

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer FLOYD A. MILLER, JR.  
Address 470 Carolina Street, San Francisco, California 94107

Project Name(\*): KAHILI MAKAI ESTATES  
Address: Kahili Makai Road, Kilauea, Hanalei, Kauai, Hawaii

Registration No. 4239 Effective date: November 16, 1999  
Expiration date: December 16, 2000

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.  
(yellow)
  - FINAL: The developer has legally created a condominium and has filed complete information with the Commission.  
(white)  
[X] No prior reports have been issued.  
[ ] This report supersedes all prior public reports.  
[ ] This report must be read together with \_\_\_\_\_
  - SUPPLEMENTARY: This report updates information contained in the:  
(pink)  
[ ] Preliminary Public Report dated: \_\_\_\_\_  
[ ] Final Public Report dated: \_\_\_\_\_  
[ ] Supplementary Public Report dated: \_\_\_\_\_
- And [ ] Supersedes all prior public reports.  
[ ] Must be read together with \_\_\_\_\_  
[ ] This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

(\*) Exactly as named in the Declaration

*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.*

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report       Not Required - disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL ATTENTION**

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

The Developer discloses that, in order to process the necessary permits for the construction of a farm dwelling and the processing of a farm dwelling agreement on agriculturally zoned parcels, authorization from at least 75% of the legal and equitable ownership of the entire project shall be required, consistent with the Declaration of Condominium Property Regime and the Bylaws. Except as limited specifically by the project documents of record, all uses permitted in the agricultural zone are permitted. Such uses include, but are not limited to, growing crops, raising animals, residence, diversified agriculture, forestry, orchards and nurseries and wildlife management. See Kauai County Comprehensive Zoning Ordinance, Article 8.7, for detailed information. In relation to specifically permitted uses of buildings and other improvements, structures shall only be occupied or used for agriculture, associated residential uses and/or other uses permitted by law and the recorded project documents. A farm dwelling may not be constructed unless a unit owner demonstrates to the County his ability to derive income from his property, established and verified prior to any building permit approval.

A buyer should understand that development and use of the property shall be in compliance with all County Codes and Ordinances. If County facilities are not already in place, the prospective purchaser is advised that owners in the project will not necessarily receive the same County benefits as owners of approved subdivided lots; owners who develop their properties later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations. Zoning and land use restrictions are subject to change and each purchaser should maintain awareness of such conditions.

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

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

TABLE OF CONTENTS

	page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	5
Developer                      Attorney for Developer      General Contractor	
Real Estate Broker          Escrow Company                  Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A: Common Elements	
EXHIBIT B: Encumbrances Against Title	
EXHIBIT C: Summary of Sales Contract	
EXHIBIT D: Summary of Escrow Agreement	
EXHIBIT E: Disclosure Statement	
EXHIBIT F: Building and House Rules	
EXHIBIT G: Letter from Kauai Planning Dept. dated 3/25/98 on TMK (4)	

5-2-21: 07

### 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: Floyd A. Miller, Jr. Phone: (415) 4872000  
Name\* (Business)  
470 Carolina Street  
Business Address  
San Francisco, California 94107

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership(LLP); or manager and members of a Limited Liability Company(LLC)(attach separate sheet if necessary):

N/A

Real Estate Broker\*: None selected. See p. 20. Phone: \_\_\_\_\_  
Name (Business)  
Business Address

Escrow: First Hawaii Title Corporation Phone: (808) 5213411  
Name (Business)  
201 Merchant Street, Suite 2000  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: Callahan Construction, Inc. Phone: (808) 8264411  
Name (Business)  
P. O. Box 568  
Business Address  
Hanalei, Hawaii 96714

Condominium Managing Agent\*: Self managed Phone: \_\_\_\_\_  
Name (Business)  
Business Address

Attorney for Developer: Hiroshi Sakai Phone: (808) 5314171  
Name (Business)  
201 Merchant Street, Suite 902  
Business Address  
Honolulu, Hawaii 96813

\* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**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. 99-099732  
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]:

1st Am. to Declaration, 8/13/99, Doc. No. 99-133559; 2nd Am. to Declaration, 8/31/99, Doc. No. 99-144243; 3rd Am. to Declaration, 9/29/99, Doc. No. 99-177189.

- 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. 2914  
 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]:

3rd Am. to Declaration, 9/29/99, Doc. No. 99-177189

- 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. 99-099733  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The House Rules for this condominium are:

Proposed                     Adopted                     Developer does not plan to adopt House Rules

E. Changes to Condominium Documents

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

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

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

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

2. Developer:

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

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

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

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	—	Majority vote <u>of Board</u>

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

2. Developer:

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

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

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



[ ] 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: Kahili Makai Street Tax Map Key (TMK): (4) 5-2-21: 7  
Kilauea, Hanalei, Kauai, Hawaii

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

Land Area: 26.19 [ ] square feet [X] acre(s) Zoning: Agriculture &  
Open ST-R District

Fee Owner: Floyd A. Miller, Jr.  
Name  
470 Carolina Street  
Address  
San Francisco, California 96107

Lessor: \_\_\_\_\_  
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: 5 Floors Per Building 1

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

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other \_\_\_\_\_

4. Uses Permitted by Zoning:

	No. of Apts.	Use Permitted By Zoning		No. of Apts.	Use Permitted By Zoning
<input type="checkbox"/> Residential	—	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	—	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	—	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	—	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	—	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Agricultural	—	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	—	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	—	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	—	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Other: <u>Sheds</u>	<u>5</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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

Yes  No

5. Special Use Restrictions:

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

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

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

[x] Other: See C - page 20 of this public report

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
<u>A-E</u>	<u>5</u>	<u>      </u>	<u>      </u>	<u>16</u>	<u>Shed</u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

Total Number of Apartments: 5

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

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

Boundaries of Each Apartment:

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

Permitted Alterations to Apartments:

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

7. Parking Stalls:

Total Parking Stalls: 10 open - not designated

	<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>2</u>	_____	_____	_____	_____	<u>10</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>10</u>		<u>0</u>		<u>0</u>		<u>10</u>

Each 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 \_\_\_\_\_ 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):

N/A

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

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

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

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

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

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

as follows:

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

There are no limited common elements in this project.

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

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

as follows:

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

Apartment A - 1.698 acres

Apartment B - 1.628 acres

Apartment C - 2.054 acres

Apartment D - 11.612 acres

Apartment E - 9.197 acres

3. Common Interest: Note: Land areas referenced herein are not legally subdivided lot Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

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

as follows:

Apartment A - 20%

Apartment B - 20%

Apartment C - 20%

Apartment D - 20%

Apartment E - 20%

E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit B describes the encumbrances against the title contained in the title report dated 8/14/99 and issued by First Hawaii 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.

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

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

<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 dated 7/16/99 in favor of Justin Hughes and Michele Hughes and William Hayes recorded as Document No. 99-117553 in the sum of \$900,000.	Buyer's interest may be terminated in which case Buyer's deposit shall be refunded, less escrow cancellation fee.

**F. Construction Warranties:**

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

1. Building and Other Improvements:

None.

2. Appliances:

None.

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

Notice of Completion for all 5 shed apartments filed on August 3, 1999 with the clerk of the Fifth Circuit Court, State of Hawaii.

H. Project Phases:

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

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

IV. CONDOMINIUM MANAGEMENT

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

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

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

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

B. Estimate of Initial Maintenance Fees:

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, 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 E\* contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

See Note below.

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 \_\_\_\_\_

\*Note: Mandatory reserves assessment and collection in effect beginning 1994 budget year. Developers disclose that no reserve study was done in accordance with Chapter 514A-83.6, HRS, and replacement reserves rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

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

[x] Specimen Sales Contract

Exhibit C contains a summary of the pertinent provisions of the sales contract.

[x] Escrow Agreement dated 7/22/99

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

[x] Other See page 20.

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 \_\_\_\_\_

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. 4239 filed with the Real Estate Commission on September 9, 1999

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. Building and House Rules for Kahili Makai Estates dated August 13, 1999. Sets forth procedure for private building approvals by Design Review Committee of the Condominium Association, building permit and the agricultural use restrictions imposed by the County of Kauai.
2. Declaration of Restrictive Covenants of the Kahili Makai Estates Condominium Property Regime dated September 24, 1999 which incorporates the County of Kauai Planning Department letter of March 25, 1998 which grants a Use Permit U-98-21, Special Management Area Use Permit SMA (U)-98-4, Variance Permit V-98-5, Class IV Zoning Permit A-IV-98-27 for the property designated as Tax Map Key, 4th Division 5-2-21: 07, Kilauea, Kauai governing the construction of improvements on the property as well as the use of the property. See Exhibit G of this report.
3. Declaration of Right to Use for Lots 4, 5, 6, 7 and 8 of the Kahili Makai Subdivision dated April 6, 1982 of which Lot 7 is the condominium project which gives the public the right to use at their own risk the portions of the Kilauea Stream that runs through the lots for the purposes of non-commercial pole fishing and non-commercial crabbing, provided that the right of use granted shall not include the right of access over those positions of the lots which are not included in the Kilauea Stream.
4. Agreement to Incorporate agricultural restrictions into instruments of conveyance dated February 18, 1982 between the Subdivider and the County of Kauai Planning Department which includes Lots 1 through 20 inclusive of which Lot 7 is the condominium project and is one of the lots which is subject to the agricultural restrictions set forth in Exhibit "A" of the Agreement and the same shall be incorporated into any deed, lease, agreement of sale, mortgage or other instrument of conveyance until such time that the land is reclassified to a Land Use District other than "Agriculture".
5. The Developer has not selected a real estate broker for the sale of apartments in the project. In the event the Developer chooses to use a real estate broker for the sale of an apartment, prior to entering into a binding contract for such sale the Developer shall (1) submit to the Real Estate Commission a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, together with a duly executed disclosure abstract identifying the designated broker, and (2) provide a copy of the disclosure abstract to the purchaser together with a copy of this public report.

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.

FLOYD A. MILLER, JR.

Printed Name of Developer

By: Justin Hughes  
Duly Authorized Signatory  
JUSTIN HUGHES

August 13, 1999  
Date

Attorney-in-fact

FLOYD A. MILLER, JR., DEVELOPER

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai  
Planning Department, County of Kauai

*\*Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership(LLP) by the general partner; Limited Liability Company(LLC) by the manager or member; and for an individual by the individual.*

10/98

EXHIBIT A

Common Elements

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

- a. The land in fee simple.
- b. The land area of 0.149 acres (over lot 7) which provides access to Apartments A, B and C inclusive.
- c. Easements A-6-1 (over Lot 6), 5 (over Lot 5) and 7 (over Lot 7) which provides access to Apartments D and E.
- d. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, hot and cold water and like utilities.
- e. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project.

EXHIBIT "B"

ENCUMBRANCES AGAINST TITLE

The title report of First Hawaii Title Corporation reports that title to the land is subject to the following encumbrances.

1. Real property taxes - Information pending. To have a confirmation with respect to taxes contact the Director of Finance, County of Kauai.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Any and all archaeological sites or historic or prehistoric remains, including but not limited to, gravesites, artifacts, rock wall and trails located on the land described herein.

4. Claims arising out of customary or traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes, as amended.

5. Flood setback lines as shown on the map of the "Kahili Makai Subdivision" prepared by Cesar C. Portugal, Registered Land Surveyor, Certificate No. 2225-SE, dated October 27, 1981.

6. Irrigation Easement "D-9" situate along a portion of the southeasterly side of Lot 7 as shown on the map of the "Kahili Makai Subdivision" prepared by Cesar C. Portugal, Registered Land Surveyor, Certificate NO. 2225-SE, dated October 27, 1981.

7. Reservation in favor of Beta Pacific, Inc., a Hawaii corporation, its successors and assigns, as contained in that certain Warranty Deed dated May 25, 1982, recorded in said Bureau in Book 16378, page 369, to which reference is hereby made. but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant(a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

8. The terms, provisions, covenants, easement and reservations as contained in the following: Declaration of Right of Use dated April 6, 1982, recorded in said Bureau in Book 16378, Page 358, to which reference is hereby made, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national

origin unless and only to the extent that said covenant(a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

9. The agreement to incorporate agricultural restrictions into instrument of conveyances dated February 18, 1982, recorded in said Bureau in Book 16378, Page 307, to which reference is hereby made.

10. Easement "SD-2" for drainage purposes, as shown on map of the "Kahili Makai Subdivision" prepared by Cesar C. Portugal, Registered Land Surveyor, Certificate NO. 2225-SE, dated October 27, 1981.

11. Reservation in favor of the owner of Lot 11 (Roadway) Kahili Makai Subdivision, as contained in the following: Deed dated May 25, 1982, recorded in said Bureau in Book 16378, Page 388, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant(a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

12. Access Easement A-7 (25 feet wide) in favor of Lots 5 and 6, as granted by that certain undated Declaration of Easements recorded in said Bureau as Document No. 93-056508, and more particularly described in Amendment to said Declaration dated December 14, 1993, recorded in said Bureau as Document No. 93-213173.

13. The terms, provisions, covenants, easement and reservations as contained in the following: The Declaration of Easements undated, recorded in said Bureau as Document No. 93-056508, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant(a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons. the foregoing Declaration was amended on December 14, 1993 recorded in said Bureau as Document No. 93-213173.

14. The terms, provisions, covenants, easement and reservations as contained in the following: The unrecorded Disclosure, Release, Indemnity and Limitation of Remedies for Tax Map Key (4) 5-2-21-07, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant(a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap

but does not discriminate against handicapped persons.

15. The terms, provisions, covenants, easement and reservations as contained in the following: The Waiver and Release dated November 19, 1998 recorded in said Bureau as Document No. 98-178822, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant(a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

16. The terms and provisions including the failure to comply with any covenants, conditions and reservations, contained in the Declaration of Condominium Property Regime for "Kahili Makai Estates" condominium" project dated June 2, 1999, recorded as Document No. 99-099732 and noted therein Condominium Map No. 2914 to which reference is hereby made, as amended by First Amendment to Declaration dated August 13, 1999, recorded in said Bureau as Document No. 99-133559, as amended by Second Amendment to Declaration dated August 31, 1999, recorded in said Bureau as Document No. 99-144243 and as amended by Third Amendment to Declaration dated September 29, 1999, recorded in said Bureau as Document No. 99-177189 and any amendments thereto.

17. The terms and provisions including the failure to comply with any covenants, conditions and reservations, contained in the By Laws of Condominium Property Regime for "Kahili Makai Estates" condominium" project dated June 2, 1999, recorded as Document No. 99-099733 to which reference is hereby made.

18. Mortgage dated July 16, 1999 filed as Document No. 99-117553 made by Floyd A. Miller, Jr., unmarried, as Mortgagor, in favor of Justin Hughes and Michele Hughes, husband and wife, and William Hayes, husband of Gloria Hayes, as Mortgagee, in the principal sum of \$900,000.00.

19. The Declaration of Restrictive Covenants dated September 24, 1999 incorporating the Use Permit U-98-21, Special Management Area Use Permit SMA(U)-98-4, Variance Permit U-98-5 and Class IV Zoning Permit Z-IV-98-27, recorded in the Bureau of Conveyances, State of Hawaii as Document No. 99-161161 setting forth the conditions to be observed with respect to any use and construction of improvements that will occur on the property.

EXHIBIT "C"

Summary of Sales Contract

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

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

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

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

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

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

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

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

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

EXHIBIT "D"

Summary of Escrow Agreement

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

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

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

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

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

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

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

EXHIBIT "E"

KAHILI MAKAI ESTATES

REGISTRATION NO. 4239

DISCLOSURE STATEMENT AS OF AUGUST 13, 1999

1. Name of Project: KAHILI MAKAI ESTATES
2. Address: Kahili Makai Road, Kilauea, Hanalei, Kauai, Hawaii
3. Name of Developer, address and telephone number:  
  
FLOYD A. MILLER, JR.  
470 Carolina Street  
San Francisco, California 94107  
Telephone: (415) 4872000
4. Project Manager or Agent: Self managed by Association of Apartment Owners. (Michele Hughes, agent)
5. Address in Kauai: P, O. Box 781, Kilauea, Hawaii 96754
6. Maintenance Fees: There are presently no maintenance fees since the project is divided with each party having improvements located within its own apartment unit. The common area and roadway easements do not require any maintenance at the present time.
7. Commencement of Maintenance Fees: At such time that the Association shall determine a need therefor. In the mean time, each owner will maintain his premises at his own cost and expense.
8. Warranties: The Project is a fee simple condominium project and there are no warranties.
10. Project: The Project consists of five (5) condominium apartments. Apartments A through E inclusive are free standing detached storage sheds. The uses will be agricultural and other uses that are allowed by the County of Kauai ordinances.

Dated: Lilue, Hawaii this 13<sup>th</sup> day of August,  
1999.

FLOYD A. MILLER, JR.

By Justin Hughes  
Justin Hughes  
Attorney-in-fact

C:\p51\condo\JUST.exe

**BUILDING AND HOUSE RULES  
KAHILI MAKAI ESTATES**

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

1. Definitions. As used herein:

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

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

c. The "unit owner" as used in the condominium documents shall also refer to an "apartment owner" or "apartment unit owner" in the Project.

d. The "condominium documents" refers to the Declaration, By Laws, Building and House Rules, Certificate of Architect or Engineer, and the Condominium Map.

2. Private Building Approvals. Any owner desiring to construct or install any building or improvements in an Apartment is required to submit the plans and specifications to the Design Review Committee for approval of such plans and specifications to be in conformance with the condominium documents.

3. Building Permit. Any owner desiring to construct a single family dwelling in a Unit will have to comply with the building and zoning ordinances as the same may be changed from time to time. The requirements of the Comprehensive Zoning Ordinance, Kauai County Code 1987 and in particular the requirements of Article 1, Section 8-1.5 Definitions, Subparagraph (10) as to Applicant and Subparagraph (99) as to Owner having a controlling interest of 75% or more of the equitable and legal title of the lot have to be observed in order to obtain a building permit. The present requirement of the County of Kauai is that each owner must sign an affidavit that he can obtain income or sustenance from farming on the apartment.

4. Use Restrictions. The agricultural restrictions for the use of the apartment for agricultural purposes from the date hereof until the County of Kauai removes such restriction.

5. Water and Utilities. The water, electricity and telephone will be drawn from the cul de sac (end) of Kahili Makai Road and through easements from Kahili Makai Road to each Apartment's boundary abutting said street and/or the Apartment's easement which has access to Kahili Makai Road and each Apartment Owner to have such water and utilities lines built at his own cost and expense from Kahili Makai Road to his dwelling and/or building.

6. Cesspools/Septic Tanks. There are no sewer lines nor a sanitary sewer system. Each Apartment Owner will have his own cesspool or septic tank located within his own area no closer than 5 feet to any area boundary and in compliance with the State of Hawaii Department of Health laws, rules and regulations.

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

a. Publish a Notice of Completion in the Garden Island or newspaper of general circulation in the State of Hawaii for two (2) consecutive weeks at least seven (7) days apart and have it filed with the Clerk of the Fifth Circuit Court.

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

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

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

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

1999. Executed this 13<sup>th</sup> day of August.

FLOYD A. MILLER, JR.

By Justin Hughes  
JUSTIN HUGHES  
Attorney-in-fact

MARYANNE W. KUSAKA  
MAYOR



COPY

DEE M. CROWELL  
PLANNING DIRECTOR  
IAN K. COSTA  
DEPUTY PLANNING DIRECTOR  
TELEPHONE (808) 241-6677  
FAX (808) 241-6699

PLANNING DEPARTMENT

March 25, 1998

Justin Hughes  
6 Rolling Hills Road  
Tiburon, CA 94920

Subject: Use Permit U-98-21  
Special Management Area Use Permit SMA(U)-98-4  
Variance Permit V-98-5  
Class IV Zoning Permit Z-IV-98-27  
TMK: 5-2-21:7, Kilauea, Kauai

The Planning Commission at its meeting held on March 24, 1998, approved the subject permits for a five unit CPR development with three units to be located within the Agriculture Zoning District, and two within the Open ST-R District and Special Management Area, as represented by the applicant.

Approval is subject to the following conditions, as recommended by the Planning Department:

1. As represented, all farm dwellings shall be restricted to a 12 foot limit on uninterrupted wall height, with a 25 foot maximum height limit as measured along all points, from natural or finished grade, whichever is lower, to the roof peak. All accessory structures shall be limited to a 12 foot limit on uninterrupted wall height, with an 18 foot maximum height limit as measured along all points, from natural or finished grade, whichever is lower, to the roof peak.
2. Exterior colors of all structures shall be limited to medium or dark earth tones such as brown, green, or grey. Use of mirrored glass, reflective sun screens, or other highly reflective materials for exterior windows shall be prohibited. Roof covering shall be of a non reflective material of a color and tone compatible with the area surroundings.

EXHIBIT G

Kapule Building • 4444 Rice Street, Suite 473 • Lihu'e, Kaua'i, Hawai'i 96766  
AN EQUAL OPPORTUNITY EMPLOYER

3. As represented by the applicant, all structures, including accessory structures, buildings or other improvements, shall be located a minimum of 25 feet from the edge of the slope on the upper and lower plateaus.
4. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, all external lighting shall be only of the following types: shielded lights, cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlighting of structures and features shall be prohibited.
5. Prior to approval of any building permit, the applicant shall submit a landscape plan to help screen the development from public views as seen from Kahili Makai Street, the Kilauea River and Mouth, and the public areas in the Crater Hill area. The landscape plan shall utilize native species, and species common to the area, and shall incorporate existing mature trees to the maximum extent feasible.
6. Prior to approval of any building permit, as recommended by the State Historic Preservation Division a Preservation Plan for sites and features to be preserved shall be submitted to, and approved by, the State Historic Division, and the County of Kauai Planning Department.
7. Proposed project designs, site plans, materials, colors, lighting, and landscaping shall be reviewed by the Planning Department for consistency with these requirements prior to submittal of final building permit applications.
8. The applicant and all future property owners are advised that any development within the Special Management Area and Open Special Treatment Area including construction of structures, and accessways, excavation, grading, grubbing, or alteration of stream channels, shall require review and approval by the Planning Department, and other relevant agencies.
9. All conditions of approval of the subject permits shall be recorded with the State Bureau of Conveyances by the applicant prior to any unit sales, or building permit application, and disclosed in all sales conveyances documents.

Justin Hughes  
March 25, 1998  
Page 3

10. The Planning Commission reserves the right to revise, modify or add conditions of approval, or revoke the permit through the proper procedures, should the development be found to adversely impact the surrounding neighborhood, or coastal resources.
11. The applicant is advised that prior to construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).



Dee M. Crowell  
Planning Director

c: Avery Youn  
State Department of Health  
DLNR-Historic Preservation Division  
State Department of Agriculture  
Department of Public Works  
Department of Water  
Fire Department  
Kauai Historic Preservation Review Commission