

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer HAROLD BETTENCOURT, WILLIAM BETTENCOURT and STEPHEN C. BETTENCOURT Address 1587 W. Wrenwood Lane, Fresno, California 93711

Project Name(\*): BETTENCOURT PLANTATION ESTATES Address: Wanaao Road, Kapaa, Kauai, Hawaii 96746

Registration No. 3439 Effective date: March 8, 1996 Expiration date: April 8, 1997

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

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

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

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

Type of Report:

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

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

SUPPLEMENTARY: (pink) This report updates information contained in the: [ ] 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 NOTICE:**

THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE ALSO IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. THE PURCHASER SHOULD CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A RESIDENTIAL DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, UPON THE PROPERTY.

1. This Public Report does not constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it ensure that all county codes, ordinances and subdivisions requirements have necessarily been complied with.

2. This Project does not involve the sale of individual subdivided lots. The land area beneath and immediate adjacent to each unit as shown on the condominium map is designated as a limited common element and does not represent a legally subdivided lot. The dotted lines on the condominium map merely represent the approximate location of the limited common element assigned to each unit.

3. Facilities and improvements normally associated with County approved subdivisions may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS FOR FURTHER INFORMATION REGARDING THE FORGOING.

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## General Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of 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: Harold Bettencourt, William  
Bettencourt and Stephen C. Bettencourt      Phone: (209) 432-6233  
Name      (Business)  
1587 W. Wrenwood Lane  
Business Address  
Fresno, California 93711

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

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

Real Estate Broker: First Choice Realty, Inc.      Phone: (808) 822-5850  
Name      (Business)  
4-356 Kuhio Highway  
Business Address  
Kapaa, Kauai, Hawaii 96746

Escrow: Security Title Corporation      Phone: (808) 245-6975  
Name      (Business)  
4370 Kukui Grove Street, #203  
Business Address  
Lihue, Kauai, Hawaii 96766

General Contractor: Luis Soltren      Phone: (808) 882-3905  
Name      (Business)  
193A Hawaiiana Street  
Business Address  
Kapaa, Kauai, Hawaii 96746

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

Attorney for Developer: Michael H. Sakai      Phone: (808) 531-4171  
Name      (Business)  
201 Merchant Street, #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. 95-121062  
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 December 28, 1995, recorded as Document No. 96-007355.  
Second Amendment to Declaration dated February 16, 1996, recorded as Document No. 96-024940.

- 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. 2282  
 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. 95-121063  
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>N/A</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:

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: Wanaao Road Tax Map Key: (4) 4-6-07: 74  
Kapaa, Kauai, Hawaii (TMK)

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

Land Area: 5.053 [ ] square feet [x] acre(s) Zoning: AG

Fee Owner : Harold Bettencourt, William Bettencourt  
and Stephen C. Bettencourt

Name  
c/o 587 W. Wrenwood Lane  
Address  
Fresno, California 93711

Sublessor:  
Name  
Address

C. Buildings and Other Improvements:

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

2. Number of Buildings: 2 Floors Per Building One

Exhibit A contains further explanations.

3. Principal Construction Material:

Concrete     Hollow Tile     Wood

Other \_\_\_\_\_

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 type="checkbox"/> Commercial	___	<input 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 checked="" type="checkbox"/> Agricultural	___	<input checked="" 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 checked="" type="checkbox"/> Other: <u>storage shed</u>	<u>2</u>	<input checked="" 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:

Pets: Declaration of Restrictive Covenants and ByLaws

Number of Occupants: \_\_\_\_\_

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

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 Net Area (sf)</u>
Unit A	<u>1</u>	<u>0/0</u>	_____	_____	<u>24</u>
Unit B	<u>1</u>	<u>0/0</u>	_____	_____	<u>24</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Apartments: 2

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

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

**Boundaries of Each Apartment:**

The boundary of each unit is the exterior finished surfaces of the units' perimeter walls, roofs, foundations, windows and frames, doors, beams, and post.

**Permitted Alterations to Apartments:**

Each unit owner may alter the structure and any other improvements located within their unit's limited common land area with the approval of the Developer or as otherwise provided in this Declaration.



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	x _____	_____	_____
Structures	x _____	_____	_____
Lot	x _____	_____	_____

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

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

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

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

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

described in Exhibit     B    .

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 B.

as follows:

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

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

as follows:

<u>Unit</u>	<u>Percentage Interest</u>
A	50%
B	<u>50%</u>
Total	100%

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 C describes the encumbrances against the title contained in the title report dated 1/20/96 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>
Agreement of Sale dated September 30, 1995 as recorded in Book 11741, Page 555.	If a cancellation occurs, purchaser's interest in a sales contract may be terminated. Purchaser's deposits will be refunded, less escrow cancellation fees.

**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. There are no warranties, express or implied.

**2. Appliances:**

None. There are no appliances included with any unit.

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

Construction of Unit A and B, storage sheds, will be completed in November, 1996 .

**H. Project Phases:**

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

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

IV. CONDOMINIUM MANAGEMENT

A. Management of the Common Elements: The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer  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 D contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. Utility Charges for Apartments:

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

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

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit   E   contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated May 23, 1995  
Exhibit   F   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, as amended.
- C) Bylaws of the Association of Apartment Owners.
- D) House Rules. None.
- 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 Restrictive Covenants dated August 7, 1984 (see Exhibit "G") and Declaration of Restrictive Covenants dated April 16, 1981.

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. 3439 filed with the Real Estate Commission on 10/20/95.

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

yellow paper stock

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**C. Additional Information Not Covered Above**

**NOT A SUBDIVISION.** This is a condominium project which should not be confused with a subdivision. A purchaser of an apartment unit will be conveyed an apartment unit together with an "undivided" percentage interest in the common elements of the project. The entire parcel of land upon which the project is situated is designated as a common element. That portion of the common element which each purchaser has the exclusive right to use is called a limited common element or area, but is not a separate, legally subdivided lot.

**MAINTENANCE FEES.** All costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective apartment owner.

Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners to purchase fire insurance to cover the improvements of the Project, and that premiums be common expenses. Developer anticipates that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses. The insurance presently maintained by the Developer cost approximately \$840 per year. This is subject to change.

**ADDITIONAL RESTRICTIONS.** In addition to the Declaration of Condominium Property Regime and By-Laws of the Association, there are additional restrictions which affect the Project and units. See Exhibit "G" for additional information concerning the restrictions.

**LAND AREA.** The total land area as determined by the engineer for the project and as set forth in the condominium map is 5.053 acres. A title report prepared by First American Title Corporation for the project dated January 20, 1996 based on a survey prepared by Wayne T. Wada also indicates that the land area is 5.053. Previous title reports and other instruments have indicated slightly smaller land areas, however, based on the present information that the limited common land areas are 2.553 acres for unit A and 2.500 acres for unit B, there may be a slight discrepancy in the actual land area for the project and for each of the respective limited common element land areas.

**AGREEMENT OF SALE.** The interest of Stephen Bettencourt in the Project and the property is held as a buyer under an Agreement of Sale. The Agreement of Sales is between Albert Bettencourt, as seller, and Stephen Bettencourt, as purchaser, is dated September 30, 1976 and was recorded in the Bureau of Conveyances, in Book 11741, Page 555. In order for Stephen Bettencourt to convey an apartment to a purchaser, he must prior to or simultaneously with a sale of such apartment satisfy the terms of the Agreement of Sale and be conveyed the fee simple interest by Albert Bettencourt. Therefore, notwithstanding any other provision that may be contained in the Escrow Agreement for the Project, Stephen Bettencourt cannot close a sale of an apartment to a purchaser unless the satisfaction of the Agreement of Sale occurs. If Stephen Bettencourt fails to satisfy the Agreement of Sale, a purchaser may cancel the Sales Contract because that would mean he is unable to convey title and a purchaser would also be entitled to pursue any other remedy permitted by law including specific performance.

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 and correct and complete.

Developer:

Harold Bettencourt  
HAROLD BETTENCOURT

May 23, 1995  
Date

William Bettencourt  
WILLIAM BETTENCOURT

6/9/95  
Date

Stephen C. Bettencourt  
STEPHEN C. BETTENCOURT

May 25, 1995  
Date

Distribution:

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

EXHIBIT "A"

Description of Apartments

The Project contains the following two units:

a. Unit A. Unit A consist of one freehold estate consisting of one storage structure having a net area of 24 square feet together with the limited common land area under and surrounding Unit A. This unit is constructed principally of wood. The land area surrounding Unit A as delineated and described in the Condominium Map is a limited common element for Unit A and is for the exclusive use of Unit A.

b. Unit B. Unit B consist of one freehold estate consisting of one storage structure having a net area of 24 square feet together with the limited common land area under and surrounding Unit B. This unit is constructed principally of wood. The land area surrounding Unit B as delineated and described in the Condominium Map is a limited common element for Unit B and is for the exclusive use of Unit B.

EXHIBIT "B"

Common Elements

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

- a. The land in fee simple.
- b. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, drainage, hot and cold water and like utilities which services more than one unit and any easements for such utility services.
- c. Any common easements for ingress and egress and all installations for underground utilities including electricity, water, telephone, and cable television up to that portion that services both units, if any.
- d. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project.

Limited Common Elements

The land area delineated and designated in the Condominium Map are limited common elements of a unit and consist of the following:

- A. Unit A. The land area surrounding and under Unit A is a limited common element of Unit A and is for the exclusive use of Unit A and consist of approximately 2.553 acres.
- B. Unit B. The land area surrounding and under Unit B is a limited common element of Unit B and is for the exclusive use of Unit B and consist of approximately 2.500 acres.

EXHIBIT "C"

Encumbrances Against Title

1. Title to all minerals and metallic mines reserved to the State of Hawaii.

2. Agreement of Sale dated September 30, 1976, by and between Albert Bettencourt, husband of Helen Bettencourt, as Seller and Stephen C. Bettencourt, single, as to an undivided one-third (1/3rd) interest, recorded in the Bureau of Conveyances, State of Hawaii, in Book 11741, Page 555. (Also affects other property).

Waiver of Dower by Carol McCarthy, wife of Barry F. McCarthy and formerly wife of Stephen C. Bettencourt, by Quitclaim Deed dated October 1, 1991, recorded in said Bureau, as Document No. 91-138934.

3. Right-of-Entry in favor of Citizens Utilities Company and Hawaiian Telephone Company, now know as GTE Hawaiian Telephone Company Incorporated, dated March 4, 1981, for right-of-entry and easement for utility purposes over and across the land herein described, recorded in the Bureau of Conveyances, State of Hawaii, in Book 15484, Page 181.

4. Restrictive covenant and condition as contained in Declaration of Restrictive Covenants, dated April 16, 1981, recorded in said Bureau, in Book 15491, Page 651.

5. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Declaration of Restrictive Covenants, dated August 7, 1984, recorded in said Bureau, in Book 18078, Page 167.

6. Grant in favor of Citizens Utilities Company and Hawaiian Telephone Company, now known as GTE Hawaiian Telephone Company, Incorporated, dated August 7, 1985, for easement for utility purposes over, under, upon and across and through a portion of the land herein described, recorded in said Bureau, in Book 18954, Page 114.

7. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Declaration of Horizontal Property Regime of "Bettencourt Plantation Estates", dated May 23, 1995, recorded in said Bureau, as Document No. 95-121062. Said Declaration was amended by instrument dated December 28, 1995, recorded in said Bureau, as Document No. 96-007355.

8. Condominium Map No. 2282 recorded in the Bureau of Conveyances, State of Hawaii.

9. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the By-laws of the Association of Unit Owners of Bettencourt Plantation Estates dated May 23, 1995, recorded in said Bureau, as Document No. 95-121063.

10. Joinder to Declaration and Bylaws made by Albert Bettencourt, recorded in said Bureau, as Document No. 95-121064.

11. Joinder to First Amendment to Declaration and Bylaws made by Albert Bettencourt, recorded in said Bureau, as Document No. 96-007356.

12. For information regarding real property taxes, your attention is directed to Tax Assessor, County of Kauai.

EXHIBIT "D"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>
A	\$35.00 x 12 = \$420.00
B	<u>\$35.00 x 12 = \$420.00</u>
TOTAL:	\$70.00 = <u>\$840.00</u>

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
  - [ ] common elements and apartments
- Elevator
- Gas
- Refuse Collection
- Telephone
- Water and Sewer

Maintenance, Repairs and Supplies

- Building
- Grounds

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance \*\* \$70.00 x 12 = \$840.00

Reserves(\*)

Taxes and Government Assessments

Audit Fees

Other

\*\*This is for the policy presently maintained by the Developer that covers all units.

TOTAL \$840.00

I, Harold T. Bettencourt, ~~as agent and employed by~~ XXXXXXXXXXXXXXXXXXXX, ~~the condominium managing agent~~ or the developer, for the condominium project Bettencourt Plantation Estates, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Harold Bettencourt

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

Date: May 23, 1995

EXHIBIT "E"

Summary of Sales Contract

The Sales Contract contains the purchase price, description and location of the apartment and other terms and conditions under which a Purchaser will agree to buy an apartment in the Project.

Among other things, the Sales Contract:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Purchaser will pay the purchase price.

2. Identifies the escrow agent and states that purchaser's deposit will be held in escrow until the Sales Contract is closed or canceled.

3. Requires that Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

4. Permits the Developer without the consent of approval of a purchaser to modify the Declaration, By-Laws Condominium Map or other documents provided that purchaser may cancel the Sales Contract and obtain a refund if such modification:

a. substantially and materially impairs the use and enjoyment of the apartment;

b. substantially and materially alters the arrangement of the rooms or usable space of an apartment or building;

c. renders unenforceable a purchasers' loan commitment;

d. increases the purchaser's share of common expenses or maintenance fees;

e. reduces the obligations of Developer of common expenses on unsold apartments.

5. Provides that the Developer is selling the apartments in "AS-IS WHERE-IS" condition. This means that the Developer is not making any warranties or representations with respect to the apartments and Project.

6. Provides that the Developer has up to 12 months after the effective date of the Final Public Report to construct the improvements (the sheds).

7. If purchaser dies (any one of them) prior to closing, Developer has the right to return purchaser's funds, less any escrow cancellation fees and cost, and cancel the Sales Contract.

8. Provides that the closing cost shall be paid as follows:

a. By purchaser: title insurance, drafting of any note and mortgage, purchaser notary fees, recording fees, one half of escrow fees, and also a start fee for common expenses, if any.

b. By Developer: drafting of apartment deed and Developer notary fees, conveyance taxes, preliminary title report, and one half of escrow fees.

9. Provides the following remedies, in the event of default under the Sales Contract:

by purchaser:

- a. Developer may bring an action against purchaser for breach of contract;
- b. Developer may retain initial deposit;
- c. Purchaser shall be responsible for expenses incurred.

by Developer:

- a. Purchaser may bring an action against Developer for breach of Contract;
- b. Purchaser may bring an action compelling Developer to perform under contract;
- c. Developer shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

10. Provides that purchaser may not assign his/her interest in the Sales Contract without the prior written consent of Developer.

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

EXHIBIT "F"

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"). Escrow is SECURITY TITLE CORPORATION. Under the Escrow Agreement dated May 23, 1995, these things will or may happen:

(a) Developer or Escrow will let purchasers know when payments are due and all monies received from a purchaser will be deposited in Escrow. Any interest earned on the deposits will belong to Developer.

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

(c) The Escrow Agreement specifies when purchaser funds may be disbursed upon closing of a sale. The conditions include:

i) Escrow receives the purchasers' signed "Receipt for Public Report(s) and Notice of Right to Cancel";

ii) Escrow receives a certification from the Developer that the Sales Contract is effective and that the rescission right requirements in favor of purchasers have been complied with by the Developer; and

iii) The apartment deed conveying the unit to the purchaser has been recorded in the Bureau of Conveyances.

(d) The Escrow Agreement says under what conditions a refund will be made to a purchaser. Refunds can occur under the following situations:

i) If Purchaser elects to cancel the transaction in accordance with the "Receipt for the Final Public Report and Notice of Right to Cancel". The Receipt provides that purchasers may cancel the Sales Contract and purchaser is the Receipt is mailed or sent by telegram to Developer before (1) the apartment unit is conveyed to purchaser or (2) midnight of the 30th day after delivery of the Public Report(s) to me, whichever is earlier.

ii) The Developer and purchaser agree to terminate the Sales Contract;

iii) if the Developer exercises any right to cancel the transaction which it may have reserved.

NOTE: If a transaction is cancelled, the purchaser must return all documents to the Developer.

(e) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract. If a purchaser defaults, all deposits previously placed into Escrow will be forfeited by purchaser and Escrow may release such funds to Developer. See paragraph 11 of Escrow Agreement.

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

EXHIBIT "G"

Declaration of Restrictive Covenants

This Project is subject to the Declaration of Restrictive Covenants ("Declaration") dated August 7, 1984, which was recorded in the Bureau of Conveyances, State of Hawaii, in Book 18078, Page 167. The Condominium Project is on lot 78-B however the Declaration also affects lots 78-A, 78-C, 78-D, 78-E, and 78-F. There are restrictions and provisions contained in the Declaration which purchasers should be aware of. The Declaration includes restrictions that affect the following:

1. Construction or any grading cannot impede or change free flow of surface runoff water. The property shall be grassed or planted for erosion control. The property shall be kept free of rubbish, inoperable vehicles, and other items.

2. The property shall be used for dwelling purposes and such agricultural purposes which are not prohibited.

3. No animals, livestock or poultry of any kind shall be raised or kept on the property except cattle and horses are permitted. Domestic animals are also permitted. No noxious, offensive, or unlawful activity is permitted.

4. No dwelling may exceed two stories in height. No structure may be moved onto the property and no used materials may be used for construction. Dwellings shall have a minimum floor area of 1,200 square feet for one-story and 1,600 square feet for two stories. No quonset, A-frame or geodesic type dwellings are permitted. No metal storage structures are permitted. There are also roofing material restrictions.

5. No individual water supply systems or tanks are permitted.

6. The Declaration shall be extended for successive ten year periods commencing on January 1995 unless a majority of owners cancel or change the Declaration.

NOTE: The foregoing is only a summary. This summary is not intended to be a substitute for or be used in lieu of the actual review by a purchaser of the Declaration of Restrictive Covenants.

### Declaration of Restrictive Covenant

This Project is also subject to a Declaration of Restrictive Covenant dated April 16, 1981, which was recorded in the Bureau of Conveyances in Book 15491, Page 651. This Declaration provides that lots 78-A, 78-B, 78-C, 78-D, 78-E, and 78-F may not be further subdivided without the consent of the Planning Department, County of Kauai. The Project site is lot 78-B.

NOTE: This Project is a condominium project and should not be confused with a subdivision of land. The land areas are limited common elements and not subdivided parcels.