

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Benson-Kwee Joint Venture  
Address 364 Liholiho Street, Wailuku, HI 96793

Project Name(\*): WAILUKU BUSINESS CENTER  
Address: Wili Pa Street, Wailuku, HI 96793

Registration No. 2853

Effective date: July 20, 1993

Expiration date: August 20, 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: The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.  
(yellow)

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

SUPPLEMENTARY: This report updates information contained in the:  
(pink)  
 Preliminary Public Report dated: \_\_\_\_\_  
 Final Public Report dated: \_\_\_\_\_  
 Supplementary Public Report dated: \_\_\_\_\_

And  Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_  
 This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

(\*) Exactly as named in the Declaration

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

Required and attached to this report       Not Required - disclosures covered in this report.

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

**TABLE OF CONTENTS**

	<b>page</b>
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	5
Developer                      Attorney for Developer      General Contractor	
Real Estate Broker          Escrow Company              Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A: Description of the Land Underlying the Project	
EXHIBIT B: Identification of Apartments, Parking Stalls, and Common Interests	
EXHIBIT C: Estimate of Maintenance Fees and Maintenance Fee Disbursements	
EXHIBIT D: Encumbrances Against Title to the Land	
EXHIBIT E: Effect of Blanket Liens	
EXHIBIT F: Restrictions on Uses of Apartments	
EXHIBIT G: Description of Common Elements	
EXHIBIT H: Summary of Escrow Agreement	
EXHIBIT I: Summary of Sample Reservation and Sales Agreement	
EXHIBIT J: Summary of the Declaration of Protective Covenants, Conditions and Restrictions of the Millyard	

### General 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: Benson-Kwee Joint Venture Phone: 242-2727  
Name (Business)  
364 Liholiho Street  
Business Address  
Wailuku, Hawaii 96793

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

Phillip J. Benson & Nathan K.G. Kwee  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker: Kwee & Associates Realty, Inc. Phone: 242-2727  
Name (Business)  
P.O. Box 1818  
Business Address  
Wailuku, Hawaii 96793

Escrow: Title Guaranty Escrow Services Phone: 244-7924  
Name (Business)  
2103 Wells Street, Suite C  
Business Address  
Wailuku, Hawaii 96793

General Contractor: Phil Benson Builder Phone: 883-1054  
Name (Business)  
P.O. Box 383421  
Business Address  
Waikoloa, Hawaii 96738

Condominium Managing Agent: Self-Managed by Association of Phone: \_\_\_\_\_  
Name Apartment Owners (Business)  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Attorney for Developer: Richard J. Kiefer, Esq. Phone: 524-1212  
Paul, Johnson, Park & Niles (Business)  
Name  
1001 Bishop Street, Pacific Tower, Suite 1300  
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. 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. \_\_\_\_\_

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. \_\_\_\_\_

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. \_\_\_\_\_

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>—</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:

As set forth in Sections O and P of the Declaration, the Developer has reserved the right to make such changes as may be required by law, the Real Estate Commission, by any title insurance company issuing a title insurance policy on the Project or any of the Apartments, or by any institutional lender lending funds on the security of the Project or any of the Apartments, provided, however, that such changes shall not change the common interest appurtenant to an Apartment or substantially change the design, location or size of an Apartment.

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: Wili Pa Street, Tax Map Key: (2)3-4-20:22  
Wailuku, Hawaii 96793 (TMK)

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

Land Area: 11,358 [x] square feet [ ] acre(s) Zoning: M-1

Lessor  
 (Fee Owner): Nathan & Jasmine Kwee  
Name  
364 Liholiho Street  
Address  
Wailuku, Hawaii 96793

Note: As more fully explained in Exhibit I, while the Project is subject to a Development Lease between the fee owners and the Developer, upon closing of the sale of a unit in the Project, that lease will be cancelled as to that unit and the buyer will receive fee simple title to the unit.

Sublessor: Benson-Kwee Joint Venture  
Name  
P.O. Box 1818  
Address  
Wailuku, Hawaii 96793

C. Buildings and Other Improvements:

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

2. Number of Buildings: One Floors Per Building Two

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

3. Principal Construction Material:

Concrete     Hollow Tile     Wood

Other Steel & Wood

4. Permitted Uses by Zoning:

	No. of Apts.	Use Permitted By Zoning		No. of Apts.	Use Determined By Zoning
<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 checked="" type="checkbox"/> Commercial	<u>6</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	___	<input 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: Not permitted.

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

[X] Other: See Exhibit F

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: - Stairways: 2 Trash Chutes: -

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Lanai/Patio (sf)
101	1	n/a	1,084	n/a
102	1	n/a	1,100	n/a
103	1	n/a	1,084	n/a
201	1	n/a	2,134	n/a
202	1	n/a	480	n/a
203	1	n/a	653	n/a

Total Apartments: Six

\*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 shall run along the lines of the demising partitions and perimeter walls as shown on the Condominium Map of the Wailuku Business Center.

Permitted Alterations to Apartments:

As set forth in Section O of the Declaration of Condominium Property Regime of Wailuku Business Center, the owner of an Apartment shall have the right to make any alterations or additions within such owner's apartment, and the owner of any two or more adjoining apartments may alter or remove intervening walls.



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:

The Wailuku Business Center will be built in conformance with all applicable zoning codes, rules and regulations.

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

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	_____	_____	_____
Structures	_____	_____	_____
Lot	_____	_____	_____

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 G.

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 use them, as described in the Declaration, are:

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

as follows:

The limited common elements of the Project, as set forth in paragraph D.3 of the Declaration of Condominium Property Regime of Wailuku Business Center, include the parking stalls designated for specific units as shown in Exhibit "B" attached hereto.

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:

described in Exhibit B.

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 D describes the encumbrances against the title contained in the title report dated 12/21/92 & 3/1/93 and issued by First American Title Company 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.

<b><u>Type of Lien</u></b>	<b><u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u></b>
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Blanket Liens against the Project are identified in Exhibit D, and the potential effects of those Liens are disclosed in Exhibit E.

**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 contractor's warranties for workmanship and materials shall commence upon publication of the notice of completion for the Project, or, as to any particular apartment, upon occupancy of that apartment by a purchaser of that apartment, whichever occurs first, and shall continue in effect for a period of twelve months from that date.
  
2. **Appliances:** If any appliances covered by manufacturers' warranties are installed or incorporated in the project, the developer shall, if possible, assign or otherwise pass-through those warranties to purchasers of apartments in the project. The developer gives no warranties with regard to appliances installed or incorporated into the project for which the manufacturers have not given warranties. If an appliance covered by a manufacturer's warranty is installed in a common area for the benefit of the entire project, the developer shall assign or otherwise<sup>15</sup> pass-through warranties, if possible, to the Association of Apartment Owners.

G. Status of Construction and Estimated Completion Date:

Construction has not commenced. It is estimated that it will begin in April, 1993, and be completed by January, 1994.

H. Project Phases:

The developer [ ] has [x] 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  the Developer or the Developer's affiliate.  
 self-managed by the Association of Apartment Owners  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 C 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 Collection Refuse  
(Common areas only)

## 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 I contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated October, 1992  
Exhibit H contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

### 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 Declaration of Protective Covenants, Conditions & Restrictions for the Millyard

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. 2853 filed with the Real Estate Commission on April 13, 1993

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**C. Additional Information Not Covered Above**

Pursuant to Sections 16-99-3(g) and 16-99-11(d), Hawaii Administrative Rules ("HAR"), prospective purchasers are hereby advised that one of the developers/fee owners, Nathan K.G. Kwee (RB-15403) and fee owner Jasmine H. Kwee (RS-48537), are Hawaii real estate licensees. Further, pursuant to Section 16-99-11(c), HAR, "(n)o licensee shall advertise 'For Sale by Owner, . . .'"

D. 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.

Benson-Kwee Joint Venture

**Name of Developer**

By: 

Duly Authorized Signatory

February 25, 1993

**Date**

Nathan K.G. Kwee, Managing Venturer

**print name & title of person signing above**

**Distribution:**

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

EXHIBIT "A"

All of that certain parcel of land situate at Halieu, Owa, Paohaku, Wailuku, Island and County of Maui, State of Hawaii, described as follows:

Lot 2, containing an area of 11,358 square feet, more or less, as delineated on the map entitled "THE MILLYARD SUBDIVISION", which map was filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 1829.

BEING all of the land conveyed to Nathan K. G. Kwee and Jasmine H. Kwee, husband and wife, as tenants by the entirety, by Warranty Deed dated December 7, 1992, recorded in said Bureau as Document No. 92-199852.

END OF EXHIBIT A

EXHIBIT B

Apartment Descriptions

<u>Apartment Number</u>	<u>Floor Area (square feet)</u>	<u>Parking Stall(s)</u>	<u>% Interest in Common Elements</u>
101	1,084	8 & 13	16.58507
102	1,100	9 & 12	16.82986
103	1,084	10 & 11	16.58507
201	2,134	2, 3, 4 & 5	32.65994
202	480	1	7.34618
203	653	7	9.99388
TOTAL --			<u>100.00000%</u>

All areas set forth herein are approximate only, and are based on measurements taken from the interior surface of all perimeter walls as shown on the Condominium Map. The precise areas of the apartment spaces may vary somewhat upon completion.

END EXHIBIT B

#0277X

EXHIBIT   C  

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>
101	\$252	\$3,024
102	\$256	\$3,072
103	\$252	\$3,024
201	\$497	\$5,964
202	\$112	\$1,344
203	\$152	\$1,824

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

**Estimate of Maintenance Fee Disbursements:**

**Monthly x 12 months = Yearly Total**

**Utilities and Services**

**Air Conditioning**

**Electricity**

common elements only

\$100

\$1,200

common elements and apartments

**Elevator**

-

**Gas**

-

**Refuse Collection**

\$75

\$900

**Telephone**

-

**Water and Sewer**

\$42

\$504

**Maintenance, Repairs and Supplies**

\$300

\$3,600

**Building**

**Grounds**

**Management**

-

**Management Fee**

**Payroll and Payroll Taxes**

**Office Expenses**

**Insurance**

\$250

\$3,000

**Reserves(\*)**

\$292

\$3,504

**Taxes and Government Assessments**

\$400

\$4,800

**Audit Fees**

\$62

\$744

**Other**

**TOTAL**

\$1,521

\$18,252

I, Nathan Kwee, as ~~agent and employee of~~ Managing Venturer of the Condominium Developer, ~~the condominium managing agent~~ for the condominium project Wailuku 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: 2/25/93

END EXHIBIT C

EXHIBIT D

ENCUMBRANCES AGAINST TITLE TO THE LAND  
UNDERLYING THE WAILUKU BUSINESS CENTER

1. **Real Property Taxes - Tax Key: (2)3-4-20-22**  
For further information regarding taxes assessed against the Wailuku Business Center, contact the Director of Finance of the County of Maui.
2. **Reservation in favor of the State of Hawaii of all mineral and metallic mines.**
3. **Easement 30 for landscaping purposes, as shown on File Plan No. 1829.**
4. **LICENSE**  
  
In Favor Of: County of Maui  
Dated: November 25, 1958  
Liber: 3773  
Page: 469  
Purpose: granting an easement for sewer purposes
5. **Exception and reservation as set forth in that certain Deed dated June 22, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 17966 Page 310, and in that certain Deed dated June 22, 1984, recorded in said Bureau in Liber 17966 Page 357, to which reference is hereby made.**
6. **Terms and provisions of that certain Agreement To Develop The Millyard Subdivision In Two Phases made by and between Hawaiiana Investment Co., Inc., a Hawaii corporation, and the County of Maui, through the Department of Public Works and the Department of Water Supply, dated December 13, 1984, recorded in said Bureau in Liber 18331 Page 768, to which reference is hereby made.**

7. Restrictions, covenants and conditions as contained in:

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MILLYARD**

Dated: May 10, 1985  
Liber: 18659  
Page: 397

to which reference is hereby made, but deleting restrictions, if any, based on race, color, religion or national origin

The foregoing Declaration was amended by the following:

Liber 18782 Page 153

Consent and Joinder thereto dated May 15, 1985, recorded in said Bureau in Liber 18659 Page 448.

8. Exception and reservation as contained in that certain Deed dated November 5, 1985, recorded in said Bureau in Liber 19121 Page 329, to which reference is hereby made.

9. Covenant and agreement as contained in that certain Deed dated November 5, 1985, recorded in said Bureau in Liber 19121 Page 329, to which reference is hereby made.

10. **MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT**

Mortgagor: T. G. Exchange, Inc., a Hawaii corporation  
Mortgagee: Maui Three, Inc., a Hawaii corporation  
Dated: November 7, 1990  
Document No. 90-172390  
To Secure: \$68,335.00  
and any other amounts and/or obligations secured thereby  
(Besides other land)

11. **MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT**

Mortgagor: Nathan K. G. Kwee and Jasmine H. Kwee, husband and wife  
Mortgagee: GECC Financial Corporation, a Hawaii corporation  
Dated: December 3, 1992  
Document No. 92-199853  
To Secure: \$200,000.00  
and any other amounts and/or obligations secured thereby

12. The effects, if any, of the following:

a. **MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT**

Mortgagor: Nathan K. G. Kwee (no marital status given)  
and Phillip John Benson (no marital status  
given)  
Mortgagee: Ronald M. Fukumoto and Kay S. Fukumoto,  
husband and wife (no tenancy given)  
Dated: December 1, 1992  
Document No. 92-199854  
To Secure: \$100,000.00  
and any other amounts and/or obligations  
secured thereby

13. The terms and provisions of that certain unrecorded  
Development Lease made by and between Nathan K. G. Kwee and  
Jasmine H. Kwee, as lessor, and the Benson-Kwee Joint  
Venture, as lessee, dated February 26, 1993, but effective  
as of February 25, 1993, a memorandum of which is recorded  
in the Bureau of Conveyances of the State of Hawaii as  
Document No. 93-033597.

END EXHIBIT D

EXHIBIT E

EFFECT ON BUYER'S INTEREST AND DEPOSIT IF DEVELOPER  
DEFAULTS OR BLANKET LIEN IS FORECLOSED PRIOR TO CONVEYANCE

As set forth in the foregoing Exhibit D, the land underlying the Wailuku Business Center is subject to certain Mortgage, Security Agreement, and Financing Statements, which are sometimes called "Blanket Liens". Developer anticipates that the Blanket Liens, if not already released prior to the sale of units in the Project, will be released on an apartment-by-apartment basis upon closing of the sale of specific apartments so that title to the apartments can be conveyed free and clear of the Blanket Liens.

Before the final closing and delivery of a signed Apartment Deed to a Buyer, the Developer's lenders will have the right, under circumstances described in the Mortgage, Security Agreement, and Financing Statements, to file suit to collect the loan funds and other amounts and to have the Project, including the Property, sold at a foreclosure or other sale. If Developer's lender files suit to collect its loan funds or other amounts owing to it or to have the Project sold, the Seller's Lender doesn't have to name a Buyer as a party to the lawsuit or tell a Buyer about the lawsuit or sale. As set forth in Article V, Section 7 of the sample Reservation and Sales Agreement for the Wailuku Business Center, a copy of which is on file at the Real Estate Commission and which may also be viewed at the Developer's office, if a lender sells the Project at a foreclosure or other sale, a buyer may not be able to close the buyer's purchase of an apartment in the Project, and, unless buyer's agreement to purchase an apartment is only a "reservation" as defined by the buyer's Reservation and Sales Agreement, the buyer may lose its deposits.

END EXHIBIT E

EXHIBIT F

RESTRICTIONS ON THE USE OF APARTMENTS IN  
THE WAILUKU BUSINESS CENTER

As set forth in Section H of the Declaration and Article VI of the By-Laws (copies of which are on file at the Real Estate Commission and are available for review at the Developer's offices), provide that all Apartments shall be operated and used only for such purposes as shall be permitted by law. Specifically prohibited uses of Apartments include, but are not necessarily limited to, the following: all uses prohibited under present zoning laws; carpentry and/or cabinet making shops; surfboard making shops; automotive mechanic, repair or paint shop or any other use which generates excessive noise, the unsafe use and storage of flammable materials as determined by County fire inspectors or the storage of customers' motor vehicles within the common elements.

END EXHIBIT F

EXHIBIT G

COMMON ELEMENTS

As set forth in Section D of the Declaration of Condominium Property Regime of the Wailuku Business Center, the Common Elements of the Project include:

- (a) The land described in Exhibit A;
- (b) All foundations, columns, girders, beams, footings, floor slabs, supports, unfinished perimeter, party and load-bearing walls and partitions and roof;
- (c) The arcade, stairways, balconies, fences, gates, and roadways;
- (d) The parking area consisting of eleven uncovered regular-size parking stalls, two uncovered compact-size parking stalls, one uncovered handicapped-size parking stall, the loading area, the garbage dumpster enclosure, and the landscaped areas;
- (e) All pipes, cables, conduits, ducts, pumps, sewer lines, 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
- (f) 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.

END EXHIBIT G

## EXHIBIT H

### SUMMARY OF ESCROW AGREEMENT

The Developer of the Wailuku Business Center, the Benson-Kwee Joint Venture, has entered into an Escrow Agreement dated October, 1992, with Title Guaranty Escrow Services, Inc. ("Title Guaranty") whereby Title Guaranty has agreed to provide escrow services to the Developer and buyers of apartments in the Wailuku Business Center. A copy of this Escrow Agreement is on file at the Real Estate Commission of the State of Hawaii, and may also be viewed at the Developer's office. Because this summary cannot and does not cover each and every term of the Escrow Agreement, potential buyers are invited to review the original.

The Escrow Agreement provides that when a buyer makes payments under the terms of a Sales Contract, such payments shall be promptly made or delivered to Title Guaranty. Title Guaranty is then required to hold all funds that it receives in separate escrow accounts in a federally insured bank or savings and loan association located in the State of Hawaii. The Escrow Agreement specifically prohibits Title Guaranty from "commingling" or mixing and funds paid by a buyer with the Developer's funds.

Before a buyer's Sales Contract becomes binding as defined in the Sales Contract, a buyer may cancel the Sales Contract for any reason. Accordingly, the Escrow Agreement provides that if a Sales Contract is cancelled, Title Guaranty will, upon receipt of notice of cancellation, refund a buyer's funds. The Escrow Agreement provides that, in case of such a cancellation, Title Guaranty shall be entitled to retain a cancellation fee commensurate with the amount of work it has performed, provided that such a fee shall not be less than \$25.00 or more than \$250.00.

The Escrow Agreement prohibits Title Guaranty from making any payments out of a buyer's funds (except for refunds discussed above) until a buyer has signed a receipt for a Final Public Report on the Wailuku Business Center and the buyer's Sales Contract has "become binding," as described in the Sales Contract. Thereafter, unless otherwise provided in a buyer's Sales Contract, Title Guaranty may make payments out of a buyer's funds for construction-related costs, provided, however, that those payments shall be made only when requested or approved by the Developer's construction lender(s).

Finally, the Escrow Agreement provides that when Title Guaranty receives (1) an executed and recordable Apartment Deed in favor of a buyer, (2) the full amount of the purchase price

stated in that buyer's Sales Contract, (3) and mortgage securing repayment by the buyer of all or part of the purchase price, (4) any other amounts payable by buyer under the Sales Contract, (5) and necessary releases, and (6) a commitment to issue a title insurance policy in favor of the buyer, Title Guaranty will promptly act to "close" the sale to the buyer. The Escrow Agreement provides that, in doing so, Title Guaranty shall (a) record the Apartment Deed, and any applicable mortgages and releases, (b) distribute copies of the recorded documents to the appropriate parties, and (c) pay all real estate property taxes, maintenance charges, start-up fees or other prorations to the appropriate persons, and will pay the purchase price to the Developer (after deducting its share, if any, of closing costs).

END EXHIBIT H

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## EXHIBIT I

### SUMMARY OF SAMPLE RESERVATION AND SALES AGREEMENT

The Developer of the Wailuku Business Center, the Benson-Kwee Joint Venture, has filed a sample Reservation and Sales Agreement for apartments in the Wailuku Business Center with the Real Estate Commission of the State of Hawaii. The sample agreement is also available for review at the Developer's office. Because this summary cannot and does not cover each and every term of the sample agreement, potential buyers are invited and encouraged to review the sample agreement.

As required by Hawaii Revised Statutes Chapter 514A, the sample agreement provides that, until a buyer signs a receipt for a Final Public Report for the Wailuku Business Center (or is deemed to have receipted for it under H.R.S. § 514A-62) and all of the conditions of H.R.S. § 514A-62 have been satisfied, the agreement may be cancelled for any reason. The agreement provides that upon such a cancellation, a buyer's payments under the agreement shall be refunded, less an escrow cancellation charge. The agreement further provides that, upon a buyer's receipt of a Final Public Report, the agreement shall become a binding contract.

The sample agreement provides for the sale of fee simple condominium apartments in the Wailuku Business Center, together with a specified interest in the common elements of the Wailuku Business Center. The sample agreement further provides that, at the time an apartment is conveyed to a buyer, the interior of the apartment will be in an unimproved state, and the buyer shall be responsible for improving the interior space of the apartment.

The sample agreement provides that a buyer will pay the purchase price for an apartment on the following schedule: (1) a \$1,000 down payment to be paid upon execution of the agreement; (2) a \$10,000 payment upon the buyer's receipt of a loan commitment for the purchase of the apartment from a lender, or upon the Developer's written notice that grading work has commenced, whichever occurs first; (3) a \$10,000 payment upon the buyer's receipt of the loan commitment, or upon the Developer's written notice that the concrete slab for the Wailuku Business Center has been poured, whichever occurs first; (4) a \$10,000 payment upon written notice that the framing of the roof has been completed; and (5) the balance of the purchase price for the apartment shall be paid one day before the scheduled closing date for the apartment. The sample agreement also provides that, one day before the

scheduled closing of the sale of an apartment, a buyer shall pay closing costs, a project start-up fee, any prorated charges (such as real property taxes), and two months maintenance fees for the apartment.

The sample agreement provides that if a buyer fails to make any payment when it is due or fails to keep any of buyer's other promises or agreements contained in the agreement, then the Developer will have the right, at its sole option and in addition to any other rights contained herein, to do any one or more of the following:

(a) The Developer may cancel this Agreement by giving buyer written notice of cancellation and Developer may keep all sums paid by buyer under this Agreement as liquidated damages.

(b) The Developer may file a lawsuit for damages.

(c) The Developer may file a lawsuit for "specific performance" (in other words, a lawsuit to make the buyer keep all of buyer's promises and agreements).

(d) The Developer may take advantage of any other rights which the law allows or which it may have under the agreement.

The sample agreement also provides that if a buyer defaults under the agreement, the buyer will pay for all costs, including Developer's reasonable lawyer's fees and the escrow cancellation fee, which are incurred because of the buyer's default.

Finally, because the Developer is a lessee of the property under a development lease with the owners of the fee simple interest in the property ("the Fee Owners"), the sample agreement provides that, upon closing of a sale of an apartment by the Developer, the Developer and the Fee Owners will execute a cancellation of the Development Lease as to that apartment, and the Fee Owners will concurrently execute and deliver a condominium apartment deed for that apartment to the Developer or its designee.

END OF EXHIBIT I

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EXHIBIT J

SUMMARY OF THE DECLARATION OF PROTECTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS FOR THE MILLYARD

As set forth in Exhibit D to this Public Report, title to the land underlying the Wailuku Business Center is subject to the restrictions, covenants and conditions set forth in the Declaration of Protective Covenants, Conditions and Restrictions for the Millyard ("the CC&R's"). Because this summary cannot and does not cover each and every provision of the CC&R's, potential buyers are invited and encouraged to review the CC&R's, copies of which are available for review at the Developer's office.

The Wailuku Business Center is located in the Millyard business park. In order to "create a uniform theme of architectural style, require compatible building materials and design, reduce the visual impact of mass, achieve pleasing aesthetic views, require cohesive landscaping and uniform signage and control noise, smoke, odors, lighting at night, toxic materials, dust, and waste materials," the developer of the Millyard business park adopted the CC&R's which set forth a comprehensive plan for the management and use of the Millyard.

As a part of the comprehensive plan, Article VII of the CC&R's prohibits activities at the Millyard that are hazardous to any person or property (including the discharge of firearms and the maintenance of open fires) and prohibits unreasonably loud noise and lights that are unreasonably bright or that cause unreasonable glare. Further, the CC&R's restrict the types of signs that may be erected in the Millyard, and contain requirements as to the construction and upkeep of improvements within the Millyard.

The CC&R's create the Millyard Association and provide that it shall hold title to certain parts of the Millyard business park, be responsible for the maintenance of those parts, and be responsible for enforcement of the CC&R's, among other responsibilities. Pursuant to the CC&R's, each owner of a lot in the Millyard shall be a member of the association, provided, however, that in the case of multiple owners of one lot (such as is likely to be true in the case of the Wailuku Business Center), the multiple owners shall designate one person to exercise Association voting rights assigned to that lot. The CC&R's also provide for the creation of a Design Review Committee with the responsibility establishing development standards, and for approving improvements, signs, and other matters within the Millyard.

In order to fund the Association's operation, the CC&R's provide that each owner of an interest in a lot in the Millyard shall be subject to assessment by the Association. As set forth in Article V of the CC&R's such assessments may include, among other things, amounts necessary (1) for operation of the Association and the Design Review Committee, (2) for maintenance and repair of Association property, and (3) for common advertising and promotion of the Millyard.

As stated above, this summary cannot and does not cover each and every provision of the CC&R's. Potential buyers are therefore invited and encouraged to review the CC&R's, copies of which are available for review at the Developer's office.

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