

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Edward R. H. McDowell and Joyce P. McDowell, Trustees
Address 2510 The Strand, Hermosa Beach, California 90254

Project Name(\*): HALE ANUENUE
Address: 3700 Kilauea Lighthouse Drive, Kilauea, Kauai, Hawaii

Registration No. 4295 Effective date: January 12, 2000
(Conversion) Expiration date: February 12, 2001

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the:
And [ ] Supersedes all prior public reports.

(\* ) 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  
as Exhibit G

Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL NOTICE:** This is a CONDOMINIUM PROJECT, not a subdivision. THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A DWELLING UNIT OR CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO RESIDENTIAL USE. THE PURCHASER SHOULD CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A DWELLING ON THE PROPERTY.

1. There are presently NO RESIDENTIAL STRUCTURES on Units 2 and 3, but there are shade structures, each of which is defined as an "apartment" under the law. Developer advises that Kauai Electric will require the granting of easements over portions of the Project to connect power. The Declaration requires the owners to grant such easements.
2. Issuance of an effective date for this Public Report does not constitute an approval of the project by the Real Estate Commission, or any other governmental agency, nor does it imply compliance with all County codes and ordinances.
3. This project does not involve the sale of individual subdivided lots. The land area used by each unit, (see the the Condominium Map) is as a "limited common element" for that unit and does not represent a subdivided lot. The dotted lines on the Condominium Map represent the location of the limited common element assigned to each unit.
4. Facilities and improvements normally associated with County-approved subdivisions, such as improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior driveways.

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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: Edward R. H. McDowell and Joyce P. McDowell, Phone: (310) 374-6939  
Name\* Trustees (Business)  
2510 The Strand  
Business Address  
Hermosa Beach, California 90254

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\*: Regency Pacific Realty, LLC Phone: (808) 826-7498  
Name (Business)  
P.O. Box 1046  
Business Address  
Hanalei, Kauai, Hawaii 96714

Escrow: First Hawaii Title Corp Phone: (808) 826-6812  
Name (Business)  
5-5190 Kuhio Highway, Suite B-6  
Business Address  
Hanalei, Kauai, Hawaii 96714

General Contractor\*: Dana Nicely, Contractor (Units B & C) Phone: (808) 828-1211  
Name dba Nicely Built (Business)  
P.O. Box 171  
Business Address  
Hanalei, Kauai, Hawaii 96714

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

Attorney for Developer: STEVEN R. LEE, ESQ. Phone: (808) 246-1101  
Name (Business)  
4473 Pahee Street, Suite L  
Business Address  
Lihue, Hawaii 96766

\* 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. 99-149700  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]: First Amendment to Declaration of Condominium Property Regime and Condominium Map No. 2968, dated December 14, 1999, recorded as Document No. 99-196865.

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. 2968  
 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]: N/A

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. 99-149701  
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]: N/A

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><del>66-2/3%</del></u>

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

2. **Developer:**

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

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

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.

Leasehold or 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: 3700 Kilauea Lighthouse Rd. Tax Map Key (TMK): (4) 5-2-04:68  
Kilauea, Kauai, Hawaii

Address  TMK is expected to change because Units without residence will receive address  
when construction occurs.

Land Area: 7.231  square feet  acre(s) Zoning: Agriculture

Fcc Owner: Edward R. H. McDowell and Joyce P. McDowell, Trustees

Name  
2510 The Strand

Address  
Hemosa Beach, California 90254

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: 5 Floors Per Building 1 - 2 story; 4 - 1 story

Exhibit C 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	<u>1</u>	<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>Shade Houses 2</u>		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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

Yes  No

5. Special Use Restrictions:

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

- Pets: See House Rules
- Number of Occupants: \_\_\_\_\_
- Other: See House Rules
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: NO Stairways: NO Trash Chutes: NO

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
<u>A</u>	<u>1</u>	<u>2/2.5</u>	<u>2,581</u>		
<u>A</u>		<u>1/1</u>	<u>468</u>	<u>None</u>	<u>Guest House</u>
<u>A</u>		<u>-0-</u>	<u>-0-</u>	<u>918</u>	<u>Garage</u>
<u>B</u>	<u>1</u>	<u>-0-</u>	<u>-0-</u>	<u>16</u>	<u>Shade Structure</u>
<u>C</u>	<u>1</u>	<u>-0-</u>	<u>-0-</u>	<u>16</u>	<u>Shade Structure</u>

Total Number of Apartments: 3

\*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: Per Article II of the Declaration of Condominium Property Regime, the boundaries of each apartment shall be the outer surface of the entire building. Wires or conduits, pipes or any utility lines running over, under or through any apartment which are utilized for or serve more than one unit shall not be deemed a part of the apartment, the same being deemed common elements.

Permitted Alterations to Apartments: Permitted alterations to apartments are as allowed by County of Kauai zoning ordinances and recorded restrictions on the project, if any. Upon construction of each permanent improvement, an amendment to the Declaration of Condominium Property Regime will be required to disclose actual improvements as a matter of public record.

7. Parking Stalls:

Total Parking Stalls:	<u>3</u>						
	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>TOTAL</u>
Assigned (for each unit)	<u>3</u>	_____	_____	_____	_____	_____	_____
Guest	<u>0</u>	_____	_____	_____	_____	_____	_____
Unassigned	<u>0</u>	_____	_____	_____	_____	_____	_____
Extra for Purchase	<u>0</u>	_____	_____	_____	_____	_____	_____
Other: _____	<u>0</u>	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>3</u>	_____	<u>0</u>	_____	<u>0</u>	_____	<u>3</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.

\* 3 assigned spaces for Unit A. Each unit has ample space for

Commercial parking garage permitted in condominium project. parking in its limited common element.

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):

Developer adopts Condition Report of Architect Matthew Schaller regarding Unit A, the only residential unit in the Project. The structure has an estimated useful life in excess of thirty (30) years.

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   E  .

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 E.

as follows:

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

described in Exhibit C.

as follows:

Unit A	50%
Unit B	25%
Unit C	25%

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 F describes the encumbrances against the title contained in the title report dated September 7, 1999 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 and Mortgage and Financing Statement	If foreclosed, Buyer's deposit shall be refunded (less any escrow cancellation fees) and the sales contract between Seller and Buyer shall be cancelled. (See Exhibit "F")

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: No warranties of any kind.

2. Appliances: No warranties of any kind.

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

All construction is complete. Unit A completed in 1989. Units B & C, shade houses, were constructed in late 1998.

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
- self-managed by the Association of Apartment Owners
- the Developer or the Developer's affiliate.
- 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 H 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 \_\_\_\_\_

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

Escrow Agreement dated September 4, 1999

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

Other Specimen Apartment Deed

### 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 Grant of Easement for utility purposes in favor of Kauai Electric and Hawaiian Telephone Company; Deed With Restrictive Covenants and Grant of Easement for utility purposes in favor of Citizens Utilities Company.

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. 4295 filed with the Real Estate Commission on November 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

This is a condominium project, not a subdivision. Units purchased are not subdivided lots. To determine whether your expectations can be realized, you should carefully review the contents of this Report. You should also conduct your own investigations and ascertain the validity of information provided.

It is anticipated that the initial improvements on Units B and C will be replaced by or supplemented with a farm dwelling. The prospective purchaser shall have the right to build such farm dwelling at purchaser's expense. The purchaser shall also, in such event, file the "as-built" certificate within thirty days of completion of the farm dwelling in conformance with Section 514A-12, Hawaii Revised Statutes, and record an amendment of the Declaration of Condominium Property Regime ("Declaration") to describe the farm dwelling. The County of Kauai Planning Department requires, in order to process the necessary permits for the construction of a farm dwelling and the processing of a farm dwelling agreement, authorization from at least 75% of the legal and equitable ownership of the entire project, consistent with the Declaration, the Bylaws and House Rules, if any, ("condominium documents").

Except as limited specifically by the condominium documents, all uses permitted in the agricultural zone are permitted. 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 all development and use of the property shall be in compliance with County codes and ordinances, that owners in this condominium project will not necessarily receive the same County benefits as owners of approved subdivided lots, and that owners who develop their limited common element later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations.

The Project is entitled to one guest house. The right to the guest house is assigned to Unit A, where the guest house is currently located. A summary of guest house restrictions under Kauai ordinances is attached hereto as Page 20-a.

COUNTY OF KAUAI  
PLANNING DEPARTMENT

GUEST HOUSE REQUIREMENTS

1. It is located on a parcel of Land of at least 9,000 square feet.
2. It is physically separate from the dwelling unit and observes all required setbacks.
3. It is used only by guests and may not be rented out as a separate dwelling.
4. It does not contain a kitchen or any room used for cooking or preparing food.
5. It contains no more than 500 square feet of gross floor area, including all living space, storage, decks and garages under a single roof structure.
6. Decks and storage areas which are not covered by a roof need not be included as part of the floor area calculations.
7. If a garage exists on the main dwelling of a lot, an additional garage can be attached to the guest house provided that the garage area be included as part of the gross floor area.
8. If no garage exists on the main dwelling, then a garage or other accessory use to the main dwelling can be added to the guest house, without including the added area as part of the gross floor area, provided that the applicant sign a form stating that the garage or accessory use is for the purpose of servicing the main dwelling only.
9. It complies with all applicable State and County laws and regulations, including all of the above requirements.

NOTE: Servants' quarters must conform to the guest house requirements.

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.

Edward R. H. and Joyce P. McDowell, Trustees

Printed Name of Developer

By: Edward R. H. McDowell 10/28/97  
Duly Authorized Signatory\* Date

By: Joyce P. M. McDowell 10/28/97  
Duly Authorized Signatory\* Date

Edward R. H. and Joyce P. McDowell, Trustees

Printed Name & Title of Person Signing Above

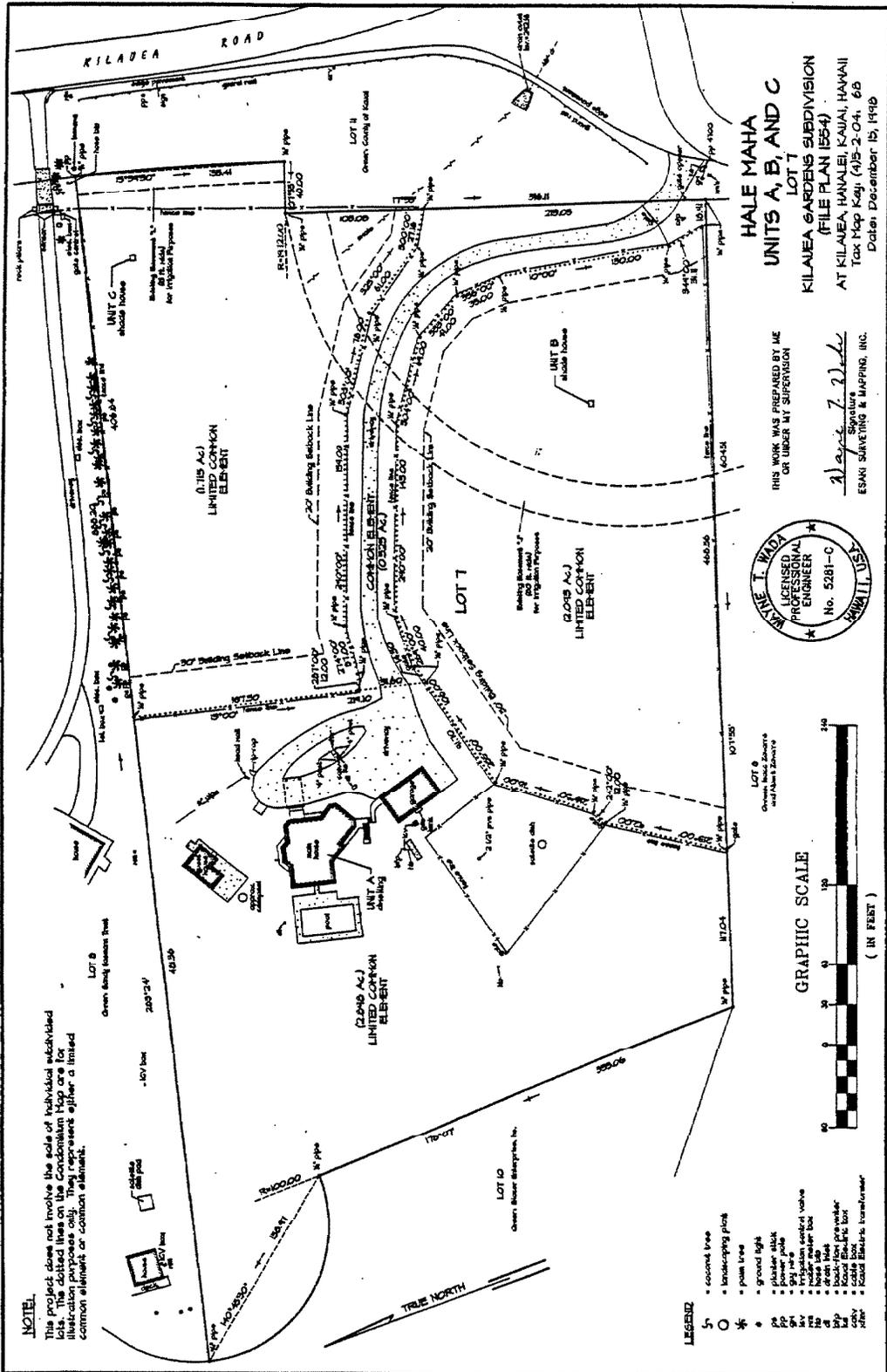
Distribution:

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.*

EXHIBIT "A"

CONDOMINIUM PLOT PLAN AND LIMITED COMMON ELEMENT LOCATIONS



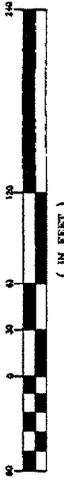
NOTE:

This project does not involve the sale of individual subdivided lots or units. It is a plot plan for illustration purposes only. They represent either a limited common element or common element.

LEGEND:

- common tree
- landscaping plot
- ground light
- plaque
- ▲ sky sign
- ▽ irrigation control valve
- ◇ fire hydrant
- △ fire alarm pull station
- drain trap
- ground electrical box
- solid electric transformer

GRAPHIC SCALE



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

*Karen T. Ward*  
 ESANI SURVEYING & MAPPING, INC.  
 Date: December 15, 1998

**HALE MAHA**  
**UNITS A, B, AND C**  
**LOT 7**  
**KILAUEA GARDENS SUBDIVISION**  
**(FILE PLAN 1554)**  
 AT KILAUEA HANAIEI, KAUAI, HAWAII  
 Tax Map Key: (4)5-2-04, 65  
 Date: December 15, 1998

**EXHIBIT B**

**SUMMARY OF SALES CONTRACT**

The HALE ANUENUE Sales Contract and Receipt (the "contract"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. The method of payment of the purchase price to the escrow agent, subject to other terms.
2. The closing date for the purchase.
3. Whether, at the time of execution of the contract, an effective date for a final public report has been issued.
4. The terms and conditions of the sale which include, among other provisions, the following:
  - (a) That Purchaser will receive a copy of the final public report for the project.
  - (b) Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow Agreement, and Purchaser is subject to all of the terms of the Escrow Agreement.
  - (c) Seller has a right to extend the closing date by 31 days or by 31 days after the public report effective date is issued, whichever is later.
  - (d) After issuance of the Final Public Report effective date and Buyer's waiver of its right to cancel under Hawaii Revised Statutes Section 514A-62, Purchaser shall not have the right to rescind the contract.
  - (e) Purchaser has received a copy of the Escrow Agreement.
  - (f) The unit the Purchaser is purchasing is shown on the condominium map; Purchaser will have the right to cancel if the Unit is different from that shown on Exhibit A.
  - (g) That a deed conveying clear title will be given at closing, subject to certain obligations.
  - (h) The Purchaser agrees to give future easements if reasonably required for the project.
  - (i) Except for unexpired builder's statutory warranties and assignable appliance warranties, the Purchaser will accept the Unit "AS-IS". Purchaser assumes all risks regarding any potential hazardous materials on the condo property or property adjoining or in the vicinity, including liability for suits by third parties. Seller is, however, unaware of any such conditions on the property.
  - (j) The payment of commissions, if any, is set out in the contract.
  - (k) Time is of the essence of the obligations of Purchaser under the contract.
  - (l) If Purchaser has defaults, Seller may cancel the contract or bring legal action against Purchaser to force sale, or obtain money damages.

**SPECIAL NOTICE:** THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE CONTRACT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE PURCHASER'S RIGHTS AND OBLIGATIONS, THE PURCHASER MUST REFER TO THE PURCHASER'S CONTRACT TO DETERMINE THE BUYER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONTRACT, THE CONTRACT WILL CONTROL NOT THIS SUMMARY.

**EXHIBIT C**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS**

Qty.	Unit No.	Area of Limited Common Element* (Acres)	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	% of Common Int.
1	A	2.898	2-2.5	2,581	0	50%
		Guest House	0	468		
		Garage	0	918		
1	B	2.093	0	0	16	25%
1	C	1.715	0	0	16	25%

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. Units A has substantially more value than the other units. It's value and burden are deemed by the Developer to be double that of the other units. Therefore, the assessment of undivided interest both for common expense and for voting is 50% for Unit A, 25% for Unit B and 25% for Unit C.

The common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration of Condominium Property Regime, each unit owner may use the unit, alter or add to it in any manner deemed desirable, so long as it is permitted by law and the Declaration of Protective Covenants and House Rules, if any. If adjoining unit owners desire to alter and/or transfer portions of their respective units, they can do so by the filing of an amendment to the Condominium Map and the Declaration of Condominium Property Regime together with their respective signatures.

**\*Note: Land areas referenced herein are not legally subdivided lots.**

**END OF EXHIBIT C**

## EXHIBIT D

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between FIRST HAWAII TITLE CORPORATION (the "Escrow"), and EDWARD R.H. MCDOWELL, TRUSTEE and JOYCE P. MCDOWELL, TRUSTEE, Trustees (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.

2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.

3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected within seven days of signing the sales contract to cancel and receive all funds paid, without deduction; or (b) the Real Estate Commission has not issued a Final Public Report on the project or the requirements of the sales contract have not been met; or (c) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met.

4. Escrow will return deposited sums to the Buyer without interest if Seller and Buyer give Escrow written notice to return the funds to Buyer, if there is a right to cancellation and refund of monies under the sales contract or otherwise. If there is a cancellation under the seven-day right, no fees will be charged Buyer. Thereafter, in the event of a cancellation as a matter of agreement or right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, and all other costs incurred in connection with the Escrow, not less than \$25.00.

5. Escrow will arrange for and supervise the signing of all documents which are to be signed subsequent to and contemplated by the sales contract.

6. AS Escrow's compensation for its performance under this Agreement, Escrow will receive its schedule rate for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon schedule rate.

**SPECIAL NOTICE:** THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE AGREEMENT, ONE MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

**END OF EXHIBIT D**

**EXHIBIT E**

**COMMON ELEMENTS OF THE PROJECT**

The common elements of the project are:

- (a) the land in fee simple;
- (b) the access and utility common element, consisting of 1.312 acres of land area;
- (c) the common electric gate and related improvements;
- (d) all commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; and
- (e) any and all other future elements and facilities in common use or necessary to the Project.

**LIMITED COMMON ELEMENTS OF THE PROJECT**

Certain parts of the common elements, referred to as the "limited common elements," have been designated and set aside for the exclusive use of one or more units, and such unit(s) have appurtenant exclusive easements for the use of such limited common elements. The limited common elements set aside, reserved and deemed a limited common element appurtenant to and for the exclusive use of each respective unit is that certain land area upon and around which A,B,C are located, shown and designated on the Condominium Map and the table below.

<u>Unit Number</u>	<u>Area of Limited Common Element*</u>
A	2.898 acres
B	2.093 acres
C	1.715 acres

The wired telephone-operated gate openers shall be limited common elements of the unit(s) to which they pertain.

**\*Land areas referenced herein are not legally subdivided lots.**

**END OF EXHIBIT E**

**EXHIBIT F**

**ENCUMBRANCES AGAINST TITLE**

1. Real Property Taxes. Check with the County of Kauai, Department of Finance, Real Property Tax Division for detailed information.
2. The definitions and prohibitions of "SHORELINE SETBACKS," as enacted by Act 136, Sessions Laws of Hawaii, 1970.
3. GRANT  
In Favor Of: KAUAI ELECTRIC COMPANY, LIMITED, and HAWAIIAN TELEPHONE COMPANY, now known as GTE HAWAIIAN TELEPHONE COMPANY, INCORPORATED, formerly known as Mutual Telephone Company  
Dated: September 30, 1949  
Book: 2270  
Page: 56  
Purpose: Granting an easement for utility purposes.
4. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:  
DEED  
Dated: December 4, 1981  
Book: 16111  
Page: 467  
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.
5. Easement J over and across Lot 7 for irrigation purposes, as shown on File Plan No. 1554.
6. Easement K over and across Lot 7 for irrigation purposes, as shown on File Plan No. 1554.
7. GRANT  
In Favor Of: C. BREWER & CO., LTD., a Hawaii corporation  
Dated: August 22, 1978  
Book: 13123  
Page: 211  
Purpose: Granting Easements J and K

8. UNRECORDED AGREEMENT

By and Between: KILAUEA SUGAR PLANTATION COMPANY and U. S. LIGHTHOUSE SERVICE  
Dated: January 3, 1935  
Re: 2 inch water pipeline, to which reference is hereby made.

9. UNRECORDED AGREEMENT

By and Between: KILAUEA SUGAR COMPANY, LIMITED and the UNITED STATES OF AMERICA, acting through the FOURTEENTH COAST GUARD DISTRICT  
Dated: April 30, 1962  
Re: Allowing the Coast Guard to maintain existing two inch water pipeline and take surplus water from the end of the eight inch water main at Kilauea Sugar Company, Limited's Mill, to which reference is hereby made.

10. The Effect of, if any:

GRANT  
In Favor Of: CITIZENS UTILITIES COMPANY, a Delaware corporation  
Dated: March 13, 1987  
Book: 20604  
Page: 244  
Purpose: Granting an easement for utility purposes (Sandra N. Fuller, the vested owner at the time of the execution and recordation of the aforesaid instrument, did not sign the document.)

11. The terms and provisions, including the failure to comply with the covenants, conditions and reservations, contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR HALE ANUENUE

Dated: SEPTEMBER 4, 1999  
Document No. 99-149700

Condominium Map No. 2968, to which reference is hereby made.

12. The terms, provisions, covenants, easements and reservations as contained in the following:

BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF HALE ANUENUE

Dated: SEPTEMBER 4, 1999  
Document No. 99-149701

13. The terms, provisions, covenants, easements and reservations as contained in the following:

DECLARATION OF PROTECTIVE COVENANTS AND BUILDING RULES OF HALE ANUENUE

Dated: SEPTEMBER 4, 1999  
Document No. 99-149702

14. The terms, provisions, conditions and restrictions, if any, contained in that certain Trust Agreement(s) herein referred to.

15. MORTGAGE

Mortgagor: ROBERT M. FULLER and SANDRA N. FULLER,  
husband and wife  
Mortgagee: BANK OF HAWAII, a Hawaii corporation  
Dated: June 5, 1992  
Document No.: 92-093976  
Principal Sum: \$125,000.00  
The present amount due should be determined by contacting the owner of the debt.

16. MORTGAGE AND FINANCING STATEMENT

Mortgagor: EDWARD R. H. McDOWELL and JOYCE P. McDOWELL,  
Trustees of the Edward R. H. McDowell and  
Joyce P. McDowell Trust, under unrecorded  
Declaration of Trust dated October 29, 1992,  
as amended, by the First Amendment dated  
November 26, 1996, with full powers and  
authority to buy, lease, mortgage and sell  
the property herein described, and other  
powers more fully set forth therein.  
Mortgagee: FIRST HAWAIIAN BANK, a Hawaii corporation  
Dated: October 20, 1998  
Document No.: 98-159268  
Principal Sum: \$250,000.00  
The present amount due should be determined by contacting the owner of the debt.

END OF EXHIBIT F

**EXHIBIT G  
DISCLOSURE ABSTRACT FOR  
HALE ANUENUE**

Pursuant to Hawaii Revised Statutes, Section 514(A)-61, the Developer of HALE MAHA makes the following disclosures:

1. The Developers of the project are EDWARD R. H. McDOWELL, TRUSTEE, and JOYCE P. McDOWELL, TRUSTEE, 2510 The Strand, Hermosa Beach, California 90254; telephone (310)374-6939.

2. See Exhibit H to the Final Public Report for the projected maintenance fees. The Developer discloses that no reserve study was conducted in accordance with §514A-83.6, HRS, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

3. There are no warranties against defects of material and workmanship in individual apartments, common elements or exclusive use areas, and the purchaser buys his/her unit in an "as is" condition.

4. All of the apartments of the project are to be used for agricultural purposes and permitted residential use within the agricultural zone. There will be no commercial use except those activities permitted by the County of Kauai County Comprehensive Zoning Ordinance and subdivision covenants.

5. The real estate broker for the Project is: \_\_\_\_\_  
Regency Pacific Realty LLC

At any time the Owner or Developer uses a broker for sales, an approved listing agreement must be on file with the Real Estate Commission.

The undersigned certify the accuracy of the foregoing.

Edward R. H. McDowell  
EDWARD R. H. McDOWELL, TRUSTEE

Joyce P. McDowell, Trustee  
JOYCE P. McDOWELL, TRUSTEE

Dated: 10/28/99

---

RECEIPT

The undersigned has received a copy of the foregoing disclosure abstract with Exhibit G this \_\_\_ day of \_\_\_\_\_, 19\_\_.

Purchaser(s)

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**EXHIBIT H**  
**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>
A	\$200.00	X 12	=	\$2400.00/YR
B	\$100.00	X 12	=	\$1200.00/YR
C	\$100.00	X 12	=	\$1200.00/YR

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:

Yearly Total

Monthly x 12 months =

Utilities and Service

Electricity

[x] common elements only/gate

Maintenance, Repairs and Supplies

Road Maintenance

Insurance

Reserves (\*) (possible roadway repair)

**TOTAL**

We, EDWARD R.H. MCDOWELL, TRUSTEE and JOYCE P. MCDOWELL, TRUSTEE, Trustees, Developers of the condominium project HALE ANUENUE, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles and reserves were estimated.

Edward R.H. McDowell, Trustee 10/28/99  
EDWARD R.H. MCDOWELL, TRUSTEE Date

Joyce P. McDowell, Trustee 10/28/99  
JOYCE P. MCDOWELL 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 not conducted a reserve study in accordance with Section 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to Section 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.

COPY

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4444 Rice Street, Suite 473, Bldg. A,  
Lihue, Hawaii 96766

M E M O R A N D U M

DATE: October 7, 1999

TO: Senior Condominium Specialist  
Real Estate Commission  
P&VLD/DCCA  
250 South King Street, Suite 702  
Honolulu, Hawaii 96813

FROM: } Dee M. Crowell, Planning Director *DMC*

Subject: Certification of Inspection of Existing Buildings for

PROJECT NAME: HALE ANUENUE CONDOMINIUM PROJECT  
TAX MAP KEY: (4) 5-2-04:68

The developer of the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai (Section 514A-40 (b)(1), HRS). Subject to the disclosures and waiver (item "g" below) specified herein, we certify the following:

- a. The developer has contracted architect Matthew F Schaller to certify that the existing structures on the proposed project are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by this department.
- b. There were no variances approved for the subject property.
- c. The parcels does not contain any outstanding legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.
- d. The current zoning for the parcel is agriculture.
- e. There are no outstanding violations of County building or zoning codes according to our records.

Senior Condominium Specialist

Page 2

October 7, 1999

- f. Kauai Electric and the Department of Water has requested that this department inform them of new CPRs so they can provide their comments on existing facilities and on additional and future service requirements for the project. Their comments herewith enclosed.
- g. WAIVER  
The foregoing certification is not a warranty as to any compliance with all applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulation of condominiums under Subsection 514A-40 (b)(1), Hawaii revised Statutes.

If you have any questions, please contact Alvin Fukushima of my staff at 241-6697

cc: Steven R. Lee

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4444 Rice Street, Suite 473, Lihue, Hawaii 96766

M E M O R A N D U M

DATE: September 16, 1999  
TO: Kauai Electric  
Attn: Debra L. Santiago  
FROM: Alvin Fukushima  
Drafting Technician III  
SUBJECT: CPR Comments

Date	SEP 17 1999
Rec'd:	
File	
No.:	
_____	Manager, Engineering
_____	Suprvsr, Engineering
_____	Systems Engineer
_____	Staff Engineer
_____	Customer Engineer
_____	Associate Engineer
AX	copy to:

Pursuant to our agreement, we are submitting the attached CPR application for your comments.

The property being proposed for CPR is identified as TMK 5-2-04:68 and named Hale Anuenue Condominium which is zoned agriculture and qualifies for 3 units. The developer is proposing 3 units. A map of the proposed CPR is attached for your reference.

Please submit your comments to our office by Sept. 28, 1999. You may use the portion below to comment on or if you wish, submit a separate letter to us.

If you have questions, please call me at 241-6697.

**COMMENTS:**

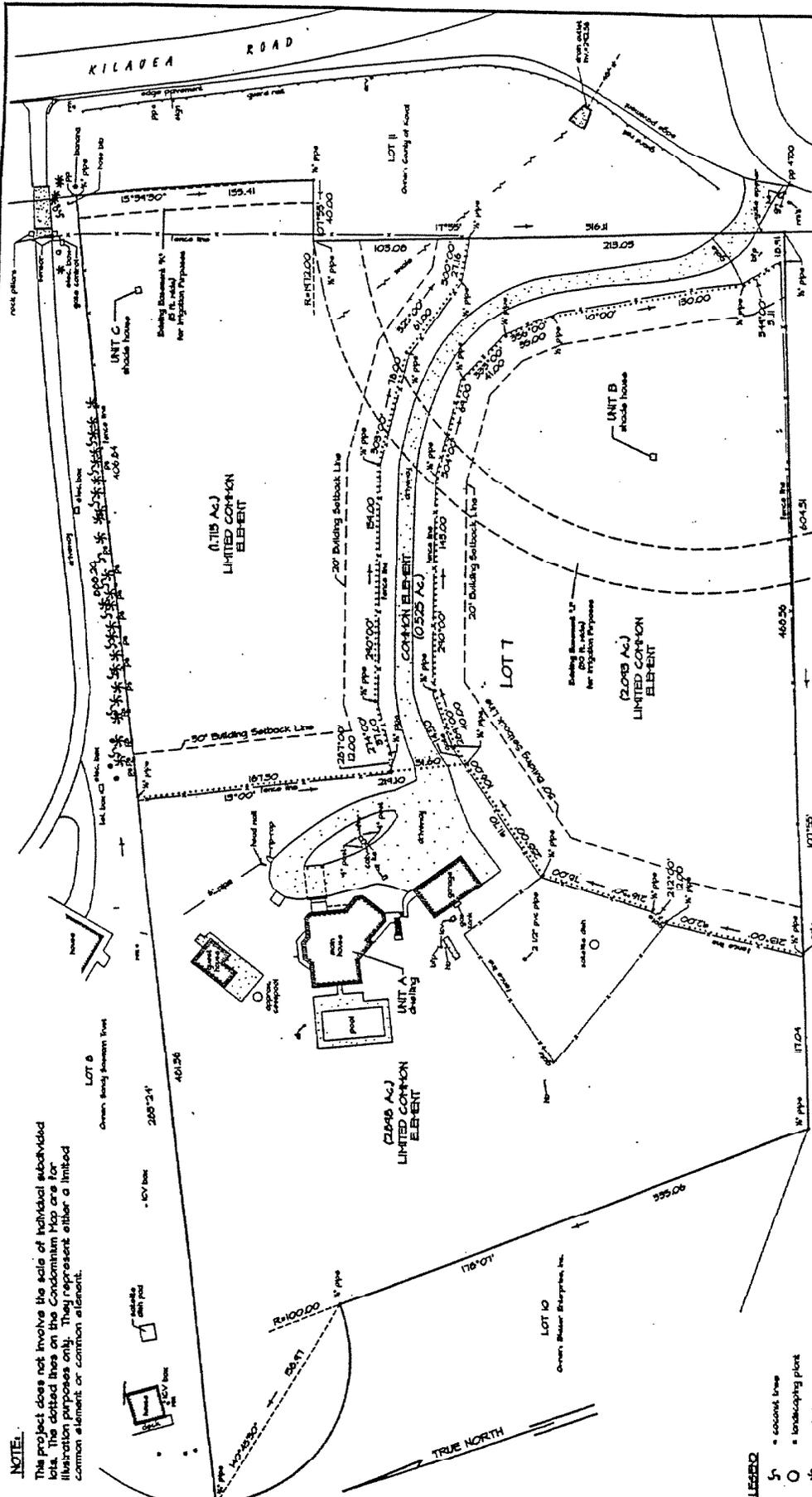
UTILITY EASEMENTS GRANTED TO KAUAI ELECTRIC ARE REQUIRED IN ORDER TO FURNISH UNITS B & C OF THE "HALE ANUENUE CONDOMINIUM", TMK: 5-2-04:68 WITH ELECTRICAL SERVICE. EXISTING EASEMENT EXHIBIT "A" ATTACHED. FOR FURTHER INFORMATION REGARDING EASEMENTS, PLEASE CALL OUR ENGINEERING SERVICES COORDINATOR, ALICE MIGUEL AT 246-4369.  
PLEASE NOTE ON THE ATTACHED ELECTRICAL MAP THAT THERE IS NO SECONDARY CONDUCTOR AVAILABLE TO SERVE UNIT B. A PADMOUNT TRANSFORMER MAY BE NEEDED. UNIT C MAY BE SERVED FROM PULLBOX #3780, HOWEVER AN EASEMENT WOULD BE REQUIRED. THE DEVELOPER OF THIS CPR SHOULD CONTACT KAUAI ELECTRIC A.S.A.P. @246-4340.

COUNTY OF KAUAI  
SEP 22 10:53  
PLANNING DEPT.

*Debra L. Santiago*  
9/20/99 Kauai Electric Co.

SEP 21 1999  
SENT \_\_\_\_\_

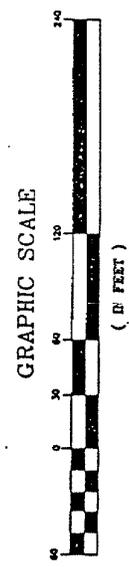
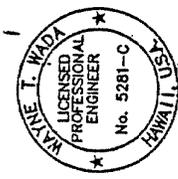
**NOTE:**  
 This project does not involve the sale of individual subdivided lots. The dotted lines on the Condominium Map are for illustration purposes only. They represent either a limited common element or common element.



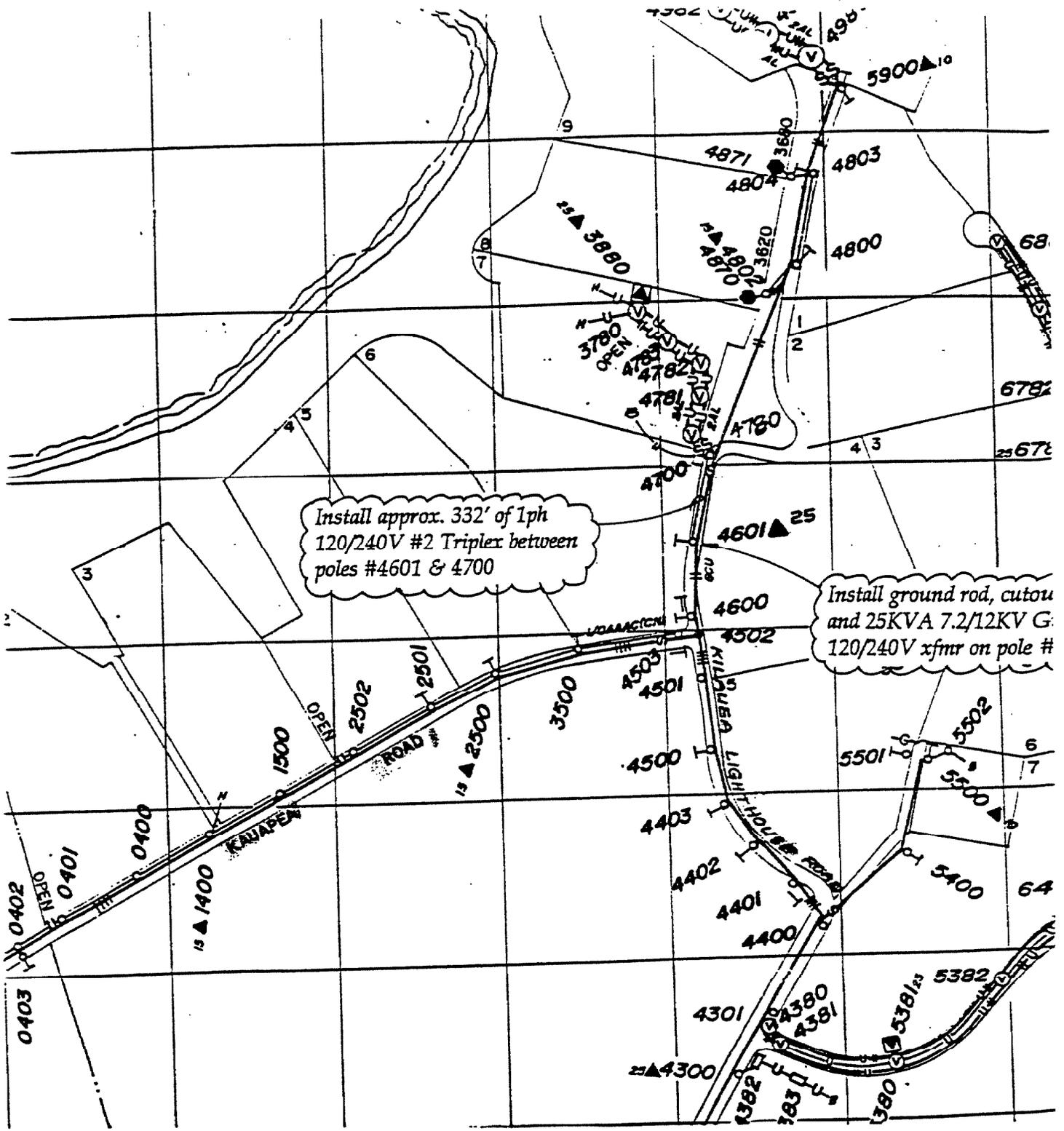
**HALE AVENUE  
 UNITS A, B, AND C  
 LOT 7  
 KILAUEA GARDENS SUBDIVISION  
 (FILE PLAN 1554)  
 AT KILAUEA, HANALEI, KAUAI, HAWAII  
 Tax Map Key: (4)S-2-04; 60  
 Date: April 24, 1993**

THIS WORK WAS PREPARED BY ME  
 OR UNDER MY SUPERVISION

*Wayne T. Wada*  
 Signature  
 ESQUI SURVEYING & MAPPING, INC.



- LEGEND**
- coconut tree
  - landscaping plant
  - palm tree
  - ground light
  - planter stick
  - sign post
  - irrigation control valve
  - water meter box
  - drop box
  - back-flow preventer
  - water electric box
  - back electric transformer



**Kilauea Lighthouse Road - McDowall, Edward**  
 (Electric Gate)

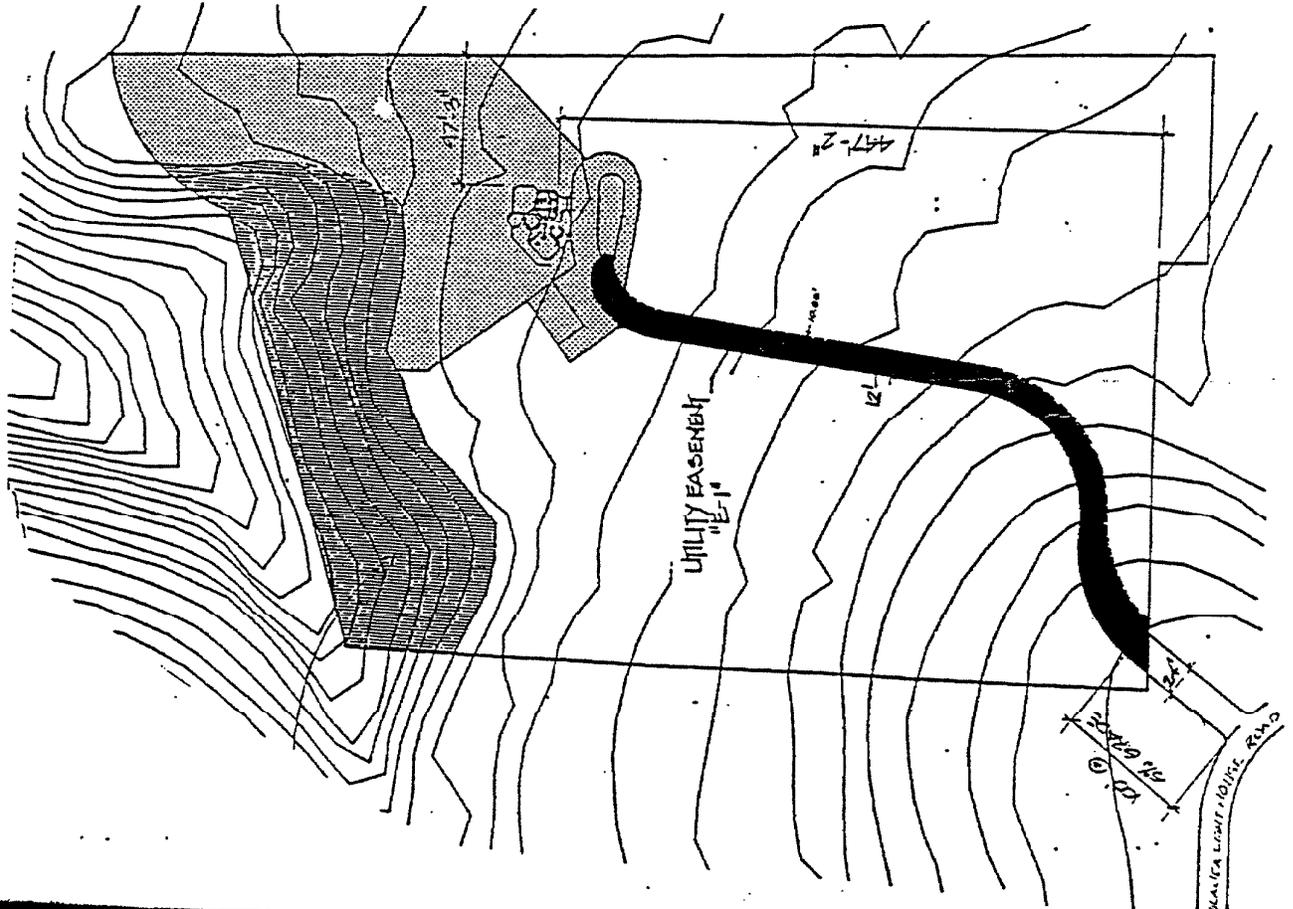
File #98-04-506FP

KILAUEA			
CITIZENS UTILITIES COMPANY KAUAI ELECTRIC DIVISION ELEELE, KAUAI, HAWAII		DETAIL MAP ELECTRICAL DISTRIBUTION	
		DISTRICT	MAP NO.
R & R DRAFTING INC. THE DALLES, OREGON		HANALEI	145-530 140-530

DESIGNATION OF A UTILITY EASEMENT IN FAVOR  
 OF KAUAI ELECTRIC, AFFECTING A PORTION OF  
 LOT 7, PARCEL 68, KILAUEA GARDENS SUBDIVISION,  
 F.P. 1554, KILAUEA & KAHILLI, HANAIEI,  
 KAUAI, HAWAII  
 TMK 5-2-04

OWNER: ROBERT M. FULLER

EXHIBIT A



SCALE N. T. S.		REVISIONS		DATE
DATE	25 FEB 87			
DR'N	jpl			
CHKD	GHT			
AP'VD				
TITLE				NO.
UTILITY EASEMENT DESIGNATION				

KAUAI ELECTRIC DIVISION  
 CITIZENS UTILITIES COMPANY

UTILITY EASEMENT DESIGNATION

39004

# DEPARTMENT OF WATER

County of Kauai

*"Water has no Substitute -- Conserve It!"*

COUNTY OF KAUAI

'99 SEP 21 8 21 05

PLANNING DEPT.

September 20, 1999

Mr. Alvin Fukushima  
Planning Department  
County of Kauai  
Lihue, HI 96766

Dear Mr. Fukushima:

Subject: "Hale Anuenue Condominium" Proposed Three Unit CPR on  
TMK: 5-2-~~21:07~~<sup>21:08</sup>, Area Zoned Ag, Kilauea Road, Kilauea, Kauai, Hawaii

Any actual development of this area will be dependent on the adequacy of the source, storage and transmission facilities existing at that time. At the present time, these facilities along Kilauea Lighthouse Road are adequate for the proposed CPR.

If you have any questions, please call Keith Aoki at 245-5418.

Sincerely,



Ernest Y. W. Lau  
Manager & Chief Engineer

KA/sb  
A:\Cpr29\aoaki

**EXHIBIT J**

**SUMMARY OF COVENANTS, CONDITIONS AND  
RESERVATIONS FOR THE KILAUEA GARDENS SUBDIVISION**

The sale of all lots in the KILAUEA GARDENS SUBDIVISION, of which this Project is a part, shall be subject to the recorded conditions, covenants and restrictions set forth on this page. See Page 2 of this Exhibit J for specific Project restrictions:

a. The conditions stated in the tentative subdivision approval letter dated March 24, 1977, issued by the County of Kauai Planning Department, regarding: facilities reserve charges; Department of Water approval of water system facilities; subdivision map revisions; uses within the conservation district being subject to the approval of the Department of Land and Natural Resources; the applicant conducting percolation tests at strategic sites; the dedication of road widening reserves; payment of park fees; compliance with Act 199 regarding B class soils; file copies of easements with the Planning Department; applicants preparation road, drainage, water and utilities improvement plans; inform potential purchasers of conditions and restrictions affecting the land; applicant to meet all conditions of SMA permit approval; and provide the lots with easements for irrigation facilities. All of the foregoing were complied with as a prerequisite to final subdivision approval.

b. The Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyances referenced in Exhibit F hereto.

c. The conditions stated in the application for final subdivision approval letter dated February 28, 1978, written by Clinton I. Shiraishi, attorney for the applicants. The letter confirms compliance with the tentative subdivision approval letter.

d. All construction for residential uses shall be of new masonry or lumber material free of dry rot and termites. No second hand material can be used. No existing dwelling may be moved from a different location to a subdivision lot. There are restrictions on the types of roofing permitted.

e. No structure of a temporary character shall be used on any lot as a residence.

f. The front setback shall be a minimum of 50 feet from the boundary line.

g. The side setbacks shall be a minimum of 30 feet from the boundary line.

h. Animals, such as horses and cows, and poultry may be raised on the property. However, no pigs shall be permitted on any part of the property.

i. No deed, mortgage, or lease shall be made or delivered by the Grantee conveying, mortgaging or leasing the premises without containing or be subject to the CC&R's.

j. Easements for the installation and maintenance of utilities, irrigation and drainage facilities are reserved to the subdivision applicant.

k. The covenants and restrictions shall run with the land, and jurisdiction may be taken in equity at suit of the subdivision applicant, its successors or assigns, or of any other Buyer-Grantee of any of said lots within said subdivision.

**WARNING!!! THIS DOCUMENT IS NOT INTENDED TO BE A FULL SUMMARY OF ALL PROVISIONS. AN INTERESTED BUYER SHOULD REVIEW A FULL SET OF THE COVENANTS BEFORE ENTERING INTO A BINDING AGREEMENT TO PURCHASE A UNIT IN THE PROJECT.**

Next follows a summary of the recorded House Rules (covenants) that are specific to this condominium Project. This document is not meant to completely recite the actual provisions of the House Rules, nor to cover every issue in which a purchaser might have interest. **The prospective purchaser is urged to obtain a full copy of the covenants from the condominium Developer prior to entering into an agreement to purchase a unit.**

- A. There is a Design Review Committee which approves construction.
- B. Any owner desiring to construct buildings must get permits, including the need for a Farm Dwelling Agreement to build a residence.
- C. Water and Utilities are available in or next to the County road through the common element or easements. Unit owners will be required to connect such utilities to his/her respective improvements at his/her own cost and expense.
- D. Wastewater Treatment - There are no sewer lines and no sanitary sewer system. Each Unit will be required to have its own wastewater treatment system.
- E. Roadway/Driveways - The common roadway within the Project is paved. Each Unit shall improve its own driveway and approach entering the Unit from the common roadway.
- F. Farming - Each Unit owner must engage in agricultural activity, as defined herein, as a condition precedent to the ability to build or occupy a "Farm Dwelling."
- G. Drainage - Each Unit shall clear, grade, drain and construct improvements on each Unit in such a fashion so as not to alter the basic flow of surface waters of the Project.
- H. Dwelling Cost and Quality are restricted.
- I. Setbacks - No future building shall be located on any homesite nearer than the greater of the setback lines shown on the Condominium Map or five feet from any other boundary.
- J. There are standard exterior architectural restrictions.
- K. Each outbuilding or any Unit must be of quality workmanship and materials, and conform inconspicuously to the architectural style of the primary residence of that Unit.
- L. This project has height limitations in addition to the Kauai Northshore ordinance.
- M. Noxious, loud and offensive activities are restricted.
- N. There is limited exterior lighting.
- O. Clear-cutting is restricted.
- P. A Landscaping Plan is required for each Unit.
- Q. Temporary structures are limited.
- R. Pets and farm animals are restricted.
- S. The Association shall determine and control the use of the common area lands, if any, including but not limited to use for landscaping and paving or construction and maintenance of the gate and entry system.
- T. The Association shall have the power to enforce House Rules, including the assessment of the common expenses, adoption of a fine system and the filing and foreclosing of a lien against any Unit owner failing to observe these House Rules.
- U. A procedure for repeal or modification is defined.

- V. The effects of agricultural taxes are treated.
- W. A right of first refusal on resale is established in favor of the Developer.
- X. Each Unit owner shall be responsible for bringing water, power, telephone and television cable service to their individual Units.
- Y. The Association shall have easements for access to any Unit for repair, maintenance and emergency.
- Z. The Association shall responsible for any damages due to its gross negligence or willful misconduct during any entry onto any Unit by the Association or any of its agents.
- AA. The foregoing covenants and conditions shall continue in force and effect for at least twenty years after their initial term.
- BB. Any dispute concerning or involving one or more provisions hereof, actual or threatened, shall be submitted to arbitration.
- CC. All matters referable to arbitration hereunder shall be heard by a single arbitrator and the arbitrator's decision or award shall be specifically enforceable under the prevailing arbitration laws of the State of Hawaii.

END OF EXHIBIT "J"