

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer KIAWE PARTNERS
Address 3860 WAILEA ALANUI DRIVE, SUITE 101, WAILEA, MAUI, HI 96753

Project Name(\*) KIAWE TERRACE
Address 851 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII 96753

Registration No. 4038
(conversion)

Effective date: November 20, 1998
Expiration date: December 20, 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 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:

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

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

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

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

(\*) Exactly as named in the Declaration

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

Required and attached to this report

Not Required - Disclosures covered in this report.

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

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## **General Information On Condominiums**

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: KIAWE PARTNERS Phone: (808) 875-8550  
Name (Business)  
3860 WAILEA ALANUI RD., SUITE 101  
Business Address  
WAILEA, MAUI, HAWAII 96753

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

TSA KIHEI, INC., A HAWAII CORPORATION (GENERAL PARTNER)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker: MSY CORP. Phone: (808) 879-7774  
dba AINA MAUI PROPERTIES (Business)  
Name  
535 LIPOA PARKWAY, SUITE 152

Escrow: Business Address  
KIHEI, HI 96753  
ATTN: H. KENNETH SIRKUS  
ISLAND TITLE CORPORATION Phone: (808) 539-7525  
Name (Business)  
1132 BISHOP ST., SUITE 400  
Business Address  
HONOLULU, HI 96813

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

Condominium Managing Agent: HAWAIIANA MANAGEMENT Phone: (808) 593-9100  
COMPANY, LTD. (Business)  
Name  
711 KAPIOLANI BLVD., STE. 700  
Business Address  
HONOLULU, HI 96813

Attorney for Developer: DAVIS WRIGHT TREMAINE Phone: (808) 524-5726  
Name (Business)  
1001 BISHOP ST., 1360 PAUHI TOWER  
Business Address  
HONOLULU, HI 96813  
ATTN: MARK K. MUKAI, ESQ.

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

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The Condominium Map for this condominium project is:

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

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>Board of Directors</u>

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

- a. The nonexclusive right to grant, relocate, realign, or cancel easements within the Common Elements (other than the Limited Common Elements) for public utility purposes.
- b. The right to amend the Declaration to assign and reassign parking stalls.
- c. The right to conduct sales activities in the Project until all apartments are sold, including the right to display model apartments.

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 Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per:  Month  Year

For Sub-leaseholds:

- 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 Sub-leasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per:  Month  Year

Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: 851 SOUTH KIHEI ROAD Tax Map Key (TMK) (2) 3-9-001-011  
KIHEI, MAUI, HI 96753  
 Address  TMK is expected to change because N/A

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Land Area: 8.527  square feet  acre(s) Zoning: A-1

Fee Owner: KIAWE PARTNERS  
 Name  
3860 WAILEA ALANUI DRIVE, SUITE 101  
 Address  
WAILEA, HAWAII 96753

Lessor: N/A  
 Name  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 8 Floors Per Building 2

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

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other \_\_\_\_\_

4. Uses Permitted by Zoning:

	No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>		No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>
<input checked="" type="checkbox"/> Residential	<u>200</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: One dog (less than 25 pounds, adult weight) and two cats (neutered if female)  
Parakeets, canaries or fish are permitted.
- Number of Occupants: Not more than 3 residents for each one-bedroom.  
Not more than 5 residents for each two-bedroom.
- Other: Uses other than residential and timesharing are prohibited.
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: N/A Stairways: 0 Trash Chutes: N/A

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
Orchid	<u>32</u>	<u>1/1</u>	<u>528</u>	<u>66</u>	<u>Lanai</u>
Plumeria	<u>36</u>	<u>2/1</u>	<u>726</u>	<u>66</u>	<u>Lanai</u>
Hibiscus	<u>132</u>	<u>2/2</u>	<u>726</u>	<u>66</u>	<u>Lanai</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 200

\*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 Apartments consist of the spaces within the perimeter walls, floors, and ceilings of each of the two hundred (200) Apartments of the Project. The Apartments shall not be deemed to include: (i) the undecorated or unfinished surfaces of the perimeter (including party) walls or interior load bearing walls, (ii) the undecorated or unfinished surface of the floors and ceilings surrounding each Apartment, (iii) any pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve more than one Apartment, the same being deemed Common Elements as hereinafter provided, or (iv) any tinted windows including any film or other coating thereon. Each Apartment shall be deemed to include (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Apartment which are utilized for and serve only that Apartment, (iii) the inner decorated or finished surfaces of all walls, floors and ceilings, (iv) any doors or panels along the perimeters, (v) all cranks, frames and other window or sliding door hardware, and (vi) all appliances and fixtures installed therein and replacements thereof.

Permitted Alterations to Apartments: Each Owner of an Apartment shall have the right at any time and from time to time at his sole cost and expense, and without the necessity of the consent or joinder of any other Apartment Owner or the amendment of the Declaration, but with the prior approval of the Board and with the presentation of such plans and specifications and other materials as the Board may require, to make any of the following alterations solely within the Apartment: to install, maintain, remove, and rearrange partitions and other structures from time to time within such Apartments, and to paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the interior surfaces of the ceilings, floors and walls within any such Apartment and to finish, alter or substitute any air-conditioning, plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such Apartment by such Owner or the tenants or lessees thereof; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would jeopardize the soundness or safety of any part of the Project, reduce the value therefor, adversely affect any other Apartment, alter the uniform external appearance of the Project, or affect or impair any easement or right of any other Apartment Owner.

7. Parking Stalls:

Total Parking Stalls: 402

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>      </u>	<u>177</u>	<u>      </u>	<u>23</u>	<u>      </u>	<u>      </u>	<u>200</u>
Guest	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Unassigned	<u>      </u>	<u>24</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>24</u>
Extra for Purchase	<u>      </u>	<u>132</u>	<u>      </u>	<u>40</u>	<u>      </u>	<u>      </u>	<u>172</u>
Other: <u>Handicap</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>6</u>	<u>6</u>
Total Covered & Open:	<u>333</u>	<u>      </u>	<u>63</u>	<u>      </u>	<u>6</u>	<u>      </u>	<u>402</u>

Each apartment will have the exclusive use of at least 1 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

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

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool       Storage Area       Recreation Area
- Laundry Area       Tennis Court       Trash Chute/Enclosure(s)
- 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 \_\_\_\_\_ (Date)

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):

The buildings comprising the Project were constructed in 1991 and Apartments, common elements, and limited common elements in the Project are to be conveyed or otherwise transferred to purchasers on an "as is" basis. Accordingly, the Developer makes no warranties, express or implied, regarding the condition and expected useful life of structural components, mechanical, and electrical installations. It is incumbent upon each purchaser to conduct their own due diligence investigation as to the condition and expected useful life of structural components, mechanical, and electrical installations.

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>	_____	_____
Structures	<u>  x  </u>	_____	_____
Lot	<u>  x  </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 \_\_\_\_\_.

as follows:

- (a) The land in fee simple; (b) All unfinished, undecorated portions of all perimeter (including party) and interior load-bearing walls, the undercoated or unfinished surfaces of floors and ceilings, all structural components, foundations, floor slabs, columns, girders, beams, supports, ceilings and spaces between the ceiling and the floor slab or roof above, tinted windows including any film or other coating thereon, and roofs; (c) All yards, grounds planters, trellises and landscaping and all refuse facilities, if any, whether within or appurtenant to the Project; (d) All roads, parking areas, driveways, ramps, loading areas and walkways which are rationally of common use by Owners of more than one Apartment; (e) All ducts, sewer lines, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities over, under and across the Project which serve more than one Apartment for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution; (f) Elevators, open storage areas designated at the parking levels, hallways, corridors, interior and exterior stairs, stairways, the lobby, equipment rooms, roof equipment enclosures and other similar areas which are not part of an Apartment; (g) Two hundred (200) mailboxes; one for each dwelling; (h) Any central air conditioning equipment or apparatus, including equipment or apparatus within an Apartment including, without limitation the control unit console, thermostats, switches, vents and ducts; and (i) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

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

as follows:

- a. Each wall between two (2) adjoining apartments shall be a Limited Common Element appurtenant to such Apartments when (a) both such Apartments are owned by the same Apartment Owner and (b) the Board has approved the designation of a portion of such wall for access between the two (2) Apartments pursuant to the Declaration.
- b. One (1) or more parking stalls as designated in the Declaration and as shown on the Condominium Map. Upon compliance with Section 514A-14 Hawaii Revised Statutes, each Owner shall have the right from time to time to assign and reassign the Limited Common Interest in parking stalls to another Apartment in the Project.

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:

Orchid Type (1/1):	.3906
Plumeria Type (2/1):	.5208
Hibiscus Type (2/2):	.5208

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   A   describes the encumbrances against the title contained in the title report dated   October 6, 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 specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	Buyer will lose their interest if Developer Defaults or Lien is Foreclosed Prior to Conveyance. Buyer's deposit will be returned to Buyer if Developer defaults or lien is foreclosed.

F. Construction Warranties:

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

1. Building and Other Improvements:

The Apartments have been previously constructed and occupied. The Apartments are sold "as is" and the Developer makes no warranties, express, or implied, regarding the Apartments.

2. Appliances:

The appliances are sold "as is" and the Developer makes no warranties, express or implied, regarding the appliances.

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

The Project is a conversion to condominium ownership of buildings originally constructed in 1991.

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):

Not applicable.

IV. CONDOMINIUM MANAGEMENT

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

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

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

- not affiliated with the Developer  the Developer or the Developer's affiliate.
 self-managed by the Association of Apartment Owners  Other: \_\_\_\_\_

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit C contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

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

- None  Electricity (  Common Elements only \_\_\_\_\_ Common Elements & Apartments)
 Gas (  Common Elements only \_\_\_\_\_ Common Elements & Apartments)
 Water  Sewer  Television Cable
 Other Refuse collection and telephone

## 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 October 6, 1998  
Exhibit E contains a summary of the pertinent provisions of the escrow agreement.
- Other Affordable Housing Agreement (Kiawe Terrace)

### B. Buyer's Right to Cancel Sales Contract:

#### 1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been issued 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 Affordable Housing Agreement (Kiawe Terrace); SMA, as modified,  
Subdivision Agreement (Large Lots) dated June 26, 1992, Subdivision Agreement  
(3 Lots or Less) dated June 26, 1992, Hold Harmless Agreement dated September 3, 1992

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 4038 filed with the Real Estate Commission on October 6, 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

1. Licensing Status. Pursuant to Sections 16-99-3(g) and 16-99-11(d), Hawaii Administrative Rules (“HAR”), prospective purchasers are hereby advised that Hideki Hayashi, who is the Vice President of the General Partner of the Developer, is a current and inactive Hawaii-licensed real estate salesperson (RS 37019). Pursuant to Section 16-99-11(c), HAR, “(n)o licensee shall be allowed to advertise ‘For Sale by Owner’, ‘For Rent by Owner’, ‘For Exchange by Owner’.”
2. Time Sharing. Current zoning ordinances of the County of Maui do not permit the Apartments or the Project to be timeshared. However, the Declaration of Condominium Property Regime for the Project does provide that to the extent permitted by applicable law, time sharing as defined in Chapter 514E of the Hawaii Revised Statutes, as now or hereafter amended, shall be an authorized use of the Apartments and the Project or any portion of it. In addition, the Developer and its respective agents, successors and assigns, has reserved unto itself in the Declaration the exclusive right to develop, own, and operate a time share plan, as defined in Chapter 514E of the Hawaii Revised Statutes, as now or hereafter amended, in the Project until January 1, 2050, or until all intervals in said time share plan are sold, whichever occurs first.
3. Seller’s Disclosure. The Developer/Seller and its principals have not lived in the Apartments or the Project for at least one-hundred-eighty days prior to the date of this Public Report. Accordingly, each Buyer is hereby notified that Developer/Seller does not have the requisite personal knowledge to make accurate disclosures about the Apartments or the Project.
4. Status of Special Management Area Use Permits. In 1987, Special Management Area Use permits were granted by the County of Maui for the Four Seasons Hotel (now known as the Four Seasons Wailea) and the Grand Wailea Resort (now known as the Grand Wailea Resort, Hotel & Spa) (collectively, the “Hotels”). Condition no. 9 of both permits required the applicants to participate in the County’s employee housing program by constructing one (1) employee housing unit per six (6) hotel rooms. In 1989, a Special Management Area Use Permit was granted for the 200-unit Kiawe Terrace Apartments to satisfy employee housing requirements for the Hotels. In 1990, an Employee Housing Agreement was executed with the Developer and the Hotels.

In July, 1998, the Developer made a request to the County of Maui for a Special Management Area Use Permit Amendment, requesting modification of the employee housing condition to the Project to be sold as a fee simple housing project. On October 12, 1998, the Developer was notified by the Maui Planning Commission that upon review of the Developer’s request, the Commission voted to grant the requested Special Management Area Use Permit Amendment to delete the employee housing requirements, allowing the Project to be sold as a fee simple housing project on the following conditions:

- For the first 45 days of the 120-day affordable sales period for employees of the Hotels, Apartments shall be offered for sale to employees (individuals and families) earning 80 percent or less of the County of Maui's median annual income as established by HUD. The sales price for these Apartments shall be ten percent less than the regular sales price (which shall be affordable to individuals and families earning the 60 percent or less of the County of Maui's median annual income as established by HUD).
- For the last 75 days of the 120-day affordable sales period for employees of the Hotels, Apartments shall be offered for sale to employees (individuals and families) without regard to income. The sales price for these Apartments shall be ten percent less than the regular sales price (which shall be affordable to individuals and families earning 60 percent or less of the County of Maui's median annual income as established by HUD).
- After the 120-day affordable sales period for employees, all unsold Apartments shall be offered for sale for a 60-day period to individuals or families in the general public whose income does not exceed 80 percent of the County of Maui's median annual income as established by HUD. The sales price for these Apartments shall be affordable to individuals and families earning 60 percent or less of the County of Maui's median annual income as established by HUD.

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.

KIAWE PARTNERS, A HAWAII LIMITED PARTNERSHIP

Printed Name of Developer

By:   
Duly Authorized Signatory

October 6, 1998  
Date

HIDEKI HAYASHI, VICE PRESIDENT, TSA KIHEI, INC., GENERAL PARTNER OF

Printed Name & Title of Person Signing Above KIAWE PARTNERS

Distribution:

Department of Finance, COUNTY OF MAUI  
Planning Department, COUNTY OF MAUI

**EXHIBIT "A"**

**CONDOMINIUM PUBLIC REPORT  
KIAWE TERRACE**

**ENCUMBRANCES AGAINST TITLE**

1. Real Property Taxes. Reference is made to Maui County Real Property Tax Assessor's Office for any taxes that may be due and owing.
2. Title to all minerals and metallic mines reserved to the State of Hawaii.
3. Easement "C", area 19,256 square feet, more or less, as shown on map attached to instrument:

Dated: December 16, 1982  
Recorded: December 16, 1982  
Book 16743, Page 97

4. EASEMENT

Dated: December 16, 1982  
Recorded: December 16, 1982  
Book 16743, Page 97  
Purpose: Water pipeline  
In favor of: County of Maui through its Department of Water Supply, a body corporate and politic in the State of Hawaii

5. Terms, provisions, covenants and conditions in the Notice:

Dated: ---  
Recorded: April 20, 1990  
Document No. 90-056059  
By and Between: TSA Kihei, Inc., a Hawaii corporation and the County of Maui  
Re: Kihei Wastewater Treatment Capacity

6. Terms, provisions, covenants and conditions in the Section VI(c) Agreement For Central Maui Areas:

Dated: January 19, 1990  
Recorded: April 23, 1990  
Document No. 90-057152  
By and Between: TSA International, Limited, a Hawaii corporation and the Department of Water Supply of the County of Maui

Re: Water usage

7. MORTGAGE

Dated: July 13, 1990  
Recorded: July 13, 1990  
Document No. 90-106338  
Amount: \$15,525,000.00  
Mortgagor: Kiawe Partners, a duly registered Hawaii limited partnership  
Mortgagee: First Hawaiian Bank, a Hawaii corporation

8. FINANCING STATEMENT COVERING CERTAIN PERSONAL PROPERTY:

Recorded: July 13, 1990  
Document No. 90-106339  
Debtor: Kiawe Partners  
Secured Party: First Hawaiian Bank

9. EASEMENT:

Dated: October 17, 1990  
Recorded: November 5, 1990  
Document No. 90-171941  
Purpose: Cable Television  
In favor of: The Chronicle Publishing Company, a Nevada corporation,  
doing business as Chronicle Cablevision of Hawaii

10. Terms, provisions, covenants and conditions in the Subdivision Agreement (Large Lots):

Dated: June 26, 1992  
Recorded: July 1, 1992  
Document No. 92-105668  
By and Between: Kiawe Partners, a Hawaii limited partnership and the County  
of Maui, Department of Public Works, a political subdivision  
of the State of Hawaii

11. Terms, provisions, covenants and conditions in the Subdivision Agreement (Three Lots or Less):

Dated: June 26, 1992  
Recorded: July 1, 1992  
Document No. 90-105669  
By and Between: Kiawe Partners, a Hawaii limited partnership, and the County  
of Maui, Department of Public Works, a political subdivision  
of the State of Hawaii

12. Terms, provisions, covenants and conditions in the Hold Harmless Agreement:

Dated: September 3, 1992  
Recorded: October 1, 1992  
Document No. 92-160135  
By and Between: County of Maui, "County", and Kiawe Partners, a Hawaii partnership, "Developer", and Kiawe Partners, a Hawaii partnership, "Owner"

13. Easement "A" (25 feet wide), for drainage purposes, area 32,019 square feet, more or less, as shown on Tax Map.

14. EASEMENT:

Dated: July 15, 1992  
Filed: December 24, 1992  
Document No. 92-210540  
Purpose: Drainage  
In favor of: County of Maui, a political subdivision of the State of Hawaii

## **EXHIBIT "B"**

### **CONDOMINIUM PUBLIC REPORT KIAWE TERRACE**

#### **MISCELLANEOUS MATTERS**

The Seller makes the following disclaimers regarding the Project. The fact that the Seller is making the following disclaimers does not relieve the Buyer of the Buyer's obligation to investigate the Project documents and to determine whether the Project is suitable for the Buyer.

"Cracks in Concrete." It is in the nature of concrete to develop hairline cracks, which must be accepted as a normal characteristic of the material.

"Telephone and TV Wiring." Wiring is provided to telephone jacks; wiring is provided for two (2) tv jacks; pulling of wiring to other locations in the Apartment is the responsibility of the Purchaser.

"Caution to Parents with Young Children." Parents are cautioned that the play of children in the Project must be supervised at all times. In addition to the risks normally associated with shared residential buildings, the Project may contain foliage containing sharp spines or foliage that is poisonous when ingested.

"Security System." The Project is not equipped with a security system. Unauthorized persons and intruders may gain access to the Project with possible result of annoyance, personal injury or property loss.

"Estimate of Maintenance Fees." Seller's estimate of monthly maintenance fees, as shown on the Public Reports and disclosure abstracts (if any), was prepared based upon information believed to be accurate and correct. However, Seller makes no warranty or promise regarding the accuracy of these amounts.

Under the Sales Contract the Buyer will be required to agree to the foregoing and other conditions as well as any inconvenience or annoyance which the Buyer may suffer as a result of such conditions and the Buyer will be required in the Sales Contract to expressly waive any rights, claims or actions which the Buyer might otherwise have against the Seller as a result of such conditions.

#### **ARBITRATION**

All disputes by or between the Seller and any Buyer as to any matter concerning the Project, must be submitted to binding arbitration pursuant to American Arbitration Association rules of arbitration in the City and County of Honolulu, State of Hawaii.

EXHIBIT "C"

**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months =</u>	<u>Yearly Total</u>
2 Bedroom	\$ 228.62	\$ 2,743.44
1 Bedroom	171.46	2,057.52

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

**Estimate of Maintenance Fee Disbursements:**

Monthly x 12 months = Yearly Total

**Utilities and Services**

Air Conditioning		
Electricity	1,450	17,400
<input checked="" type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and apartments		
Elevator		
Gas	400	4,800
<input checked="" type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and apartments		
Refuse Collection	1,200	14,400
Telephone	150	1,800
Water and Sewer	7,000	84,000

**Maintenance, Repairs and Supplies**

Building	900	10,800
Grounds	3,525	42,300

**Management**

Management Fee	2,500	30,000
Payroll and Payroll Taxes	6,525	78,300
Office Expenses	285	3,420

**Insurance**

2,675      32,100

**Reserves(\*) (1)**

3,410      40,920

**Taxes and Government Assessments (2)**

3,500      42,000

**Audit Fees**

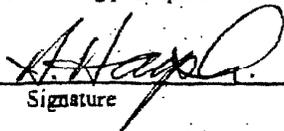
1,000      12,000

**Other**

- Security	2,700	32,400
- Legal Fees	150	1,800
- KTA Reserves-Immediate Repairs	4,525	54,300
- Contingency	2,000	24,000

**Total**      43,895      526,740

I, Hideki Hayashi as agent for/and/or employed by Kiawe Partners, the condominium managing agent/developer for the Kiawe Terrace Apartments condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
Signature

November 19, 1998

Date

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

(1) This reserve amount is for 1999 accrual only. Prior years 1991-1998 amounts total \$306,752

(2) Does not include individual unit real property taxes.

# KIawe TERRACE APARTMENTS

## Immediate Repairs Reserve (a)

November 19, 1998

	Additional Repair/Replacement Items		Estimated Cost
1	Exterior stucco repairs, Repainting, Reroofing (b)	\$	5,000
2	Sidewalk repairs	\$	8,000
3	Irrigation repairs/changing locations	\$	8,000
4	Parking lot striping, Resurfacing (b)	\$	8,000
5	Pool furniture	\$	3,600
6	Play equipment - replace	\$	12,000
7	Barbecue grills - replace	\$	1,400
8	Major tree trimming	\$	4,800
9	Shrub replacement	\$	2,000
10	TV - social room	\$	500
11	Laundry room - paint/repairs	\$	1,000
12	New washers/dryers-laundry company will replace (c)		N/C
<b>TOTAL ADDITIONAL ITEMS \$</b>			<b>54,300</b>

(a) All of these items need immediate replacement or repair

(b) Building Repainting, Reroofing and Parking Lot Resurfacing -  
not in need of immediate repair and these are included in Reserves (\*) total

(c) Laundry company will install new coin operated machines  
at no charge to Kiawe Terrace Apartments

**KIAWE TERRACE APARTMENTS  
CALCULATION FOR MONTHLY MAINTENANCE FEES**

<b>2 BR = 792 sf X 168 UNITS =</b>	<b>133,056</b>		
<b>1 BR = 594 sf X 32 UNITS =</b>	<b>19,008</b>		
<b>TOTAL</b>	<b>152,064</b>		
<b>\$526,740/152,064 =</b>	<b>3.4639</b>		
<b>2 BR = 792 sf x \$ 3.4639 = \$2,743.41 / 12 =</b>		<b>\$</b>	<b>228.62 per month</b>
<b>1 BR = 594 sf x \$ 3.4639 = \$2,057.56 / 12 =</b>		<b>\$</b>	<b>171.46 per month</b>

## **EXHIBIT "D"**

### **CONDOMINIUM PUBLIC REPORT KIAWE TERRACE**

#### **SUMMARY OF SALES CONTRACT**

The unexecuted Sales Contract ("Sales Contract"), filed with the Real Estate Commission, provides for, among other things, a description of the apartment to be sold, the purchase price, the time, manner and place of payment, disclosure of the Seller's affordable housing obligations to employees of the Grand Wailea Resort, Hotel & Spa and the Four Seasons Wailea, the disclosure of the Project as a condominium conversion and the Developer's disclaimers regarding construction of the Project, and the remedies of Developer and Purchaser in the event of a default under the Contract.

Among other provisions, the specimen Sales Contract provides:

1. That the condominium project is a condominium conversion; that all apartments, the Common Elements, or anything installed in the Project are sold "AS IS"; that SELLER DISCLAIMS ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY IMPLIED WARRANTY OF WORKMANSHIP AND ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE APARTMENT, OR THE COMMON ELEMENTS OR THE PROJECT; that Purchaser acknowledges that Seller has made no warranties, express or implied, with respect to the Apartment, its quality or grade, or any Common Element or anything installed therein, its quality or grade; that without limiting the foregoing, Seller disclaims any and all responsibility or liability for any malfunctions, construction or design defects, or any other problems which Purchaser may encounter with respect to the Apartment, the Common Elements and/or the Project; and that Purchaser acknowledges Seller's disclaimers, expressly waives any rights, claims or actions against Seller arising out of or connected with any defects with respect to the Apartment, the Common Elements and/or the Project.
2. That Seller's sales activities, including the use of model units, signs and extensive sales displays and activities will continue in the Project until the sale of the last Apartment; that Seller also reserves the right to utilize unassigned or guest parking spaces in the Project for parking for prospective purchasers until the earlier to occur of (i) eighteen (18) months from the Closing Date or (ii) the sale of the last unsold Apartment in the Project; and that Seller also reserves the right for itself, its sales representatives and prospective purchasers to utilize the Common Elements for ingress and egress to such parking spaces and model units in order to show the Common Elements to prospective purchasers.
3. That the Sales Contract shall be binding when a true copy of the Final Public Report together with the Receipt Form required by Hawaii Revised Statutes Section 514A-62 is delivered to the Purchaser, the Purchaser has an opportunity to read said report(s), a Deemed Acceptance of the

report(s) shall have taken place and, if applicable, the Purchaser shall have executed a Confirmation Agreement within thirty (30) days of the delivery thereof by the Seller; that if the Deemed Acceptance shall have occurred in any manner other than by waiver of the right to cancel on the Receipt Form, the Sales Contract shall not become binding as a contract for the purchase and sale of the Apartment unless and until the Purchaser shall have executed a Confirmation Agreement; that in the event that Purchaser shall then fail to execute a Confirmation Agreement upon such presentation (or in the event that Seller is unable to locate Purchaser for delivery of the Final Public Report or the Confirmation Agreement), Seller shall have the right to cancel the Sales Contract.

4. That if the Purchaser shall at any time default in making any payment when required, or fail to perform any other obligation required of the Purchaser, the Sales Contract may, at Seller's option, be terminated by written notice to Purchaser; that in the event of such cancellation after the Effective Date of the Sales Contract, Seller may retain all amounts paid by Purchaser as liquidated damages; that the Seller and Purchaser acknowledge that they understand and have agreed that in such event the injury to Seller will be difficult and expensive to measure in view of Seller's financial commitments with respect to the Project and that as a reasonable estimate of Seller's fair compensation for any damages resulting from such default, the sums paid by the Purchaser under the Sales Contract shall belong to Seller as liquidated damages; that Seller may, in addition to the aforesaid damages, pursue any other remedy, including specific performance, permitted by law or equity; and that all costs, including reasonable attorney's fees, incurred by reason of default by the Purchaser shall be borne by the Purchaser.
5. That the sale of the apartment is to close on that date selected by Seller, as described in the Sales Contract, upon which the Apartment Deed and all other documents are recorded and filed and Escrow makes all distributions and payments involved in completing this sale transaction; and that the provisions of Hawaii Revised Statutes Chapter 514A applicable to sales contracts are incorporated into the Sales Contract by reference.
6. That the Sales Contract is subject to the provisions of the Declaration of Condominium Property Regime, Bylaws, and other condominium documents.

It is incumbent on the Purchaser that he/she read the full text of the Sales Contract.

**EXHIBIT "E"**

**CONDOMINIUM PUBLIC REPORT  
KIAWE TERRACE**

**SUMMARY OF EXECUTED ESCROW AGREEMENT**

A copy of the executed Escrow Agreement dated October 6, 1998 by and between Island Title Corporation ("Escrow") and the Developer has been filed with the Real Estate Commission. The Escrow Agreement provides for the deposit of Purchaser's funds pursuant to the Sales Contract and also provides for the retention or disbursement of the funds.

The Escrow Agreement provides in part that any interest earned on money on deposits belongs to the Developer.

In the event that the Sales Contract under Chapter 514A Hawaii Revised Statutes, as amended, entitles a Purchaser to a refund of Purchaser's deposit held by Escrow, then Escrow, upon instruction from Developer, will refund Purchaser's deposit, without interest earned.

The total amount of the Escrow cancellation fee is \$25.00 plus 4% State Tax. Under the Escrow Agreement, no disbursement of funds can be made to the Developer until the Sales Contract becomes effective under the provisions Chapter 514A Hawaii Revised Statutes, as amended.

It is incumbent upon a prospective Purchaser to read the executed Escrow Agreement with care.