

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer Kahua Sea View, Inc.

Address 75-5995 Kuakini Hwy, Ste 123, Kailua-Kona, HI 96740

Project Name(\*) KAHUA SEA VIEW LOT 45 B CONDOMINIUM PROJECT  
Address Lot 45-B Kahua 1st, Kahua & Waika, District of North Kohala, Island & County of Hawaii, State of Hawaii

Registration No. 3514

Effective Date March 29, 1996

Expiration Date April 29, 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:      The Developer may not as yet have created the  
(yellow)                      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:                      The developer has legally created a condominium and has  
(white)                      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:      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  
As Exhibit "G" 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 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.

1. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. The Purchaser should consult with the appropriate County agencies to determine whether the Purchaser may build a residential dwelling unit, or any other type of structure, on the property.
  - a. Unit 1 and Unit 2 are greenhouses, which may be defined as an "apartment" under the condominium property act.
  - b. Further improvement of the property is also subject to the requirements of the Hawaii County Comprehensive Zoning Ordinance specifically as it relates to "ohana" additional dwelling units.
2. Facilities and improvements normally associated with County-approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and drive ways.

Special Attention Cont.

3. This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

Farm dwelling is defined in Section 205-4.5(a)(4) as "a single family dwelling located on and used in conjunction with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling".

Penalty for violation of Section 205-4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

This public report does not constitute an approval of the project by the Real Estate Commission or any other government agency, nor does it warrant 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.

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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 and 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 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 developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Kahua Sea View, Inc. Phone 808-334-0988  
75-5995 Kuakini Hwy, Ste 123  
Kailua-Kona, Hawaii 96740

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

Dale W. McGowan  
Nat Wolozin

Real Estate  
Broker: West Maui Realty, Inc Phone 808-334-0988  
75-5782 Kuakini Hwy, Ste #3-B  
Kailua-Kona, Hawaii 96740

Escrow: Security Title Corporation Phone 808-521-9511  
Pacific Tower  
1001 Bishop Street, Ste 1200  
Honolulu, Hawaii 96813

General  
Contractor: Nelson Construction Phone 808-885-5436  
P.O. Box 1859  
Kamuela, Hawaii 96743

Condominium  
Managing  
Agent: Project will be self-managed by Phone 808-334-0988  
Association of Apartment Owners

Attorney for  
Developer: Wendelin L. Campbell Phone 808-885-0522  
P.O. Box 6869  
Kamuela, Hawaii 96743

**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: Doc. No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court Doc. No. 2273750

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

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

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. \_\_\_\_\_  
 Filed - Land Court Condo Map No. 1116

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: Doc. No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Doc. No. 2273751

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. However, see Exhibit H for similar type provisions.

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%	75%
Bylaws	65%	65%
House Rules	-	N/A

\* 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:



[ ] 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 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 improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: Lot 45-B Kahua 1st, Kahua & Waiki, District of North Kohala, Island and County of Hawaii, State of Hawaii

Tax Map Key: 3rd Div. 5-9-8: 22

[ ] Address [ ] TMK is expected to change because \_\_\_\_\_  
N/A

Land Area: 3.003 [ ] square feet [X] acres

Zoning: Ag. 3-A

Fee Owner :     Kahua Sea View, Inc.      
    75-5995 Kuakini Hwy, Ste 123      
    Kailua-Kona, Hawaii 96740    

Sublessor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**C. Buildings and Other Improvements:**

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

2. Number of Buildings:   2   Floors per Building   1    
 Exhibit "A" contains further explanations.

3. Principal Construction Material:

Concrete     Hollow tile     Wood     Other

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 checked="" 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/com	_____	<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>Greenhouse 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: Pets are permitted; however, no pigs or poultry.

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

Other: See Exhibit H for building & use restrictions

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

Apt. Type	Quantity	BR/Bath	Net Living Area(sf)	Lanai/Patio(sf)	Net Greenhouse Area(sf)
<u>1</u>	<u>1</u>	<u>0</u>	_____	_____	<u>48</u>
<u>2</u>	<u>1</u>	<u>0</u>	_____	_____	<u>48</u>
_____	_____	_____	_____	_____	_____

Total Apartments: 2

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

\*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:

See Exhibits "A" & "C"

Permitted Alterations to Apartments:

As noted in paragraph 20 of the Declaration, individual unit owners may, at their sole discretion and at their own expense, remodel, expand or otherwise alter their unit, provided said alterations are done in compliance with all applicable ordinances, rules, codes, regulations and other requirements in force at the time of said construction. All alterations shall be completed expeditiously and in the manner set forth in said Paragraph 20.

7. Parking Stalls:

Total parking Stalls: \*Unit 1 and Unit 2 have ample area within their limited common elements for parking purposes.

Assigned/ Guest Unassigned Extra for Purchase Other Total Covered & Open	Regular		Compact		Tandem		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____	_____

Each residential apartment will have the exclusive use of at least 2\* parking stall(s). Buyers are encouraged to find out which stall(s) will be available for their use.

\*See parking requirements in Exhibit H

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       Recreational 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):

It is the opinion of the developer that all structural components and mechanical and electrical installations material for the use and enjoyment of the units appear to be sound and in satisfactory working condition. Nonetheless, no representation of ANY KIND IS MADE as to the useful life, if any, of the structural components or the mechanical or electrical installation of the units.

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.

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

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

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

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

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

1. Common Elements: Common Elements are those parts of the condominium project 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 "C".

as follows:

3. Common Interest: Each apartment will have an undivided 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:

Each unit and its owner(s) shall have appurtenant thereto a one-half (1/2) fractional (50%) interest in the common elements of the Project for all purposes including voting, said interest is referred to as "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 "D" describes the encumbrances against the title contained in the title report dated January 16, 1996 and issued by Security Title Corporation .

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 the title to the individual apartments.

[X] There are blanket liens which may affect title to the individual apartments.

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

Type of Lien      Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance

Mortgage              Buyer's interest may be cancelled in which event Buyer will be entitled to a refund of deposits, 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:

Improvements are sold "AS IS"

2. Appliances:

None. N/A

G. Status of Construction and Estimated Completion Date:

Greenhouses, Units 1 & 2 were completed in 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 Element:** 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, name 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 \* contains a schedule of estimated initial maintenance fees and maintenance fees disbursements (subject to change.)

**\*See Exhibit "G" (Disclosure Abstract)**

- 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             TV 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 N/A
[X] Specimen of Sales Contract Exhibit "E" contains a summary of the pertinent provisions of the sales contract.
[X] Escrow Agreement dated December 15, 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 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 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 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. 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 Farm Dwelling Agreement (see page 20); Declaration of Covenants, Conditions and Restrictions on Kahua Sea View Subdivision (Exhibit H is a summary).

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, Hawaii 96809, at a nominal cost.

This Public Report is part of Registration No. 3514 filed with the Real Estate Commission on February 27, 1996.

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

[ ] yellow paper stock [X] white paper stock [ ] pink paper stock

C. Additional Information Not Covered Above:

Residential Dwellings within State Land Use Agricultural District

Purchasers should be aware that the State Land Use Commission issued a Declaratory Ruling in December, 1994, regarding the construction of residential dwellings on properties located within the State Land Use Agricultural District. In response to said ruling, the Hawaii County Planning Department is requiring applicants for building permits on such lands to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling reads as follows:

FARM DWELLING NOTICE

To: Applicants for Building Permits on Land in State land Use Agricultural District.

This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

Farm Dwelling is defined in Chapter 205-4.5 (a)(4) as "a single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling."

Penalty for violation of Section 205-4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

I acknowledge that I have read the above and have been given a copy

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Witness

Mailboxes

Mailboxes have not been provided for the units, as there is no mail delivery to this area. People in this area customarily maintain a post office box at the local post office.

C. Additional Information Not Covered Above:

Pursuant to Section 16-99-3(g) and 16-99-11(d), Hawaii administrative Rules ("HAR"), prospective purchasers are hereby advised that, Dale W. McGowan, the President of Kahua Sea View, Inc., the Developer, is a current and active Hawaii-licensed real estate broker with West Maui Realty, Inc., (RB15011), the project broker. Further, pursuant to Section 16-99-11(c) HAR, "(n)o Licensee shall advertise `For Sale by Owner, For Rent by Owner, For Lease by Owner, For Exchange by Owner' ".

D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

Kahua Sea View, Inc.  
Name of Developer  
By: Dale W. McGowan 1-16-96  
Duly Authorized Signatory Date

Dale W. McGowan, President  
print name & title of person signing above

Distribution:

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

## EXHIBIT A

### DESCRIPTION OF INDIVIDUAL UNITS

"Unit 1" consists of (i) a one room, single story, wood frame and shade cloth greenhouse with a dirt floor, having a net area of approximately 48 square feet, with no basement and (ii) any and all other future improvements which may be constructed on the land area appurtenant to said unit by the owner thereof. Specifically, in addition to the above-described improvements, the owner thereof is permitted, if allowed by law, to build any permitted structures on the land area appurtenant to said unit, provided that said structures comply with all applicable building codes and zoning ordinances. The costs and expenses of any such future construction shall be borne solely by the owner of said unit.

"Unit 2" consists of (i) a one room, single story, wood frame and shade cloth greenhouse with a dirt floor, having a net area of approximately 48 square feet, with no basement and (ii) any and all other future improvements which may be constructed on the land area appurtenant to said unit by the owner thereof. Specifically, in addition to the above-described improvements, the owner thereof is permitted, if allowed by law, to build any permitted structures on the land area appurtenant to said unit, provided that said structures comply with all applicable building codes and zoning ordinances. The costs and expenses of any such future construction shall be borne solely by the owner of said unit.

END OF EXHIBIT A

**EXHIBIT B**

**DESCRIPTION OF COMMON ELEMENTS**

One freehold estate was designated in all portions of the Project other than the units (except as herein specifically included), these portions of the Project being herein referred to as the "common elements", including specifically, but not limited to:

(a) The land in fee simple;

(b) All roadways, ducts, pumps, pipes, wires, conduits or other utility lines running over, under or through any unit or any limited common element appurtenant thereto which are utilized by or serve more than one unit and other central and appurtenant installations for common services, if any, including access, water, power, light, sewage, irrigation and telephone;

(c) Any and all other apparatus, installations and/or facilities in common use and all other parts of the Property necessary or convenient to the existence, maintenance and safety of the Project, or normally in common use;

(d) Each unit shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes of ingress to, egress from, utility services for, and support, maintenance and repair of such unit, and in the other common elements of the Project for use according to their respective purposes. When applicable, each unit shall also have appurtenant thereto easements in the other unit(s) for the purposes of utility service for, and the maintenance and repair of said utility services, including but not limited to electricity, gas, water, sewage, telephone and television cable;

(e) The limited common elements described below.

The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided in the Act. Any such partition or division shall be subject to the prior consent thereto by the holder(s) of all mortgage(s) of record against any condominium unit(s).

**END OF EXHIBIT B**

## EXHIBIT C

### DESCRIPTION OF LIMITED COMMON ELEMENTS

Certain parts of the common elements, herein referred to as the "limited common elements", are hereby set aside and reserved for the exclusive use of certain units, and such unit(s) shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

(a) That certain land area upon and around which Unit 1 is located, shown and designated on the Condominium Map as "Limited Common Element Land Area Appurtenant to Unit 1", containing an area of approximately 1.500 acres, shall be a limited common element appurtenant to and for the exclusive use of Unit 1.

(b) That certain land area upon and around which Unit 2 is located, shown and designated on the Condominium Map as "Limited Common Element Land Area Appurtenant to Unit 2", containing an area of approximately 1.503 acres, shall be a limited common element appurtenant to and for the exclusive use of Unit 2;

(c) All other common elements of the Project which are rationally related to less than all of said units shall be limited to the use of such units to which their use is rationally related;

All costs of every kind pertaining to the aforesaid limited common elements, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne solely by the owner of the unit to which said limited common elements are appurtenant.

END OF EXHIBIT C

EXHIBIT "D"

DESCRIPTION OF ENCUMBRANCES AGAINST TITLE

1. For information regarding real property taxes due and owing, reference is made to the County of Hawaii Director of Finance.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Reservation as contained in:

**DEED**

Dated: September 12, 1975  
Document No. 735404  
to which reference is hereby made

4. **MORTGAGE**

Mortgagor: Kahua Sea View, Inc., a Hawaii corporation  
Mortgagee: T. G. Exchange, Inc., a Hawaii corporation  
Dated: September 16, 1991  
Recorded: November 18, 1991  
Document No. 1865613  
To Secure: \$600,000.00  
and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to (also affects other property)

The foregoing Mortgage was assigned by the following:

**ASSIGNMENT OF NOTE AND MORTGAGE**

Assignor: T. G. Exchange, Inc., a Hawaii corporation  
Assignee: Royce Noboru Hirayama and Charlene Masae Hirayama, husband and wife, no tenancy shown  
Dated: August 13, 1992  
Recorded: August 25, 1992  
Document No. 1947604

5. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in:

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
KAHUA SEA VIEW SUBDIVISION**

Dated: October 5, 1992

Document No. 1960829

to which reference is hereby made, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c) (also affects other property)

The foregoing Declaration was amended by the following:

<u>Dated</u>	<u>Document No.</u>
--------------	---------------------

September 19, 1995	2271856
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6. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF "KAHUA SEA  
VIEW LOT 45 B CONDOMINIUM PROJECT"**

Dated: November 2, 1995

Document No. 2273750

Condominium Map No. 1116, to which reference is hereby made.

**NOTE:** The Units described in the foregoing Declaration are as follows:

Unit 1 - as to an undivided 50% interest

Unit 2 - as to an undivided 50% interest

7. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF "KAHUA SEA VIEW LOT 45 B CONDOMINIUM PROJECT"

Dated: November 2, 1995  
Document No. 2273751

8. Condition of County of Hawaii Ordinance No. 90-139 Section 2, Paragraph C, to-wit:

(c) it shall be demonstrated to the satisfaction of the Planning Director that substantial agricultural activity is being conducted on the lots to be rezoned within three years from the date of final subdivision approval [June 22, 1992]. for the purpose of this condition, "agriculture" shall be defined as the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber; game propagation; raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use. Agricultural activity will be considered substantial: (1) If it provides a major source of income to the person(s) who resides on the property; or (2) If the property is dedicated for Agriculture uses in accordance with applicable Department of Finance, Real Property Tax Division's procedures.

## SUMMARY OF SALES CONTRACT

It is Seller's intention to use the most recent edition of the Hawaii Association of Realtor's form of Deposit Receipt Offer and Acceptance (DROA). Among other provisions, the contract will contain the following:

1. Evidence of title: Seller shall furnish Buyer evidence of Seller's marketable title to the interest which is to be conveyed to Buyer. If Seller fails to deliver title as herein provided Buyer has the option to terminate this agreement and have any of Buyer's deposits returned to Buyer. The foregoing shall not exclude any other remedies available to Buyer. Buyer will receive an Owner's standard coverage policy of title insurance at closing:

(a) Seller shall pay 60% of the premium to be charged for an Owner's standard coverage policy of title insurance to be issued to the buyer in the amount of the sales price, and (b) Buyer shall pay 40% of such premium and any additional costs relating to the issuance of any extended coverage policy, including a Lender's policy.

2. Default: It is expressly understood and agreed: First: In the event Buyer fails to pay the balance of the purchase price or complete the purchase as herein provided, Seller may (a) bring an action for damages for breach of contract; (b) retain the initial deposit and all additional deposits provided for herein, as liquidated damages, and (c) Buyer shall be responsible for any costs incurred in accordance with this contract. Second: In the event Seller fails to perform his obligations as herein provided, Buyer not being in default, Buyer may (a) bring an action against Seller for damages for breach of contract; (b) file and maintain an action against Seller for specific performance of the contract and (c) Seller shall be responsible for any cost incurred in accordance with this contract. The foregoing shall not exclude any other remedies available to either Seller or Buyer in the event of default and/or a lawsuit arising out of this contract (including a suit by a REALTOR for commission), the prevailing party shall be entitled to recover all costs incurred including reasonable attorney's fees. All expenses incurred by escrow shall be deducted from deposited funds prior to any disbursement of the prevailing party.

3. Closing: For the purpose of this contract "closing" shall be the date upon which all appropriate documents are recorded. Buyer and Seller agree to execute appropriate or customary documents when requested to do so.

4. Time is of the Essence: If either Buyer or Seller for reasons beyond his control cannot perform his obligation to purchase or sell the property by the closing date, then such party by giving escrow written notice prior to the closing date called for in this contract with copies to all parties to this contract, can extend closing for no longer than 30 calendar days to allow performance. Thereafter time is of the essence and the default provisions of Standard Term H apply. Any further extension must then be agreed to in writing by both parties. There is no automatic right to extend. This provision relates only to the extension of the closing date.

## EXHIBIT F

### SUMMARY OF CONDOMINIUM ESCROW AGREEMENT

1. Sales Contracts Deposited in Escrow. As and when Developer shall enter into a sales contract for the sale of a unit, Developer shall deliver an executed copy of such sales contract to Escrow.

2. Receipt of Funds by Escrow. Developer shall pay over to Escrow any monies received by Developer from purchaser under sales contracts covering units in the Project, including all disbursements made on loan commitments, if any, from lending institutions to individual purchasers.

3. Conditions to be Met Prior to Disbursement. No disbursements of funds held in escrow shall be made unless and until the following conditions have been fulfilled:

(a) The Real Estate Commission shall have issued a Final Report on the Project; provided, however, to the extent any sales contracts are entered into and a purchaser's funds are obtained prior to the issuance of a Final Public Report of the Real Estate Commission, no disbursements shall be made from such purchaser's funds until (i) such Final Public Report shall have been issued; and (ii) the purchaser shall have been given a copy of said Final Report and shall have acknowledged receipt of same or shall have been deemed to have acknowledged receipt of same and Developer's attorney shall have delivered a written opinion to Escrow that the purchaser's sales contract has become effective; and

(b) Developer or Developer's attorney shall have delivered a written opinion to Escrow stating that the requirements of Sections 514A-62 and 514A-63, Hawaii Revised Statutes, as amended, have been met; and, if the project is a conversion project, that requirements of Section 521-38, Hawaii Revised Statutes, as amended, have been complied with; and

(c) Developer shall have given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract; and

(d) Developer shall have delivered to Escrow a certificate from Developer's architect stating that the project is in compliance with the Federal Fair Housing Amendments Act of 1988.

4. Return of Funds and Documents. A purchaser shall be entitled to a return of funds and Escrow shall pay such funds to such purchaser, without interest, if any one of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow in writing to return to the purchaser the funds of the purchaser held hereunder by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Final Report, the purchaser has exercised such purchaser's right to cancel the contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or

(d) The purchaser has exercised the purchaser's right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

In any of the foregoing events, Escrow shall, upon the occurrence of the event described in (a) or (b) above or upon receipt of a written request for a refund from the purchaser upon the occurrence of an event described in (c) or (d) above, unless the purchaser has waived or has been deemed to have waived the right to a refund, pay said funds to said purchaser (less a cancellation fee of Escrow of not less than \$25.00 per unit or a cancellation fee commensurate with the work done by Escrow prior to such cancellation, whichever fee is greater, up to a maximum of \$250.00) and thereupon said sales contract and any conveyance document theretofore delivered to Escrow shall be returned to Developer and shall be deemed no longer held hereunder; provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to receipt by Developer of written notice from Escrow of its intent to make such refund.

(e) Notwithstanding any other provision in this Agreement to the contrary, Escrow further agrees to make refunds to purchasers, in accordance with Part VI, Chapter 514A, Hawaii Revised Statutes, out of the funds then on deposit with Escrow, if Developer and the purchaser shall so request in writing and any one of the following events has occurred:

- (i) No sales contract has been offered to the purchaser who has been placed on Developer's reservation list of owner-occupant applicants; or
- (ii) The purchaser has been unable to obtain adequate financing, or a commitment for adequate financing, for the purchaser's reserved unit within thirty (30) calendar days following the end of the ten (10) calendar day period during which Developer is limited to selling to owner-occupants; or
- (iii) The purchaser desires to cancel the contract on account of hardship circumstances such as those set forth in Section 514A-104(1), Hawaii

Revised Statutes; or

- (iv) The purchaser indicates an intent not to become an owner-occupant of such unit.

Except for cancellations under subparagraph (i) above, Escrow may deduct from any such refund made to a purchaser a cancellation fee as set forth above.

5. Purchaser's Default. If the purchaser fails to make any payment to Escrow which is required pursuant to the sales contract on or before the due date thereof or if the purchaser fails to perform in any matter that is being handled by Escrow, Escrow shall promptly notify Developer of any such failure on the part of the purchaser. If Developer subsequently certifies in writing to Escrow that Owner has terminated the sales contract in accordance with the terms thereof and provides to Escrow copies of such notices of termination sent to the purchaser, Escrow shall thereafter treat all funds of the purchaser paid on account of such purchaser's sales contract as funds of Developer and not as funds of the purchaser. Upon written request by Developer, Escrow shall pay such sums to Developer, less any escrow cancellation fee, shall return to Developer any documents that had been theretofore delivered to Escrow by Developer and shall hold all other documents theretofore delivered to Escrow in connection with the purchase of the unit for the statutory period; and, Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

END OF EXHIBIT F

**Exhibit G  
DISCLOSURE ABSTRACT  
KAHUA SEA VIEW LOT 45 B CONDOMINIUM PROJECT**

**Pursuant to the Section 514A-61, Hawaii Revised Statutes  
Condominium Property Act**

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**DEVELOPER/PROJECT MANAGERS**

Dale W. McGowan, President, Kahua Sea View, Inc., a Hawaii corporation, 75-5995 Kuakini Highway, Ste 123, Kailua-Kona, Hawaii 96740.

**ESTIMATED MAINTENANCE FEES/COSTS PER CONDOMINIUM UNIT**

**MAINTENANCE FEES:** The regular maintenance and repair of each condominium unit is the sole responsibility of each respective unit owner. There are no common services and/or expenses which will require regular monthly assessments.

**WATER SERVICE:** The Project consists of one "Lot" as the same is defined by the Zoning Code of the County of Hawaii, as amended, and, as such, the entire Project is allotted 600 gallons of water per day by the Department of Water Supply via one 5/8" water meter which is a common element of the Project. The Department of Water Supply meter installed on Unit "1" will indicate the amount of water used by the Project. A private sub-meter installed on Unit "2" will determine the usage of unit "2" and, by deduction, the usage of Unit "1". The unit owners will pay the Department of Water Supply their proportionate amount of water bills based upon the usage indicated by these water meters.

**INDIVIDUAL INSURANCE:** Section 514A-86, Hawaii Revised Statutes, requires that fire insurance be purchased to cover the improvements portion of the Project. Developer anticipates that the Association will elect to permit unit owners to obtain separate policies. In such case, insurance premiums will be the for each individual responsibility of each owner unit rather than common expenses of the Project.

**WARRANTIES**

"Unit 1" and "Unit 2" are one room, single story, wood frame and shade cloth greenhouse completed in 1995.

Potential buyers of said Units are advised that they are being sold "AS IS" without any building warranties.

USE OF CONDOMINIUM UNITS

The units of the Project and their appurtenant land areas shall be occupied and used only by the respective owners thereof, their families, domestic servants, personal guests, tenants, and employees, and only for those purposes permitted by applicable zoning ordinances. The unit owners shall have the absolute right to lease or rent their units subject to the limitations, restrictions, covenants and conditions contained in the Declaration or in the By-Laws of the Association of Condominium Owners. Subject also to said Declaration and By-Laws, maximum allowance and freedom shall be given so as to accommodate the individual unit owner's artistic, creative and life-style requirements.

STRUCTURAL COMPONENTS AND MECHANICAL & ELECTRICAL INSTALLATIONS

It is the developer's opinion that all structural components and mechanical and electrical installations material to the use and enjoyment of the individual condominium units appear to be in sound and satisfactory condition. HOWEVER, NO REPRESENTATIONS OF ANY KIND ARE MADE AS TO THE EXPECTED USEFUL LIFE, IF ANY, OF THE STRUCTURAL COMPONENTS AND MECHANICAL AND ELECTRICAL INSTALLATIONS MATERIAL TO THE USE AND ENJOYMENT OF THE CONDOMINIUM UNITS.

CODE VIOLATIONS

To the best of the knowledge, information and belief of the undersigned, there are no outstanding notices of uncured violations of the building code or other municipal regulations of the County of Hawaii.

KAHUA SEA VIEW, INC., a Hawaii corporation

By Dale W. McGowan  
President

Dale W. McGowan

1-16-96  
Date

EXHIBIT H  
SUMMARY OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR KAHUA SEA VIEW SUBDIVISION

(NOTE: This is only a Summary of some of the more important provisions that affect a purchaser's building and use of the property. Read the entire Declaration for details).

Article I - Definitions

1.3 Excavation. "Excavation" means any disturbance of the natural surface of the land which results in the removal or disturbing of earth or rock for a depth of more than eighteen (18) inches, except for temporary activity solely for the purpose of planting.

1.5 Fill. "Fill" means any addition of rock or earth materials at the surface of the land which increase the natural surface elevation of the land existing at the time of the making and filing of this Declaration by more than six (6) inches.

1.7 Improvement. "Improvement" means all buildings, outbuildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, windbreaks, poles, mailboxes, exterior light fixtures, signs, towers, or any other structure or fixture of any other type or kind on or within the real Property or a Lot.

1.17 Visible from Neighboring Property. "Visible From Adjoining Neighboring Property" means, with respect to any given object or activity, that such object or activity is or would be in any line of sight originating from any point six (6) feet above any adjoining Property.

1.18 Service Yard. "Service Yard" means any fenced area normally attached to a residence or garage for the purpose of the storage and the screening of equipment, materials, clotheslines, tanks, and other storable items.

Article III - Restrictive Covenants

3.1 Use of Lot. Each Lot and the Improvements thereon shall be used exclusively for agricultural and/or single family residential purposes, subject to the terms and conditions of section 3.11 Animals, "Agriculture Use".

3.11 Animals. "Agricultural Use" includes the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forest products and timber, game propagation, raising of livestock including but limited to fish or other animals or aquatic life, that are propagated for economic or personal use. Nothing in this Section 3.1 shall be deemed to prevent:

(a) Any artist, artisan or craftsman from pursuing his or her artistic calling upon a Lot provided such person has no employees working on such Lot, and does not advertise any product

or work of art for sale to the public upon or from such Lot.

(b) Ohana Dwellings shall be permitted.

(c) The leasing of any Property or Lot by the Owner may include a "Transient Vacation Rental" or a "Bed and Breakfast Rental".

(d) The Subdividing of any three (3) acre Lot within this Subdivision into no more than two (2) separate Parcels.

(e) Any three (3) acre Lot may be submitted to a Condominium Property Regime (C.P.R.).

(f) Improvements existing, Lot 45-A. This dwelling shall be brought up to Subdivision standards within two (2) years or the sale of Lot 45-a by the Declarant.

(g) The Declarant from maintaining a real estate office or model home.

3.2 Maintenance of Lot. Each Lot, whether occupied or unoccupied, and any and all improvements located thereon shall be maintained by the Owner thereof in good, clean and attractive condition and repair.

3.3 Signs. No sign or billboard except for:

(a) Any sign required pursuant to any Government regulation;

(b) Residential identification signs;

(c) During the time of construction of any residence or other Improvement one job identification sign having a maximum area of six (6) square feet;

(d) One (1) "For Sale" or "For Rent" sign having a maximum face area of six (6) square feet.

(e) Signs used by Declarant.

3.4 Repair and Storage of Vehicles. No automobile, truck, trailer, mobile home or heavy equipment shall be kept on any Lot (except construction equipment used exclusively in connection with the construction of any Improvements permitted by this Declaration) unless the same is within a garage, accessory building, service yard or landscaped area so as not to be visible from any adjoining Lot or street.

3.5 Construction of Accessory Structures. No accessory structure or building shall be constructed, placed or maintained upon any Lot prior to the construction of the main structure(s) of the residence.

3.8 Towers, Antennas, Aerials, Satellite Dishes and Other Facilities. No towers, antennas, aerials or facilities for reception or transmission of radio or television broadcasts or other means of communications or transmission through the air shall be allowed on any Lot unless the same is no higher in elevation than the highest point of the residence or accessory building they are attached to or nearest to and provided they are placed upon any Lot so as to be screened on all sides by other Improvements or landscaping from view of and not visible from any neighboring Property or Lot. Solar panels installed on roofs shall be allowed on the main residence(s) provided that no tanks, pumps or other related equipment shall be installed on the roof(s) of the main residence(s) and that any excessive piping be screened from view from any Lot, residence or adjacent road.

3.9 Visibility of Clotheslines, Tanks and Materials. Clotheslines, fuel storage tanks and other materials such as lumber, pipes and construction material shall be allowed on any Lot provided that all such clotheslines, storage tanks and other material be enclosed in a service yard, Article I, 1.18, so as not to be visible from any adjacent street or neighboring property or residence.

3.10 Trailer, Outbuildings and Temporary Structures. No temporary buildings or structures, outhouse sheds, trailers or tents (except for Declarant's sales office or other temporary structures necessary in connection with any permitted construction) shall be erected, placed or permitted to remain on any Lot or Common Area. No garage, shed, trailer, tent or temporary building or partially completed building shall be used for residential human habitation.

3.11 Animals. No pigs or poultry shall be raised, bred or kept on any Lot. Other animals may be kept on any Lot as long as the animals do not become an annoyance or nuisance to the Owners and/or occupants of other Lots. For purposes of this Declaration, the emission of noise or other generation of odors by any animal kept on a Lot which noise or odor is readily detectable on any other Lot shall be deemed to be a prohibited annoyance or nuisance. (Fencing for Small Animals, see Article IV, 4.7(a)).

3.13 Destroyed Improvements. No Improvement which has been partially damaged or is totally destroyed shall be allowed to remain on any Lot in such condition for more than ninety (90) days from the date of such damage or destruction.

3.14 Removal of Trees, Walls or Fences. No trees, walls or fencing erected by Declarant may be removed without the consent of the Owner's Association.

3.15 Hunting, Firearms. Neither hunting nor the discharge of any firearm shall be permitted on any Lot.

3.16 Common Areas. The exclusive use of the Common Areas

shall be reserved equally to all Owners.

The Owner's Association shall provide for maintaining and keeping in good condition the Common Areas.

The Common Areas include:

(1) Easement "866" for access and utility purposes

(2) Easement "867" for planting screen purposes

(3) All that property which is part of Lot 45-A and is north of the entry road and cul de sac and is designed to contain a fenced entry

(4) All that property between each Lot's fence line and the Subdivision property boundary lines, including the Flag Lots' paved roads and shoulders, (45-C, 45-D, 45-E and 45-F).

3.17 No Water Cooled Equipment. All machinery, motors, compressors, etc., needing evaporation for their operation shall be aired cooled (including air conditioning equipment).

ARTICLE IV - CONSTRUCTION, DESIGN,  
PERMITTED IMPROVEMENTS AND REQUIREMENTS

4.2 Permitted Improvements. Single family dwellings including Ohana Dwellings, private garages, structures designed for the protection of animals, such other Improvements as are necessary or customarily incident to single family dwellings or to the conduct of permitted agricultural activity shall be allowed on any Lot.

4.3 Underground Utilities. All utilities including but no limited to electric, telephone, water, cable television lines, conduits and pipes must be placed underground. Tanks for fuel, water, e.g., shall be buried below ground or completely screened.

4.5 Setbacks. No residence, accessory building or other Improvement other than allowed driveways, sidewalks or other access ways, underground utility lines, fences, mailboxes, signs and landscaping plants, trees, or shrubs shall be constructed with forty (40) feet from the boundary lines of each Lot.

4.6 Building and Landscape Height. The maximum building height for any building, structure or other Improvement including landscaping shall not exceed the height of thirty-five (35) feet, landscaping meaning trees, shrub, or bush.

a) Fences and Walls. All fences, rock walls, garden or landscaping walls and not part of the building construction shall not exceed six (6) feet in height with the exception of the service

yards, see Article I, 1.8. Concrete block walls are specifically prohibited except as used for interior construction or if used for exterior wall, they will be stuccoed or permanently finished so that the block line definition will not show.

4.8 Garage Requirement. Each resident, including any ohana dwelling, shall have a garage of adequate size to accommodate at least one (1) automobile or truck. Garage shall have a door and/or other enclosure such that the entire interior of the garage is enclosed and not visible from the street or neighboring Lots. Garage need not be attached to the main residence.

4.9 Number of Residences Permitted. Not more than two (2) residences shall be constructed on any Lot. Each residence shall be a single family dwelling.

4.10 Parking Requirements. Each single family dwelling constructed on a Lot shall have, in addition to the one (1) car garage, one (1) hard surfaced (concrete, asphalt or equivalent) parking space.

4.11 Site Grading. Grading shall be kept to a minimum and shall be blended into the natural contours of the Lot. Cuts or fills in excess of three (3) feet must be approved by the Developer or the Owner's Association before grading.

4.15 Completion of Construction. Except for Improvements such as landscaping, every Improvement constructed on a Lot, once construction is begun, shall be completed within twelve (12) months.

a) Owner's Association Approval. Any construction or reconstruction or alteration of any part of the exterior of any Improvement on any Lot is prohibited without the approval by the Owners Association.

4.18 Roofs. Roofs shall be wood shake, ceramic, or concrete, tile, slate, high relief fiberglass reinforced composition shingle. Corrugated metal roofs are specifically prohibited. Prefabricated metal J-rib roofing by Jorgensen steel or equal may be approved by the Owners Association.

4.19 Roads and Driveways. All roads and driveways shall be constructed of asphalt or concrete. Connections from each Lot to either entry road and cul-de-sac or flag (pole) road shall be done with neat saw cut in a workmanlike manner.

#### Article V - Kahua Sea View Owners Association

5.2 Membership. Each Owner of any Lot within the Subdivision shall be a member of the Owners Association

5.3 Voting Rights. Each owner of one of the six (6) Lots of

the Subdivision shall be entitled to two (2) votes as follows: 45-A (2 votes), 45-B (2 votes), 45-C (2 votes), 45-D (2 votes), 45-E (2 votes), and 45-F (2 votes) for a total of twelve votes.

a) In the event that an Ohana Dwelling of second dwelling is constructed on any of the Lots, provided they are properly permitted, then the Ohana Dwelling of second dwelling shall be entitled to one (1) of the two (2) votes allowed for that Lot. Satisfactory written proof of ownership shall be required.

a) The Owners Association shall provide for the maintenance of the Common Areas.

5.6 Funds and Assessments. An operating fund shall be set up to provide for implementation of the preservation and protection of the Declaration of Covenants, Conditions and Restrictions for Kahua Sea View Subdivision.

6) Each Lot from 45-A through 45-F shall pay an equal pro rata one-sixth (1/6) share of any assessments and fees. In the event that any of the six (6) Lots are in joint ownership or have been subdivided or submitted to a Condominium Property Regime or lease-hold, then each and every such Owner or Lessor shall be responsible for the entire pro rata one-sixth (1/6) share of the total assessment fee.

Payments of assessments shall be made monthly by the tenth (10th) day of each month beginning on the dates set by the Board. Delinquent payments shall be charged interest and penalties set up by the Board.

b) Special Assessments. The Board shall levy a special assessment against any Owner who, as a direct result of whose special acts of failure or refusal to act or to otherwise comply with this Declaration, has caused monies to be expended by the Board. Such assessments shall be in the amount so expended and shall be due and payable with interest. Monies so expended shall include all reasonable costs and fees (including attorneys' fees) incurred by the Owners Association.

## Article VI - Miscellaneous Provisions

6.1 Enforcement of Declaration. Each provision of this Declaration shall be enforceable by the Declarant, by the Owner's Association or by any Owner by a proceeding for a mandatory injunction of by a suit or action to recover damages. If any court proceedings are instituted in connection with the right of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party it's costs and expenses therewith including reasonable attorneys' fees and court costs.

6.3 Duration of Declaration. This Declaration and the Covenants, Conditions and Restrictions contained herein, as amended from time to time, shall run with the land and shall be and remain

in full force and effect for a term of twenty (20) years from the date of recordation of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, in writing signed by not less than seventy-five percent (75%) of the Owners of Lots within the Kahua Sea View Subdivision (based on two (2) votes for each Lot), has been recorded at least one (1) year prior or the end of any such period, agreeing to change or terminate this Declaration, Amendments or said Covenants, Conditions and Restrictions in whole or in part.

6.4 Amendments. Any provision in this Declaration may be amended or changed and additional provisions may be added by the recording of a written document or documents specifying the amendment or change, signed by Owners who hold not less than seventy-five percent (75%), in this case nine (9) votes, of the voting power of the Owner's Association and by Declarant or its assigns.

END OF EXHIBIT H