this report      [ X ] 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 #322, as listed in Exhibit "G", Encumbrances Against Title, has been relocated about 2 feet in a westerly (mauka) direction. The Hawaii Electric Light Company relocated by about 2 feet a now-existing utility pole at the northeast corner of Lot #9140 (the Pomaika'i Business Center property) in order to not interfere with an existing drainage basin on Kipimana Street. The purpose of the easement is for an anchor for a guy wire to support the utility pole. The easement is a 3-foot by 5-foot rectangle and borders the Kipimana Street (north) property line. Land Court approval of the relocation of the easement is pending but expected.
2. Paragraph 7 of Exhibit "G", Encumbrances Against Title, regarding mechanics' or materialmans' liens, has been deleted because the apartments will be conveyed to Buyers free and clear of such liens. New paragraphs deal with terms and provisions imposed by the Deed acquired by the Developer, the mortgage for the land purchase, and the Declaration and By-Laws for the Pomaika'i Business Center.
3. The total number of Parking Stalls is 57. The Preliminary Public Report listed 59. Two regular parking stalls in front of Apt. #23 have been eliminated to accomodate a roll-up door.
4. W.H. Shipman, Ltd. conveyed the Pomaika'i Business Center property to the Developers on February 9, 1993. The "Additional Information" on Page 20 of the Preliminary Public Report is therefor no longer current. Kalepa Kona Partners is now listed as Fee Owner (P. 10).
5. The words "carpentry and/or cabinet making shops producing dust or noise that impact the operations of other apartment owners or tenants" have been deleted from Paragraph (j) of Exhibit "B".
6. Language on Conforming Uses has been changed for Section 11(b) on Page 13 to reflect the fact that the Planning Dept. has approved plans. Buyers must still conform uses to County ordinances.
7. Buyers' deposits in escrow may not be used for development costs (see Page 20 of this Report).

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### eral Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

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 owners/tenants) 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 at the lessee's expense. 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 may be individually bought, sold, rented, mortgaged or encumbered, and 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 project's 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 the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the 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 important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: KALEPA KONA PARTNERS Phone: 946-3361  
Name (Business)  
109 Poloke Place  
Business Address from Neighbor Islands,  
Honolulu, HI 96822 call Toll Free:  
1-800-924-3361

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

Kawika Aina Corp, Managing Partner (David McFaul)  
Gregory C. Gillette & Associates, Inc. (Greg Gillette)  
Dixon Construction Co., Inc. (Bill Dixon)

Real Estate Broker: Honolulu Management Co., Inc. Phone: 536-7091  
Name (Business)  
841 Bishop Street, Suite 1050  
Business Address  
Honolulu, Hawaii 96813

Escrow: Title Guaranty Escrow Services Inc Phone: 521-0211  
Name (Business)  
235 Queen Street, First Floor  
Business Address  
Honolulu, HI 96813

General Contractor: Dixon Construction Co., Inc. Phone: 329-5711  
Name (Business)  
P.O. BOX 335  
Business Address  
Kailua-Kona, HI 96745

Condominium Managing Agent: None Phone: \_\_\_\_\_  
Name (Business)  
Business Address

Attorney for Developer: No Principal Attorney; Phone: \_\_\_\_\_  
Name several firms used as consultants (Business)  
Business Address

**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. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 2003374

The Declaration referred to above has been amended by the following instruments (state name of document, date 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 Conveyances Condo Map No. \_\_\_\_\_  
 Filed - Land Court Condo Map No. 960

The Condominium Map has been amended by the following instruments (state name of document, date and recording/filing information):

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

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 2003375

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

D. House Rules. The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. 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>51%</u>

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

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:

The Developer has reserved the right to successively amend the Declaration (including the By-Laws, and when applicable, the Condominium Map), without the approval, consent or joinder of any purchaser of an apartment or any of the persons then owning or leasing any apartment, to file the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Condominium Property Act, so long as (1) such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, or (2) any plans filed therewith involve only changes to the layout, location, apartment numbers or elements as built.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/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

For Subleaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
  - Canceled     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 canceled or foreclosed.

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

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 at the lessee's expense; 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:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: Kipimana Street Tax Map Key: (3) 1-6-148:3  
Keaau, Hawaii 96749 (TMK)

[X] Address [ ] TMK is expected to change because street number has not been assigned.

Land Area: 91,781 [ x ] square feet [ ] acre(s) Zoning: MG-20

Lessor  
(Fee Owner): KALEPA KONA PARTNERS  
 Name 109 Poloke Place  
 Address Honolulu, Hawaii 96822

Sublessor: n/a  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_

C. Buildings and Other Improvements:

1.  New Building(s)     Conversion of Existing Building(s)     Both New Building(s) and Conversion  
 2. Number of Buildings: 2 Floors Per Building 1

Exhibit "A" contains further explanations.

3. Principal Construction Material:

- Concrete     Hollow Tile     Wood  
 Other Steel

4. Permitted Uses by Zoning:

	No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>		No. of <u>Apts.</u>	Use Determined <u>By Zoning</u>
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Industrial	<u>23</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other: _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

- Yes     No

5. Special Use Restrictions:

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

[X] Pets: See By-Laws, Article VI, Section 3(s) and Exhibit "B"

[ ] Number of Occupants: \_\_\_\_\_

[X] Other: See Exhibits "B" and "I"

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0                      Stairways: 0                      Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
_____	_____	_____	_____	_____
_____	<u>See Exhibit "A" attached</u>	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 23

\*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 boundaries of each apartment will be delineated by the exterior perimeter walls, the centerline of non-loadbearing separation walls, and the floor and ceiling of each apartment as shown on the Condominium Map.

Permitted Alterations to Apartments:

See Exhibit "H" attached



11. 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, Structure, Lot:

Reservations have been made for several Buyers who have been told by the Developer that uses in the Project must conform with the Hawaii County Zoning Ordinances.

The Hawaii County Planning Department will check for conformity of use at the time each owner or their tenant applies for a building permit.

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

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

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

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

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

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

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit "C".

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.

[ X ] The limited common elements and the apartments which use them, as described in the Declaration, are:

[ X ] described in Exhibit "C".

[ ] as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is 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:

[ X ] described in Exhibit "A".

[ ] 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 or your purchase and ownership of an apartment in the project.

Exhibit "G" describes the encumbrances against the title contained in the title report dated May 21, 1993 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.

[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. 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>
There will be a mortgage on the property to secure a construction loan.	Mortgagee, in its discretion, may either elect to honor Buyer's Sales Agreement or return Buyer's deposits.  The mortgagee may also elect to sell the Condominium Project, in which case Buyer may lose all deposits and may not be able to obtain the apartment(s).

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:

The execution, delivery, and recordation of the Apartment Deed shall constitute the assignment by Developer to Buyer of any and all warranties given Developer by the General Contractor for the Project and by any subcontractor's guarantee of materials and workmanship against faulty or deficient materials and installation for a period of one (1) year after "substantial completion" of the Apartment, as that term is defined in the construction contract for the Project, and the benefit of such warranties shall accrue to Buyer on closing without further instruments or documents.

2. Appliances: n/a

3. Warranty Exclusions: The Developer makes no warranties, express or implied, with respect to the apartment, the common elements, the Project, fixtures, or consumer products contained or installed in the apartment.

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

Construction is scheduled to commence on or before June 28, 1993.

The Estimated Completion date is December 24, 1993.

**H. Project Phases:**

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

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

IV. CONDOMINIUM MANAGEMENT

A. 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 condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium 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 condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer
- self-managed by the Association of Apartment Owners
- the Developer or the Developer's affiliate.
- other \_\_\_\_\_

B. 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.

Exhibit "D" contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. 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:

- None
- Electricity
- Gas
- Water
- Sewer
- Television Cable
- Other \_\_\_\_\_

NOTE: Certain Apartments with high volume water requirements may be metered and charged separately and apart from the rest of the apartments.

V. MISCELLANEOUS

A. 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 "E" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated December 3, 1992  
Exhibit "F" contains a summary of the pertinent provisions of the escrow agreement.
- Other Sales brochure

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

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 or Supplementary Report to a Final Report: Sales made by the developer are binding if:

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

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND
- B) 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.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all 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.
  - C) Bylaws of the Association of Apartment Owners.
  - D) House Rules.
  - E) Condominium Map.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other \_\_\_\_\_

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 2759 filed with the Real Estate Commission on \_\_\_\_\_.

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- yellow paper stock                       white paper stock                       pink paper stock

Additional Information Not Covered Above

The General Contractor is being bonded by Shuman Lumber Co. of Hilo. The Developer has accepted the bond. Shuman Lumber Company's bond is considered to be a "material house bond" because Shuman Lumber Co. is not a surety licensed by the State of Hawaii.

In accordance with the policy of the Real Estate Commission, use of the "material house bond" precludes utilizing Buyers' deposits in escrow by the Developer for construction costs or other development expenses until both the completion of individual Buyer's apartments and the closing of the sale of that apartment.

Developer warrants that it will comply with this policy and so instruct Escrow.

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.

KALEPA KONA PARTNERS

\_\_\_\_\_  
Name of Developer

By: David R. McFaull

\_\_\_\_\_  
June 3, 1993

Duly Authorized Signatory

Date

David R. McFaull  
President, Kawika Aina Corp.  
MANAGING PARTNER for Kalepa Kona Partners

\_\_\_\_\_  
print name & title of person signing above

Distribution:

Department of Finance, County of Hawaii  
Planning Department, County of Hawaii  
Federal Housing Administration

EXHIBIT "A"

DESCRIPTION OF APARTMENTS

The Project consists of 23 warehouse apartments, as shown on the Condominium Map.

The approximate net floor areas of the apartments are based on measurements taken from the interior surface of all perimeter walls as shown on the Condominium Map, except that no reduction is made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls. The floor areas shown below are not exact but are approximations based on the floor plans of each apartment. All floor areas set forth below have been rounded to the next lowest full square foot or tenth of a square foot.

The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls or partitions, the foundations, columns, girders, beams, floor slabs, footings, supports, roof and ceilings located within or at the perimeter of or surrounding such apartment, any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes or air exhaust running through or otherwise located within such apartment which are utilized for or serve more than one apartment, all of which are deemed common elements. Each apartment shall be deemed to include all of the walls and partitions which are not load-bearing and which are within its perimeter walls; the inner decorated or finished surfaces of all walls, floors, roof and ceilings; all windows, window frames, louvers (if any), doors or door frames along the perimeter of the apartment; and all of the fixtures originally installed therein.

EXHIBIT " A "

<u>APARTMENT NUMBER</u>	<u>APPROXIMATE FLOOR AREA (SQ.FT.)</u>	<u>% OF COMMON INTEREST</u>	<u>PARKING STALLS</u>
1	1241.7	4.69	29¢, 30*
2	1241.7	4.69	14, 31*
3	1241.7	4.69	12, 13
4	1241.7	4.69	15, 16, 17
5	869.2	3.29	32¢, 33
6	869.2	3.29	34*
7	869.2	3.29	18*, 19
8	1330.0	5.03	11, 23
9	770.0	2.91	24
10	869.2	3.29	20, 21
11	869.2	3.29	25, 26
12	869.2	3.29	27, 28
13	993.3	3.75	5, 46+
14	993.3	3.75	6, 47*
15	993.3	3.75	7, 8
16	993.3	3.75	22, 45+
17	1440.0	5.44	44+, 56, 57
18	1440.0	5.44	4, 48*, 49*
19	1440.0	5.44	3, 50*, 51*
20	1440.0	5.44	3, 52*, 53*
21	1440.0	5.44	1, 54*
22	1500.0	5.68	9*, 55¢
23	1500.0	5.68	10

\* Denotes Compact Parking Stalls

¢ Denotes Loading Spaces

+ Denotes Physically Impaired (Handicap) Parking Stalls

# **EXHIBIT "B"**

## **RESTRICTIONS AS TO USE**

The restrictions as to use for Pomaika'i Business Center are set forth in Section "H" of the Declaration of Condominium Property Regime of Pomaika'i Business Center and in the By-Laws of the Association of Apartment Owners of the Pomaika'i Business Center.

All warehouse apartments shall be owned, occupied and used for warehouse, factory and/or such accessory uses as permitted by County zoning ordinances. The owner or owners of said apartments shall have the absolute right to rent or to lease all or any portion or portions of said apartments in connection with such permitted purposes for any length of time and upon such terms and conditions as the owner or owners of such apartment(s) shall determine.

More specific restrictions are as follows:

- (a) All of the apartments of the Project shall be used only for the purposes stated in the Declaration.
- (b) All common elements of the Project shall be used only for their respective purposes as designed.
- (c) No Apartment Owner or occupant shall park, place, store or maintain in the roadways or other common elements of similar nature any equipment, vehicles, trailers, merchandise, furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.
- (d) Every Apartment Owner and occupant shall at all times keep his or her apartment and all limited common elements appurtenant thereto in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the Project.
- (e) No Apartment Owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his or her apartment or the limited common elements appurtenant thereto or of the Project.
- (f) Except as provided in Section R or any other section of the Declaration, no Apartment Owner or occupant shall erect or place in the Project any exterior additions or alterations to the apartments, limited common elements or any common elements of the Project, except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect if so required by the Board, and approved by the Board and also approved by a majority of Apartment Owners (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected (as determined by the Board), and in accordance with all provisions of the Declaration.
- (g) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the Project outside of the facilities provided for such purposes.
- (h) No Apartment Owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, machines or air-conditioning units, or other equipment, fixtures, appliances or appurtenances whatsoever on the exterior of the Project or protruding through the walls, windows or roof thereof.

(i) Nothing shall be allowed, done or kept in any apartment or common elements of the Project which would overload or impair the floors, walls or roof thereof, or cause the cancellation or invalidation of any insurance thereof maintained by or for the Association, nor shall any noxious or offensive activity or nuisance be made or suffered therein or thereon.

(j) Specific prohibited uses under this section include, but are not limited to, the following: surfboard making shops; automotive mechanic shops; automotive body repair shops; automotive paint shops or any other use which produces excessive noise or results in the unsafe use and storage of flammable materials; parking of vehicles, equipment, or trailers in the common or limited common elements for more than 30 days.

(k) No work of any kind connected with any business operation of a warehouse apartment will be permitted outside the building confines and in the common or limited common elements other than loading and unloading of equipment and products. The only exception shall be for minor routine maintenance of portable equipment or motor vehicles, maintenance such as adding engine oil, adding radiator coolant, or washdowns.

(l) No storage of goods or equipment or vehicles will be permitted outside the building confines or within the common or limited common elements.

(m) Wall mounted air conditioning units are permitted with these restrictions: for Building "A" and the north and east faces of Building "B", any air conditioning equipment that is passing through or mounted outside walls must be concealed by being located under the roof overhang and above the lower level of the fascia. Condensate must be drained to the roof drain downspout system if drained external to the apartment.

(n) Windows and additional doors in exterior walls shall be permitted, but their type, size and location shall be controlled by the Board of Directors, or the Developer, until such time as the Board is elected.

(o) The Developer will provide each apartment one (1) exterior sign the design and dimensions of which will be determined by the Developer. Additional signage must comply with Hawaii County sign ordinances and be approved by the Developer or the Board.

(p) All warehouse apartments are subject to the Covenants, Conditions and Restrictions and Owners' Association Contract for the W.H. Shipman Industrial Park recorded as Land Court document No. 1568649 and noted on Transfer Certificate of Title No. 309914 on August 1, 1988. All recorded amendments to the above-referenced document shall also apply.

(q) Pets are permitted with the following restrictions: Pets shall not be permitted to roam freely in the common elements and shall not make noise or smells that interfere with other owners or tenants. Tenants can keep pets only if the respective Apartment Owner agrees in writing to allow such, and tenants may only keep those types of pets which may be kept by the Apartment Owners. Pets shall not include those described as pests under Section 150A-2 of HRS, or animals prohibited from importation under Sections 141-2, 150A-5, or 150A-6.

(r) No toxic substances shall be deposited in the sewer system of the project.

(s) Apartment Owners shall keep and maintain the Project, including, without limitation, the groundwater on or under the Project, in compliance with, and shall not cause or permit the Project to be in violation of any Hazardous Materials Laws (as hereinafter defined). The Apartment Owners shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or above the project any Hazardous Materials (as hereinafter defined) except in strict compliance with the Hazardous Materials Laws.

(t) The Apartment Owners shall immediately advise the Developer or Board of Directors in writing of (i) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Project, (ii) all claims made or threatened by any third party against the Apartment Owners or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims") and (iii) the Apartment Owners discovery of any occurrence or condition on the Project or any real property adjoining or in the vicinity of the Project which could subject the Apartment Owners or the Project to any restrictions on ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws.

(u) The Apartment Owner shall indemnify the Developer and the Association of Apartment Owners, their directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Project, including, without limitation: (i) all foreseeable and unforeseeable consequential damages; (ii) the costs of any required or necessary repair, clean up or detoxification of the Project, and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the Developer or the Association of Apartment Owners in connection with clauses (i) and (ii), including, without limitation, reasonable attorneys' fees.

(v) The term "Hazardous Materials" shall include any flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous materials," or "toxic substances" under any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Project, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substance Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state and local laws and ordinances and regulations now or hereafter adopted, published and/or promulgated pursuant thereto (collectively the "Hazardous Materials Laws").

# EXHIBIT "C"

## DESCRIPTION OF COMMON ELEMENTS

**Common Elements.** One freehold estate is hereby designated in all remaining portions of the Project, being described and referred to herein as "common elements," including specifically, but not limited to:

- (a) Said Land in fee simple;
- (b) All foundations, columns, girders, beams, footings, floor slabs, supports, unfinished perimeter, party and load-bearing walls and partitions and roof;
- (c) All roadways, fences and gates;
- (d) All pipes, cables, conduits, ducts, pumps, sewer lines, cesspools, sewage systems, drywells, retaining walls, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, gas (if any), sewer, water, and telephone; and
- (e) Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.

### **Limited Common Elements.**

Any entrance or exit which would normally be used for the purposes of ingress to and egress from a specific apartment shall be a limited common element appurtenant to and for the exclusive use of such apartment.

Also, all assigned parking stalls are limited common elements appurtenant to and for the exclusive use of each apartment as listed in Exhibit "A" of this Public Report and Exhibit "B" attached to the Declaration.

EXHIBIT "D"

**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>	
1	\$39.50	\$474
2	39.50	474
3	39.50	474
4	39.50	474
5	28.00	336
6	28.00	336
7	28.00	336
8	42.00	504
9	25.00	300
10	28.00	336
11	28.00	336
12	28.00	336
13	31.50	378
14	31.50	378
15	31.50	378
16	31.50	378
17	46.00	552
18	46.00	552
19	46.00	552
20	46.00	552
21	46.00	552
22	48.00	576
23	48.00	576
TOTALS	\$845.00	\$10,140

The Developer shall pay all actual common expenses of the project until the project is 100% complete as shown on the Condominium Map and Construction Drawings.

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

Estimate of Maintenance Fee Disbursements:

Monthly x 12 months = Yearly Total

Utilities and Services

Air Conditioning		
Electricity		
<input checked="" type="checkbox"/> common elements only	40	480
<input type="checkbox"/> common elements and apartments		
Elevator		
Gas		
Refuse Collection	140	1,680
Telephone		
Water	50	600

Maintenance, Repairs and Supplies

Building	25	300
Grounds	250	3,000

Management

Management Fee		
Payroll and Payroll Taxes		
Office Expenses	20	240

Insurance 300 3,600

As per Chapter 514(A), Section  
Reserves(\*) 83.6, no reserves will be collected  
until the fiscal year which begins

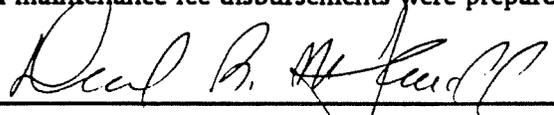
Taxes and Government Assessments  
after the first annual meeting

Audit Fees 20 240

Other

TOTAL \$845 \$10,140

David R. McFaul, as Managing Partner of Kalepa Kona Partners,  
I, ~~as agent and employed by~~ the condominium managing agent  
~~or the developer, for the condominium project~~ Pomaika'i Business Center, hereby certify that the  
above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in  
accordance with generally accepted accounting principles.



(\*) Mandatory reserves in effect January 1, 1993

Date: December 2, 1992

EXHIBIT "E"

SUMMARY OF SALES CONTRACT

1. The Reservation and Sales Agreement, hereinafter, "Sales Contract" is not a present transfer of any interest in the Project but only an agreement to purchase and sell apartments.

2. The Seller may mortgage the Project and all apartments prior to the sale of the apartments, including the apartment or apartments being purchased. The Seller's mortgagee will have a security interest in the Project which is prior to any interest the buyer may have in purchasing an apartment or apartments. If necessary, Buyer must execute a document verifying that Seller's mortgagee has such priority.

3. Payment of the purchase price shall be made through an escrow agent, Title Guaranty Escrow Services, Inc. Buyer will have the opportunity to read the Escrow Agreement and agrees with the provisions made therein.

All money for the purchase will be paid to Escrow and may be deposited by Escrow into interest-bearing accounts. All interest earned on such money will belong to the Seller.

4. By signing the Sales Contract, Buyer represents that buyer can make all required payments when due. Buyer must supply the Seller or any mortgage lender with true and accurate financial information.

If buyer needs a mortgage in order to make the purchase, Buyer must apply for a loan within ten (10) business days after Seller signs the Sales Contract. If buyer does not qualify for a loan, Seller has the option of cancelling the sale. If the sale is cancelled, Seller will tell Escrow to return Buyer's money (without interest), minus Escrow's cancellation fee, and Seller's or any lender's fee for processing the Sales Contract or loan application. As soon as buyer receives a commitment letter to make a loan, a copy of the letter must be sent to Seller immediately. If Buyer is unable to go through with the purchase because Buyer's lender does not close the loan, Buyer will be deemed in breach of the Sales Contract. Seller then has the option of keeping all monies already paid by Buyer or pursuing any other legal remedy.

EXHIBIT "E"  
(continued)

If Buyer intends to pay in cash, Buyer must furnish written proof of ability to pay within ten (10) business days after Seller signs the Sales Contract.

5. Buyer agrees that Buyer has read, reviewed and approved the condominium documents (Declaration and By-Laws), the Condominium Map, Rules and Regulations, if any, of the Project, form of Apartment Deed and the Escrow Agreement.

6. Seller has the right to amend the condominium documents and condominium Map as long as such amendments do not (a) substantially change Seller's obligations under the Sales Contract; (b) substantially change the design, location or size of any apartment or the building in which an apartment is located; (c) cause Buyer to lose Buyer's loan commitment; (d) increase buyer's common interest in the Project; or (e) reduce Seller's obligation to pay common expenses for unsold apartments.

7. There will be no initial Managing Agent. Seller will exercise all rights of the Association of apartment owners and Board of Directors until there are enough other owners to form the Association and Board of Directors at which time the Association may either self manage or appoint a Managing Agent.

8. Seller makes no warranties whatsoever about the physical condition of any apartment or any common element. Seller may require Buyer to inspect the apartment before the sale is closed, and sign a written list of any defects or damage so discovered. If Buyer then fails to inspect, Seller will not be responsible to Buyer if deficiencies, which would have been apparent from such inspection, are discovered later. Even if defects are discovered, so long as the apartment can be occupied by Buyer, Buyer will go through with the purchase.

9. Seller makes no representations or warranties whatsoever concerning any apartment description appearing on the Condominium Map, whether the apartment boundaries consist of any walls, or that the maintenance fees shown in Exhibit "E" of the Preliminary Report and/or any subsequent reports will not change.

Seller further denies that Seller has made any representations to Buyer or anyone else about the rental or resale of apartments. If Seller so requires, Buyer, any

EXHIBIT "E"  
(continued)

salesperson or anyone else connected with the offer to sell or purchase of the apartment will confirm in writing that no such representations were made by Seller or any of the Seller's agents or salespersons.

10. The Sales Contract is not binding on either Buyer or Seller until a Final Public Report on the Project has been issued by the Real Estate Commission and Buyer's right to cancel the sale has lapsed. Buyer can waive the right to cancel and go through with the sale by signing the appropriate form given to Buyer. Buyer will lose the right to cancel unless buyer cancels within thirty (30) days of receiving a copy of the Final Public report, or if buyer proceeds with the sale, occupies the apartment or otherwise accepts it.

11. The sale will close on the date shown on the Sales Contract but, in any event, not sooner than ten (10) days after Seller signs the Sales Contract.

Prior to the date of closing, "pre-closing" can take place so that all documents and other papers will be ready for closing on the scheduled date. Seller can postpone the closing date for an extra thirty (30) days by giving Buyer ten (10) days prior notice.

Prorations of maintenance fees, real property taxes and other costs will be made as of the closing date. All risk of damage or loss to the purchased apartments will also pass to Buyer as of that date.

12. Some of the expenses apart from the purchase price that the Buyer must pay at closing include the following: the entire Escrow fee, notary fees, conveyance taxes, appraisal fees, recording fees, cost of credit reports, document preparing fees, title insurance, all costs of Buyer's mortgage, and prorated maintenance fees and real property taxes. Buyer will also pay a non-refundable, one-time start-up fee to fund the Association of Apartment Owners.

13. Buyer acknowledges that there may be on-going construction and sales activities going on in the Project by Seller or other apartment owners after closing, and consents to such activity.

14. The Sales Contract cannot be transferred or assigned to another buyer without Seller's prior written consent.

EXHIBIT "E"  
(continued)

15. If buyer dies before closing, Seller has the option to cancel the sale and return buyer's purchase money (without interest), less Escrow's cancellation fee or any other costs incurred in processing the Sales Contract or any loan application.

16. Each buyer of an apartment is responsible for the fulfillment of the Sales Contract by all other Buyers of the same apartment and can be held jointly as well as individually liable to Seller.

17. If any court action is filed concerning this Sales Contract, trial will be by judge and Buyer gives up all right to a jury trial.

18. Should Buyer want to or need to sell the Apartment, Seller will have the option of buying back the Apartment as the same Total Purchase Price stated in Article III, Section B. Seller's option shall expire at the end of the Option Period, after which the Buyer is free to sell the Apartment to others. The Option Period will commence on the Closing Date and be:

- a. One (1) year for Owner-Occupants who actively use their apartments for their own business purposes, and;
- b. Three (3) years for Investors.

19. If Seller defaults and fails to keep promises made in the Sales Agreement, Buyer may require Seller to complete the sale. Buyer may also cancel the Sales Agreement, and Seller will refund all Buyer's money without interest.

## **EXHIBIT "F"**

### **SUMMARY OF ESCROW AGREEMENT**

1. All monies payable by Buyers under Sales Agreements shall be made to TITLE GUARANTY ESCROW SERVICES, INC.
2. Buyers' funds will be deposited by Escrow into federally-insured accounts. All interest earned on such deposits will belong to the Seller.
3. Escrow shall be responsible for collecting any payments due under the Sales Agreements from the Buyers by giving Buyers written notice.
4. No disbursements of funds held in Escrow shall be made unless the Final Public Report has been issued by the Real Estate Commission, Buyer has signed a receipt for the Public Report, and the Sales Agreement becomes binding on both Seller and Buyer.
5. Buyers will be entitled to a refund of their monies if any one of the following events has occurred:
  - (a). Buyer and Seller direct Escrow to make the refund;
  - (b). Seller exercises any cancellation right available under the Sales Agreement;
  - (c). Buyer cancels Sales Agreement prior to issuance of the Final Public Report;
  - (d). Buyer rescinds after receiving the Final Public Report or after a material change in the Project.

Upon cancellation of any Sales Agreement, Escrow has a right to receive a cancellation fee commensurate with the work Escrow has performed, but in any event not less than Twenty Five Dollars (\$25) nor more than Two Hundred and Fifty Dollars (\$250).

6. At closing, Escrow will supervise the execution of all documents, collection of all necessary funds, recording of all applicable real property documents, and perform all necessary services.
7. There may be partial closings, i.e., some apartments may close in advance of others.
8. If defects in documents prevent recording of such documents, Escrow will promptly correct such defects.

9. If Seller terminates the Sales Agreement due to a Buyer default, Seller will notify Escrow in writing. All funds of the Buyer will then be treated as belonging to Seller.
10. Escrow is not responsible for the validity of any document received from Seller. Seller agrees to indemnify Escrow from all costs suffered by Escrow in the event of any court proceedings over terms of the documents.
11. In case of conflict between the Escrow Agreement and Chapter 514A of State Law (the Condominium laws), the latter shall govern.
12. The fees for Buyer for each apartment shall be:
  - (a). \$300 for Escrow Services;
  - (b). \$300 for a Title Insurance Policy;
  - (c). \$100 for an additional processing fee for Buyers' mortgages obtained from lenders other than bank designated by Seller.

**EXHIBIT "G"**

**ENCUMBRANCES AGAINST TITLE**

1. Real Property Taxes (TMK: (3) 1-6-148:3) : For Real Property Taxes that may be due and owing, reference is made to the Director of Finance, County of Hawaii.

2. DESIGNATION OF EASEMENT "322"

Purpose: Anchor guy  
Shown: On Map 484, as set forth by Land Court Order No. 107309, filed June 5, 1992, as amended by Land Court Order No. \_\_\_\_\_, filed \_\_\_\_\_

3. GRANT

To: Hawaii Electric Light Company, Inc. and GTE  
Hawaiian Telephone Company Incorporated

Dated: September 14, 1992  
Filed: Land Court Document No. 1958737  
Granting: an easement over said Easement "322"

4. DESIGNATION OF EASEMENT "323"

Purpose: Landscaping  
Shown: On Map 484, as set forth by Land Court Order No. 107309, filed June 5, 1992

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations contained in DECLARATION dated October 22, 1987, filed as Land Court Document No. 1568649. Said Declaration was amended by instrument dated November 28, 1989, filed as Land Court Document No. 1689861, and dated December 13, 1990, filed as Land Court Document No. 1791651.

6. Covenants, conditions and restrictions set forth in PETITION FOR REGISTRATION OF COVENANTS, CONDITIONS AND RESTRICTIONS dated July 30, 1992, filed as Land Court Document No. 1947096.

7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in DEED dated December 10, 1992, filed as Land Court Document No. 1996255.

The foregoing includes, but is not limited to, special conditions and reservation of certain rights.

#### 8. MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

MORTGAGOR: KALEPA KONA PARTNERS, a Hawaii general partnership.

MORTGAGEE: FIRST HAWAIIAN BANK, a Hawaii corporation

DATED: February 3, 1993

FILED: Land Court Document No. 1996256

AMOUNT: \$272,500.00

9. 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 February 12, 1993, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2003374, as the same hereafter be amended in accordance with law or with said Declaration. (Project covered by Condominium Map No. 960.)
10. By-Laws of the Association of Apartment Owners of the Condominium Project known as "POMAIIKA'I BUSINESS CENTER" dated February 12, 1993, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2003375, as the same may hereafter be amended.

EXHIBIT "H"

PERMITTED ALTERATIONS TO APARTMENTS

A Building Permit shall be obtained for all interior improvements and alterations where applicable.

Any interior improvements or alterations (including removal of walls) if they:

- a. do not affect the structural integrity of the warehouse building;
- b. provide for access from any apartment to common areas;
- c. are made by a licensed contractor in accordance with plans and specifications prepared by a licensed architect or engineer; and
- d. are accompanied by a bond for 100% of the cost of construction and naming the Association as co-obligee;

and provided that:

1. the apartment owner assumes all expenses related to any such improvements and alterations; and
2. the improvements or alterations have been approved in writing by the Board of Directors, owner's mortgagees (if applicable), and all governmental agencies having authority over such improvements or alterations;
3. the interior improvements or alterations shall comply with all applicable laws, including but not limited to Section 25-73 of the Hawaii County Zoning Ordinance which specifies the limits on floor space in relation to available off-street parking;
4. restrictions on air conditioners are obeyed (Exhibit "B")
5. restrictions on windows are obeyed (Exhibit "B").

# EXHIBIT "I"

## RESTRICTIONS ON UTILITY USAGES

<u>APARTMENT NUMBER</u>	<u>ELECTRICITY</u>	<u>*WATER GALLONS/DAY</u>	<u>** SEWER GALLONS/DAY</u>
1	For all apartments:	197	85
2		197	85
3	Available voltage	197	105
4	will be 240/120	197	105
5	volts, single or	138	74
6	3 phase,4 wires	138	74
7		138	74
8		211	113
9	A 200 ampere	122	65
10	rated meter socket	138	74
11	and circuit breaker	138	74
12	will be provided	138	74
13		158	84
14	The available power	158	84
15	density will be 35	158	68
16	volt-amperes per	158	68
17	square foot	228	98
18		228	98
19		228	98
20		228	98
21		228	98
22		239	102
23		239	102

\* Based on a limit of 4200 gallons per day for a one-inch water meter in the County of Hawaii;

\*\* Based on the Department of Health standard of 1000 gallons per day per cesspool or per septic tank.