

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer GERALD TOSHIO KODAMA, Trustee

Address 1301 Moonui Street, Honolulu, Hawaii 96817

Project Name(\*): WAIAKEA PLACE

Address 944 Ainaola Drive and 23 Waiakea Place, Hilo, Hawaii

Registration No. 4023 (Conversion)

Effective date: October 12, 1998

Expiration date: November 12, 1999

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 governmental agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

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

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

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

Type of Report:

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

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

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

And

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

(\*) Exactly as named in the Declaration

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report                       Not Required - disclosure 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:**

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.

**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. The 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 of 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 spirit of cooperation.

**I. PERSONS CONNECTED WITH THE PROJECT**

Developer: GERALD TOSHIO KODAMA, Trustee Phone: (808) 841-5851  
1301 Moonui Street  
Business Address (Business)  
Honolulu, Hawaii 96819

Real Estate Broker: Not Applicable (See page 20) Phone: \_\_\_\_\_  
Name (Business)  
Business Address

Escrow: Island Title Corporation Phone: (808) 926-9717  
Name (Business)  
1132 Bishop Street, Suite 400  
Business Address  
Honolulu, Hawaii 96813

General Contractor: Not Applicable Phone: \_\_\_\_\_  
Name (Business)  
Business Address

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

Attorney for Developer: MICHAEL H. SAKAI Phone: (808) 531-4171  
Name (Business)  
201 Merchant Street, Suite 902  
Business Address  
Honolulu, Hawaii 96813-2929

**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. 98-049997  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyances, Condo Map No. 2716  
 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 Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit 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 manners which affect how the condominium project will be governed.

The Bylaws for this condominium re:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 98-049998  
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 percentage 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-Automatically              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-Automatically              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 period 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 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: 944 Ainaola Drive and 23 Waiakea Place, Hilo, Hawaii Tax Map Key (TMK): (3) 2-4-37:5

Address  TMK is expected to change because a new TMK No. and HPR number will probably be assigned.

Land Area: 24,079  square feet  acre(s)  Zoning: RS-10

Fee Owner: GERALD TOSHIO KODAMA, Trustee  
 Name  
1301 Moonui Street  
 Address  
Honolulu, Hawaii 96817

C. Buildings and Other Improvements:

1.  New Building(s)     Conversion of Existing Building(s)     Both New Building(s) and Conversion  
 2. Number of Buildings: five Floors Per Building Unit 1 - 2/story; Unit 2 - 1/story

Exhibit A contains further explanations.

3. Principal Construction Material:

Concrete             Hollow Tile             Wood

Other Glass and other allied materials

4. Permitted Uses by Zoning:

	No of <u>Apts.</u>	Use Permitted <u>By Zoning</u>	No. of <u>Apts.</u>	Use Determined <u>By Zoning</u>
<input checked="" type="checkbox"/> Residential	<u>2</u>	<input checked="" 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 type="checkbox"/> Agricultural	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	___	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Recreational	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	___	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other: _____	___	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Yes                     No

5. Special Use Restrictions:

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

Pets: Recommended number of domestic animals per apartment is 2. However, the recommended number of pets can be exceeded as long as the remaining condominium members do not have any objections. The party with the number of pets exceeding the recommended number must reduce the number to two if other condominium members complaint of noise, objectional odors, health risks, or unwanted trespassing due to the offending parties unusually large number of pets.

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

Other: Declaration of Restrictive Covenants for Waiakea Place Subdivision dated April 10, 1991

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators:  0  Stairways:  0  Trash Chutes:  0

<u>Unit Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Carport (sf)</u>	<u>Net Porch/Gazebo</u>
<u>Unit 1</u>	<u> 1 </u>	<u> 6/2 </u>	<u> 1,864 </u>	<u> 400 </u>	<u> 192/196 </u>
<u>Unit 2</u>	<u> 1 </u>	<u> 3/2 </u>	<u> 1,293 </u>	<u> 480 (detached garage and storage) </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, post entries and cesspools, if any.

Permitted Alterations to Apartments:

Each unit owner may alter the structure and any other improvements located within their unit's limited common land area as provided in paragraphs 7.0 and 15.0 of the Declaration of Condominium Property Regime.

7. Parking Stalls:

Total Parking Stalls: 4

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>TOTAL</u>
Assigned (for each unit)	<u>2</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>4</u>
Guest Unassigned	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Other:	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Total Covered & Open	<u>4</u>	<u>      </u>	<u>0</u>	<u>      </u>	<u>0</u>	<u>      </u>	<u>4</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.

Commercial parking garage permitted in condominium project.

Exhibit A contain additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational facilities

Swimming pool

Storage Area

Recreation Area

Laundry Area

Tennis Court

Trash Chute/Enclosure

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. Conditions and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

(For conversions of residential apartments in existence for at least five years):

The residential structures identified as Unit 1 in fair condition and Unit 2 in good condition. The useful remaining life of the residential structures is estimated to be approximately 30 years for Unit 1 and 60 years for Unit 2.

11. Conformance to Present Zoning Code

- a.  No variances to zoning code have been granted.  
 Variance(s) to zoning code was/were granted as follows:

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

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

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

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

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and 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: 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:

Unit 1	50%
Unit 2	<u>50%</u>
	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 August 14, 1998 and issued by Island 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 specific 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>
None	

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 warranties, express or implied.

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

Unit 1 was constructed in 1952, Unit 2 was constructed in 1990.

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):



## 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 D contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated April 9, 1998

Exhibit E contains a summary of the pertinent provisions of the escrow agreement.

Other: Declaration of Restrictive Covenants dated April 10, 1991

Exhibit F contains a summary of the pertinent provisions of the Declaration of Restrictive Covenants

### 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 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 a 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 Report 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, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - 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 for Waiakea Place Subdivision dated April 10, 1991

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, area 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. 4023 filed with the Real Estate Commission on September 9, 1998.

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

yellow paper stock     white paper stock     pink paper stock

C. Additional Information Not Covered Above

**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. The cost of the common driveway will be a common expense, however it is anticipated that a minimum amount of maintenance will be needed.

Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners 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. Developer estimates such annual premium expense to be about \$1,400.00 per year per unit. This estimate was prepared in accordance with generally accepted accounting principles. Developer discloses that no reserve study was done in accordance with Section 514A-83.6, Hawaii Revised Statutes, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

**DECLARATION OF RESTRICTIVE COVENANTS.** This project is subject to a Declaration of Restrictive Covenants dated April 10, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-056934. See Exhibit "F" for further information.

**DISCLOSURE RE: SELECTION OF REAL ESTATE BROKER**

This public report shall not bind a purchaser to the sale of any apartment unit until (1) the Developers first submits to the Real Estate Commission a duly executed disclosure abstract identifying the designated sales agent, and a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, and (2) gives a copy of said disclosure abstract to the purchaser together with a copy of the Public Report.

If the Developer(s), as the owners, choose to represent themselves in the sale of an apartment, said abstract need not be given to the purchaser, as all necessary disclosure are covered in this report.

For further information regarding the foregoing, your attention is directed to the Department of Land Utilization and the Building Department.



EXHIBIT "A"

Description of Apartments

The Project consists of the following two units:

a. Unit 1 (944 Ainaola). Unit 1 consists of one freehold estate consisting of a two-story residential structure with a detached two car carport and a detached gazebo. This unit consists of a family room, two bedrooms, a laundry room, and 1 bathroom on the first floor. The second floor consists of three bedrooms, one bathroom, kitchen and living room. There is an interior and exterior staircase. The net living area of this unit is approximately 1,864 square feet, the covered stairway contains approximately 54 square feet, the carport contains approximately 400 square feet, the gazebo contains approximately 196 square feet.

b. Unit 2 (23 Waiakea). Unit 2 consists of one freehold estate consisting of a one-story residential structure with two-car detached garage with storage. This unit consists of three bedrooms, 2 bathrooms, dining/family room, kitchen and living room. The net living area of this unit is approximately 1,293 square feet, the detached garage with storage contains approximately 576 square feet.

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 (including drainage from the roof), hot and cold water and like utilities which services more than one unit and any easements for such utility services, including utility poles and wires.
- c. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project, including any common sewer facilities.

Limited Common Elements

The limited common elements for the units in the Project are as follows:

- a. Unit 1. The land area around and under Unit 1 which is delineated in the condominium map as Limited Common Element Unit 1 ("LCEU") is a limited common element of Unit 1 and is for the exclusive use of Unit 1 and consists of approximately 12,568 square feet.
- a. Unit 2. The land area around and under Unit 2 which is delineated in the condominium map as Limited Common Element Unit 2 ("LCEU") is a limited common element of Unit 2 and is for the exclusive use of Unit 2 and consists of approximately 11,511 square feet.

EXHIBIT "C"

Encumbrances Against Title

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Deed dated May 29, 1952, recorded in the Bureau of Conveyances, State of Hawaii, in Book 2593, Page 63.
3. Affidavit dated July 9, 1990, recorded in said Bureau as Document No. 90-103211, re: Affiant is the owner of subdivision approved on April 10, 1990.
4. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Declaration, dated April 10, 1991, recorded in said Bureau, as Document No. 91-056934.
5. Easement dated April 19, 1990, in favor of Hawaiian Electric Company, Inc., a Hawaii corporation and GTE Hawaiian Telephone Company, Incorporated, a Hawaii corporation, recorded in said Bureau, as Document No. 90-079245.
6. An easement in favor of Water Commission of the County of Hawaii, dated May 8, 1990, recorded in said Bureau, as Document No. 90-090659, over Easements "R-1" and "E-1".
7. Flood Inundation as shown on survey map prepared by Clyde K. Matsunaga, Registered Professional Land Surveyor with Imata and Associates, as mentioned in Deed dated August 25, 1995, recorded in said Bureau, as Document No. 95-111676.
8. Easement "R-1" (7.00 feet wide), shown on survey map prepared by Clyde K. Matsunaga, Registered Professional Land Surveyor with Imata and Associates, Inc., dated February 12, 1990, as set forth in Deed dated August 25, 1995, recorded in said Bureau, as Document No. 95-111676, for road and utility purposes.
9. Easement "E-1" (10.00 feet wide), shown on survey map prepared by Clyde K. Matsunaga, Registered Professional Land Surveyor with Imata and Associates, Inc., dated February 12, 1990, as set forth in Deed dated August 25, 1995, recorded in said Bureau, as Document No. 95-111676, for road and utility purposes.
10. Condominium Map No. 2716, filed in the Bureau of Conveyances, State of Hawaii.
11. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the

Declaration of Condominium Property Regime dated January 30, 1998, recorded in said Bureau, as Document No. 98-049997.

12. Terms and provisions contained in the By-Laws of the Association of Unit Owners of Waiakea Place dated January 30, 1998, recorded in said Bureau, as Document No. 98-049998.

13. Any and all easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, as amended, and/or in said Apartment Deed, and/or as delineated on said Condominium Map.

14. Terms and provisions of that certain unrecorded Gerald Toshio Kodama Self Trusteed Trust dated February 17, 1993.

15. For real property taxes due and owing your attention is directed to the Director of Finance, County of Hawaii.

EXHIBIT "D"

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 or 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 "E"

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 ISLAND TITLE CORPORATION. Under the Escrow Agreement dated April 9, 1998, 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 "F"

Summary of Declaration of Restrictive Covenants

This Project is located on one of the lots of the Waiakea Place Subdivision. Lots in the subdivision are subject to a Declaration of Restrictive Covenants for Waiakea Place Subdivision dated April 10, 1991, recorded in the Bureau of Conveyances of the State of Hawaii, as Document No. 91-056934 (herein called the "Restrictive Covenants"). The "Declarant" is Gerald T. Kodama.

This is a summary of the types of restrictions applicable to the subdivision as a whole, and to the Lot upon which this Project is located. This summary is not meant to completely recite the actual provisions of the Protective Covenants, nor to cover every issue in which a purchaser might have an interest. A prospective purchaser is urged to obtain a full copy of the Restrictive Covenants from the Developer prior to entering into an agreement to purchase a unit in this Project. The Project is on Lot 1 in the Waiakea Place Subdivision.

Paragraph 1. Provides that the lots shall be used for residential purposes and contains various covenants concerning building standards.

Paragraph 2. Contains a reservation in favor of the Declarant to use the lots for sales, construction and maintenance purposes.

Paragraph 3. Restricts the use of secondhand lumber and other types of building materials.

Paragraph 4. Requires lots 1, 2, 3 and 4 to maintain a drainage flow patten as it flows to Roadway Lot A (this is Waiakea Place).

Paragraph 5. Contains a restriction on plants and trees taller than 12 feet.

Paragraph 6. Prohibits noxious or offensive activities and the keeping/storing of inoperable motor vehicles.

Paragraph 7. Prohibits temporary structures.

Paragraph 8. Prohibits animals except for domestic animals.

Paragraph 9. Prohibits use of the lots for dumping.

Paragraph 10. Requires all instruments affecting the lots to contain a paragraph relating to the Restrictive Covenants.

Paragraph 11. Provides for the proportionate share of expenses for maintenance of the Roadway Lot A (Waiakea Place). Lot 1 has a 1/9th fractional interest.

Paragraph 12. Provides that the covenants do not apply to the Roadway and contains a reservation in favor of the Declarant to further subdivide Lots 1, 4 and 7.

Paragraph 13. Provides that the Restrictive Covenants run with the land and that it is automatically extended every ten years unless a majority of owners agree to change it.

Paragraph 14. Contains provisions relating to enforcement of the Restrictive Covenants.

Paragraph 15. Provides that if one provision is not enforceable that will not affect any other provision of the Restrictive Covenants.

Paragraph 16. Provides that Declarant reserves the right to assign or convey its reserved rights.

Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director  
Russell Kokubun  
Deputy Director

County of Hawaii  
PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

September 19, 1997

Michael H. Sakai, Esq.  
902 City Financial Tower  
201 Merchant Street  
Honolulu, HI 96813-2929

Dear Mr. Sakai:

Condominium Conversion  
Tax Map Key: 2-4-37:5

In response to your letter, we have the following to offer:

1. The subject 24,079 square feet parcel is zoned Single-Family Residential - 10,000 square feet (RS-10) by the County and designated Urban by the State Land Use Commission. Based on the required minimum building site area of 10,000 square feet, two single family dwellings are permitted.
2. Our records indicate that building permits taken out for a gazebo, a dwelling (OD 88-19 approved on February 11, 1988) and an alteration to a dwelling were all closed as final inspections were recorded by the Department of Public Works, Building Division.
3. Variances were not required to achieve compliance with the zoning and building ordinances and codes.
4. Our records do not include any reference to non-conforming uses\structures on this property.

EXHIBIT "G"

Michael H. Sakai, Esq.  
Page 2  
September 19, 1997

Should you have questions, please do not hesitate to contact this office at 961-8288.

Sincerely,

  
for VIRGINIA GOLDSTEIN  
Planning Director

ETI:pak  
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## BUILDING DIVISION - DPW

COUNTY OF HAWAII - 25 AUPUNI STREET - HILO, HAWAII 96720  
HILO OFFICE (808) 961-8331

KONA OFFICE (808) 327-3520

October 9, 1998

Michael H. Sakai  
902 City Financial Tower  
201 Merchant Street  
Honolulu HI 96813-2929

SUBJECT: CONDOMINIUM REGISTRATION  
TMK: 2-4-37:5

This is to inform you that our records on file, relative to the status of the subject, discloses that:

- No \_\_\_\_\_ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violation(s) still outstanding:
  - Building     Electrical     Plumbing     Sign
- Others: \_\_\_\_\_

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact us.

  
WAYNE ONOMURA, Division Chief  
Building Division

KM:ju

uEXHIBIT "H"