

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer ROBERT C. SCHAEFER  
Address P. O. Box 3151, Lihue, Kauai, Hawaii 96766

Project Name(\*): MAKANI KAI PROPERTIES  
Address: Hauiki Road, Kapaa, Kauai, Hawaii

Registration No. 3326

Effective date: May 23, 1995

Expiration date: June 23, 1996

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)

  X   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:

**SPECIAL ATTENTION**

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

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

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



## 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: ROBERT C. SCHAEFER Phone: (808) 8221151  
Name (Business)  
P. O. Box 3151  
Business Address  
Lihue, Kauai, Hawaii 96766

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

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

Real Estate Broker: Linda K. Summers dba Summers Phone: (808) 8225876  
Name Realty (Business)  
1310 Inia Street  
Business Address  
Kapaa, Hawaii 96746

Escrow: SECURITY TITLE CORPORATION Phone: (808) 2456975  
Name (Business)  
4370 Kukui Grove, Suite 203  
Business Address  
Lihue, Hawaii 96766

General Contractor: N/A Phone: \_\_\_\_\_  
Name (Business)  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

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

Attorney for Developer: Hiroshi Sakai, Attorney at Law, a Law Corporation Phone: (808) 5314171  
Name (Business)  
201 Merchant St., Suite 902  
Business Address  
Honolulu, Hawaii 96813

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. 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. 95-038625  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]: First Amendment to Declaration dated April 12, 1995 filed at said Bureau as Document No. 95-053751 on April 24, 1995.

- 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. 2224  
 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]: First Amendment to Declaration dated April 12, 1995 filed at said Bureau as Document No. 95-053751 on April 24, 1995.

- 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. 95-038626  
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>Majority vote of Board</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:

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

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which 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: Hauiki Road, Kapaa, Kauai, Hawaii Tax Map Key: (4) 4-6-7: 69  
(TMK)

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

Land Area: 1.572 [ ] square feet [x] acre(s) Zoning: Agriculture



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:

[ ] Pets: \_\_\_\_\_

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

[x] Other: See Building and House Rules (Exh. F) and Summary of Declaration of Restrictive Covenants (Exh. G).

[ ] 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>Shed</u>	<u>2</u>	<u>N/A</u>	<u>48</u>	<u>-0-</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 2

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

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

**Boundaries of Each Apartment:**

The exterior surfaces of the structures and the description of the limited common element for each of the units as set forth in the Condominium Map.

**Permitted Alterations to Apartments:**

Either apartment owner can increase the total square footage of his structure, add additional structures, alter the location of his structure and/or subdivide in accordance with the Declaration, Building and House Rules, building code, zoning and subdivision ordinances.

7. Parking Stalls: Open stalls not designated. By ordinance, two (2) parking stalls for each residential apartment is required.  
 Total Parking Stalls: \_\_\_\_\_

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for each unit)	_____	_____	_____	_____	_____	_____	_____
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	_____	_____	_____	_____	_____	_____	_____

Each apartment will have the exclusive use of at least two parking stall(s).  
 Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.  
 Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.  
 Swimming pool       Storage Area       Recreation Area  
 Laundry Area       Tennis Court       Trash Chute  
 Other: \_\_\_\_\_

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

- There are no violations.       Violations will not be cured.  
 Violations and cost to cure are listed below.       Violations will be cured by \_\_\_\_\_

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
 (For conversions of residential apartments in existence for at least five years):

N/A

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, Structures, Lot

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

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

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

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restriction 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   A  .

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

Apartment 1 - 0.822 acre

Apartment 2 - 0.750 acre

NOTE: Land areas referenced are not legally subdivided lots.

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 \_\_\_\_\_.

as follows:

Apartment 1 - 50% appurtenant common interest

Apartment 2 - 50% appurtenant common interest

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 B describes the encumbrances against the title contained in the title report dated 3/22/95 and issued by First American Title Insurance Company.

**Blanket Liens:**

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

- There are no blanket liens affecting title to the individual apartments.
- There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
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**F. Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements: None

2. Appliances: None

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

Notice of Completion for both sheds first published on January 30, 1995.

**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
- 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 E contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

None at present.

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 \_\_\_\_\_

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   C   contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated   3/8/95    
Exhibit   D   contains a summary of the pertinent provisions of the escrow agreement.
- Other   Building and House Rules

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 Summary of Declaration of Restrictive Covenants dated October 24, 1985  
(Exh. G)

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. 3326 filed with the Real Estate Commission on April 10, 1995

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

- yellow paper stock                       white paper stock                       pink paper stock

C. **Additional Information Not Covered Above**

None

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.

ROBERT C. SCHAEFER

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

By: Robert C Schaefer  
Duly Authorized Signatory

3-23-95  
Date

ROBERT C. SCHAEFER, DEVELOPER

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

Distribution:

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

EXHIBIT "A"

Common Elements

The common elements of the Project which the apartments have immediate access to include:

a. The land in fee simple from the depth of 50 feet below the surface of the land to the center of the earth ("Subsurface Land").

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

EXHIBIT "B"

Encumbrances Against Title

The title report of First American Title Insurance Company reports that title to the land is subject to the following encumbrances:

1. Taxes for the fiscal year 1994-1995 have been paid for in full. For confirmation regarding real property taxes due and owing contact the office of the County of Kauai Director of Finance.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Exception and reservation of the ditches and necessary rights of way, as reserved in Land Patent (Grant) No. 7323, dated August 8, 1919.
4. Building setback line and 100 year flood setback line per survey of Cesar C. Portugal, Registered Professional Surveyor, Certificate No. 2225-ES, Lihue, Kauai, Hawaii, dated April 11, 1988.
5. Restrictive covenants as contained in Declaration dated October 24, 1985, recorded in said Bureau in Book 19053, page 191, to which reference is hereby made.
6. The terms and provisions of that certain Road Widening Reserve Agreement dated August 29, 1994, made by and between Robert C. Schaefer "Applicant" and the County of Kauai Planning Department "Department", recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-182307 to which reference is hereby made.
7. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the Declaration of Condominium Property Regime of the Makani Kai Properties Condominium dated March 8, 1995, recorded in said Bureau as Document No. 95-038625. Condominium Map No. 2224, to which reference is hereby made. The Declaration and Condominium Map were amended on April 12, 1995 per Document No. 95-053751.
8. By Laws of the Association of Apartment Owners of the Makani Kai Properties Condominium dated March 8, 1995 recorded in said Bureau as Document No. 95-038626.

EXHIBIT "C"

Summary of Sales Contract

The Sales Contract contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Sales Contract says:

(a) A buyer must obtain his own financing. An application for a mortgage loan within 10 days after notification by Seller and if approval is not concluded within 30 days after submission of the application then Seller has the option to terminate the contact. Buyer acknowledges that this Sales Contract is contingent on any financing after the issuance of the final public report.

(b) That a purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(c) That interest on deposits shall belong to the Seller unless Buyer arranges with Escrow to establish a separate savings account and to pay \$25.00 to Escrow for the establishment and maintenance of such account, then such interest shall accrue to the benefit of the Buyer.

(d) That the unit will be subject to various legal documents, including Declaration, By Laws, Final Public Report including Encumbrances and Disclosure Statement attached thereto, Building/House Rules, Escrow agreement, Apartment Deed, Certificate of Architect and Condominium Map and any other documents which the buyer is given a copy of and for which he has received for the same.

(e) That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

(f) If Buyer defaults, Seller shall give written notice to Buyer by certified mail and if such default is not cured within 10 days after receipt of notice, Seller may terminate the Sales Contract and retain the Buyer's deposits as liquidated damages. Seller may in addition pursue any other remedy including specific performance and all costs by reason of such default shall be borne by Buyer.

(g) If Buyer has paid all payments required under the Sales Contract, Buyer shall be entitled to specific performance.

The Sales Contract contains various other provisions with which the purchaser should become acquainted.

EXHIBIT "D"

Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement these things will or may happen:

(a) Developer will let purchasers know when payments are due.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement states the following conditions under which a refund will be made to a purchaser. Developer and Purchaser make a written request to Escrow: (a) To return to purchaser the funds; (b) To notify Developer's exercise of any option to rescind the sales contract or (c) That the conditions provided for a refund under Sections 514A-62 or 514A-63 of the Condominium Act have been met.

(d) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract, that is, the Purchaser's funds shall be retained by the Seller as liquidated damages.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

Note: Section 514A-63, Hawaii Revised Statutes provides for Rescission Rights to a purchaser under a binding contract if there is a material change in the project which directly, substantially and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use.

**EXHIBIT "E"**

**MAKANI KAI PROPERTIES**

REGISTRATION NO. 3326

DISCLOSURE STATEMENT AS OF March 8, 1995

1. Name of Project: MAKANI KAI PROPERTIES
2. Address: Hauiki Road, Kapaa, Kauai, Hawaii 96746
3. Name of Developer: Robert C. Schaefer
4. Address of Developer: P. O. Box 3151, Lihue, Kauai, Hawaii 96766
5. Telephone Number: (808) 8221151
6. Project Manager or Agent: Robert C. Schaefer
7. Address: P. O. Box 3151, Lihue, Kauai, Hawaii 96766
8. Maintenance Fees: None at present. In the future as the need and necessity arises the maintenance fees shall be budgeted upon generally accepted accounting principles. At such time the sale of the first unit occurs each owner to maintain his own insurance for the apartment and limited common element land area and add the name of the Association as an additional insured, if necessary.
9. Commencement of Maintenance Fees: At such time that the first sale of an apartment is made. If not, the Declarant will continue to maintain the premises at his own cost and expenses.
10. Warranties: The Project is a fee simple condominium project and there are no warranties.
11. Project: The Project consists of two (2) condominium apartments. Apartments 1 and 2 are free standing detached sheds. The land areas are to be utilized for agriculture and other uses permitted under the zoning ordinances for the County of Kauai.

DATED: KAPAA, KAUALI, Hawaii, MARCH 8TH, 1995.

Robert C. Schaefer  
ROBERT C. SCHAEFER

b:\MAK.DS

EXHIBIT "F"

**BUILDING AND HOUSE RULES  
MAKANI KAI PROPERTIES**

The purpose of these Building and House Rules ("Rules") is to protect all owners and occupants from annoyance and nuisance caused by improper conduct and improper use of the condominium, hereinafter referred to as "Project", and to provide for the maximum enjoyment of the premises. All owners and occupants, their agents, employees and invitees shall be bound by the Rules and standards of reasonable conduct whether covered by these Rules or not.

1. Definitions. As used herein:

a. The "Area" refers to the land set aside for the use of each owner as a limited common element.

b. The "Apartment" refers to the existing building built on the land designated as the limited common element for the owner and any subsequent improvements built within the Area.

2. Building Permit. Any owner desiring to make an addition to the existing buildings and/or construct any new building will have to comply with the building and zoning ordinances as the same may be changed from time to time. The requirements of the County of Kauai ordinances is required to be observed in the construction of a single family dwelling as well as the following:

a. No structure of a temporary character, trailer, quonset hut, tent, shack, and/or barn shall be used as a permanent residence.

b. In any grading and/or excavation of the Apartment the grade of the Apartment shall not be altered in such a manner as to affect the drainage of any adjoining Apartment.

3. Use Restrictions. The agriculture and other restrictions for the use of the Apartment as well as the Area will have to be observed by each owner.

4. Garbage and Trash. Each unit shall place his own garbage, trash and rubbish in covered receptacles or in plastic or fastened bags. Each owner shall exercise reasonable care to avoid exposure of waste materials to flies, roaches, rodents and other insects or materials.

5. General Appearance.

a. Clothes Drying. Outside clothes lines or

other outside clothes drying or airing facilities should be screened from the street and the other apartment.

b. Signs. Signs, signals and lettering may be inscribed or exposed on any part of a building or in the common elements of the project that meets the requirements of the ordinances of the County of Kauai and approved as to standards set by the Board of Directors of the Association from time to time.

c. Storage. No open storage of furniture, fixtures, appliances and other goods not in use will be permitted if not screened from the street and the other apartment.

d. Antenna. No antenna or other device to receive or transmit any television, radio, C.B. or any electronic signal shall be erected, placed or maintained on any building or area that is visible from the other apartment without the prior written approval of the other apartment owner.

6. Water and Utilities. The water, electricity and telephone lines will be drawn from Kukuna Road to each Apartment at its own cost and expense. If any water, electricity and telephone lines are located within an apartment's limited common element land area and services the other apartment, the other apartment shall have a permanent easement in favor of the other apartment provided however that the maintenance of such lines will be the responsibility of the apartment for whose benefit such lines exist.

7. Setbacks. Any dwelling and/or structure placed in an Area by an owner will observe the perimeter boundaries of each Area.

8. Upkeep of Area. Each owner will be responsible for the landscaping and upkeep of its own Area and shall not permit its Area to be overgrown with weeds and/or place used vehicles and/or storage of materials to make the Area become unsightly like a junkyard.

9. Cesspools/Septic Tanks. There are no sewer lines and a sanitary sewer system. Each Unit Owner will have his own cesspool or septic tank located within his own area no closer than 10 feet to any area boundary and in compliance with the State of Hawaii Department of Health laws, rules and regulations.

10. Completion. After completion of the dwelling and/or improvements, the owner shall proceed to do the following:

a. Publish a Notice of Completion in the Garden Isle or newspaper of general

circulation in the State of Hawaii for two (2) consecutive weeks at least seven (7) days apart and have it filed with the Clerk of the Fifth Circuit Court.

b. The plans and drawings should meet the requirements of a Condominium Map. The plan should show a site plan indicating where the dwelling and improvements will be located in the unit's limited common element land area. There should be a floor plan indicating the living/dining room, bedrooms, kitchen, bathrooms, lanai, etc. and the total net living area. The plan should show the elevations of the dwelling or improvement. The project's name, Tax Map Key, and the architect's or engineer's stamp should be stamped on the plans.

c. The architect or engineer's certificate should be executed reflecting the obtaining of a building permit from the County of Kauai and reflecting the "as built" condition of the dwelling.

d. The owner should have prepared at his own cost an amendment to the Declaration reflecting the change in description of the apartment and an amendment to the Condominium Map.

e. The amendment to the Declaration should then be filed for record in the Bureau of Conveyances, State of Hawaii.

Executed at KAPAA, KAUAI, Hawaii, this 8<sup>TH</sup>  
day of MARCH, 1995.

Robert C Schaefer  
ROBERT C. SCHAEFER

## EXHIBIT "G"

### HAUIKI MEADOWS II SUBDIVISION

#### SUMMARY OF DECLARATION OF RESTRICTIVE COVENANTS

The Declaration of Restrictive Covenants for the Hauiki Meadows II Subdivision situated at the Kapaa Homesteads, First Series, Kapaa, County of Kauai, Hawaii dated October 21, 1985 was filed in the Bureau of Conveyances, State of Hawaii in Book 19053, Page 151. The reading of the Declaration is important and certain requirements have to be met before any construction and development of any improvements can be undertaken as well as the use of the lot.

1. There are Lots 1-A, 2-A, 3-A, 5-A, 6-A, 11-A and 12-A, in this subdivision of which Lot 6-A is the Project and therefore affected by this Declaration.

2. All lots are subject to the agricultural covenants that are set forth in the State Land Use Restrictions for "agricultural activities" and "dwellings" that have to be observed as contained in Section 205-4.5, Hawaii Revised Statutes.

3. All buildings shall be built entirely of new materials and no old, quonset or dome type structure shall be constructed. A dwelling house shall have a minimum of 1,000 square feet of ground floor area not including storage, lanais, porches and a garage. Houses of three bedrooms shall have a minimum of 1,200 square feet of living space. There shall be no flat roofs and all roofs shall be constructed with medium or heavy shake material or its equivalent. All houses shall have a finished garage or carport.

4. No hogs or fighting cocks shall be raised, bred or kept on any lot.

5. The owners shall maintain the premises in a neat and orderly condition. Laundry drying equipment shall be screened or hidden so as not to be visible from adjacent lots or streets.

6. All equipment for storage or disposal for rubbish, trash and garbage shall be kept in a clean and sanitary condition and enclosed or recessed into the ground and covered at all times. Container shall be placed in County right-of-way the evening before collection and removed the day of collection.

7. No temporary structures of any kind shall be erected, placed or permitted to remain on any lot except for construction structures which shall be removed within thirty days of completion or abandonment of construction.

8. Only professionally prepared signs to advertise the lot for sale or lease may be displayed for public view.

9. No fence or rock wall shall exceed five feet in height and no chain link type fence will be allowed.

10. Each owner whose lot abuts the State-owned ditch right-of-way shall indemnify and hold harmless the State of Hawaii, its lessees, successors and assigns from and against any claim for damages proximately caused by any act, omission or negligence of the lot owner which relates to the presence of any portion of the State owned ditch right-of-way which abuts or crosses the lot owned by the owner.

11. The above covenants shall run with the land and with the exception of the covenant relating to the State-owned ditch right-of-way, shall continue in effect until January 1, 2000, unless sooner terminated by 2/3rds of the owners of lots in the subdivision. All owners of one lot shall constitute one vote.

12. The covenants shall run with the land and enforcement may be by the Declarant, its successors and assigns or any owner by way of injunction and/or damages.

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

**THE FOREGOING IS A SUMMARY AND IS FOR THE CONVENIENCE OF THE READER AND IF THERE IS ANY QUESTION THE ORIGINAL DOCUMENT SHOULD BE EXAMINED AND SUCH ORIGINAL DOCUMENT CONTROLS OVER THIS SUMMARY.**