

CONDOMINIUM PUBLIC REPORT

Prepared &  
Issued by:

Developer PHOENIX INVESTMENTS, INC., A HAWAII CORPORATION  
Address POST OFFICE BOX 4492, HONOLULU, HI 96812

Project Name(\*): HOOKELE 79  
Address: 73-4549 KUKUKI ST., KAILUA-KONA, HI 96740

Registration No. 4408 Effective date: May 16, 2000  
Expiration date: June 16, 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 a 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.
  - FINAL:**  
**(white)** The developer has legally created a condominium and has filed complete information with the Commission.  
 No prior reports have been issued.  
 This report supersedes all prior public reports.  
 This report must be read together with \_\_\_\_\_
  - SUPPLEMENTARY:**  
**(pink)** This report updates information contained in the:  
 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

FORM: RECO-30 286/986/189/1190/892/0198

*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 Report**

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 as a LIMITED COMMON AREA 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

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

There are presently **NO RESIDENTIAL STRUCTURES ON THE PROPERTY**. The only buildings on the property are storage sheds, each of which may be defined as an "apartment" under the condominium property act.

THERE ARE RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT ON THE PROPERTY. THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. ANY DWELLING CONSTRUCTED ON THE PROJECT MUST COMPLY WITH **CHAPTER 25 OF THE HAWAII COUNTY CODE AND RULE 13 OF PLANNING DEPARTMENT RULES**, AS THOSE RULES MAY BE ALTERED, AMENDED OR REPLACED. THE PURCHASER IS URGED TO CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A RESIDENTIAL DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, ON THE PROPERTY.

Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

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

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## **General Information On Condominiums**

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

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

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

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

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

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

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the projects 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: PHOENIX INVESTMENTS, INC.  
A HAWAII CORPORATION Name\* Phone: (808) 263-4161  
POST OFFICE BOX 4492 (Business)  
Business Address  
HONOLULU, HI 96812

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

PRESIDENT, VICE PRESIDENT, SECRETARY, TREASURER AND DIRECTOR – WALLACE KLEIN  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker: THOMAS F. SCHMIDT  
TOM SCHMIDT REALTORS Name Phone: (808) 329-3124  
P. O. BOX 398 (Business)  
Business Address  
KAILUA-KONA, HI 96745

Escrow: FIDELITY ESCROW SERVICE, CORP. Name Phone: (808) 537-6799  
745 FORT STREET, # 303 (Business)  
Business Address  
HONOLULU, HI 96713

General Contractor\*: ONS INCORPORATED Name Phone: (808) 329-7349  
75-5806 KAKALANI ST. (Business)  
Business Address  
KAILUA-KONA, HI 96740

Condominium Managing Agent: THE PROJECT WILL BE SELF-MANAGED  
BY THE ASSOCIATION OF APT. OWNERS Name Phone: \_\_\_\_\_  
Business Address (Business)  
\_\_\_\_\_

Attorney for Developer: COLIN L. LOVE Name Phone: (808) 329-2460  
POST OFFICE BOX 2072 (Business)  
Business Address  
KAILUA-KONA, HI 96745

\* 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. 99-113741  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 2924  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

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

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 99-113742  
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%	_____100%_____
Bylaws	65%	_____100%_____
House Rules	_____	_____N/A_____

\* The percentages for individual condominiums 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:

During the sales period, the Developer has reserved the right to make changes to the project documents and the project as may be required by law, a title insurance company, an institutional lender or any governmental agency prior to the conveyance or transfers of the first apartment, for any reason and in any manner, as the developer deems necessary under the circumstances, provided that no such change shall substantially alter or reduce the usable space within the Buyer's Apartment, render unenforceable the Buyer's mortgage commitment, increase the Buyer's share of common expenses, or reduce the obligations of the Developer for common expense on unsold apartments.

III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

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

**Leasehold or Subleasehold:** Individual apartments and the common elements, which include the underlying land will be leasehold.

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

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

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

Lease Rent Payable:             Monthly                             Quarterly  
    Semi-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 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 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 provisions(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



Fee Owner: PHOENIX INVESTMENTS, INC  
 A HAWAII CORPORATION.  
 Name  
 POST OFFICE BOX 4492.  
 Address  
 HONOLULU, HI 96812

Lessor: N/A  
 Name  
 Address

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 2 Floors Per Building 1

Exhibit A contains further explanation.

3. Principal Construction Materials:

Concrete     Hollow Tile     Wood

Other \_\_\_\_\_

4. Permitted Use by Zoning:

	No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>		No. of <u>Apts.</u>	Use Determined <u>By Zoning</u>
<input 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>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: As provided in the bylaws

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

Other: Except for vehicles belonging to guests, the owners/tenants of the apartments shall keep or park no more than two motor vehicles on the property at any one time. They shall not keep or allow any junked or abandoned vehicle or vessel on the property. The property shall not be used as a location for the repair of any vehicle or vessel if such repair includes painting other than minor touch-up, or the removal and rebuilding of any of a vehicle's or vessel's major parts other than as may be related to minor tune-ups and adjustments. If a vessel is kept on the property it shall be kept in the carport if one is available. The property shall not be used for the outdoor cleaning of any large fish or the slaughtering or outdoor cooking of any whole animals. The property shall not be used for dog kennels, or chicken or pig farming.

There are no special use restrictions.

6. Interior (fill in appropriate numbers)

Elevators: 0                      Stairways: 0                      Trash Chutes : 0

Apt. Type                      Quantity BR/Bath                      Net Living Area (sf)\*                      Other Area (sf)                      (Identify)

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (SF)	(Identify)
SHED	2	0/0	0	48	STORAGE SHED

Total Apartments 2

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

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

Boundaries of Each Apartment:

Each apartment includes, but is not limited to, the exterior finished surfaces of all walls, the doors and door frames, windows and window frames along the perimeters, the air space within the perimeter, and all fixtures originally installed in the apartment. The apartments include the interior load-bearing columns, girders, beams and walls, the undecorated or unfinished surfaces of the floor and ceilings surrounding each apartment and any pipes, shafts, wires, conduits or other utility or service lines running through or servicing only that apartment. which are utilized for or serve more than one apartment. An apartment does not include any pipes, shafts, wires, conduits or other utility or service lines running through or servicing an apartment which are utilized for or serve more than one apartment.

Permitted Alterations to Apartments:

Alterations or additions within an apartment may be made without prior written notice to or the approval of the Board of Directors. If all of the requirements of the County of Hawaii and the State of Hawaii are met the owner of an apartment may be able to convert its agricultural shed to one residence for use in conjunction with agriculture. Only one such residence shall be permitted within the Limited Common Area for Apartment "A" and only one such residence shall be allowed within the Limited Common Area for Apartment "B".



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   C  

as follows:

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

There are no limited common elements in this project:

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

described in Exhibit       C      .

as follows:

3. Common Interest: Each apartment will have an undivided 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" : Fifty Percent (50%)

Apartment "B" : Fifty Percent (50%)

Each apartment has an equal undivided fractional interest in all of the common elements. The common interests are equal and not related to or determined by the size of the apartments.

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

Exhibit       "D       describes the encumbrances against the title contained in the title report dated       Feb 28, 2000      

and issued by       HAWAII ESCROW & TITLE, INC      

Note: Items 11 & 12 in Exhibit D which buyer should obtain releases on before closing.

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 <b>Prior to Conveyance</b></u>
Mortgage	If Developer defaults or the mortgage lien is foreclosed prior to conveyance to Buyer, Buyer's contract to purchase will be terminated and all of Buyer's funds will be refunded to Buyer, less escrow cancellation fees. However, should Buyer's deposit be used by the Developer prior to a foreclosure of the mortgage and prior to conveyance to Buyer, Buyer may not be able to recover the deposited moneys

F. Construction Warranties:

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

1. Building and Other Improvements:

The Owner/Developer makes no warranties itself and the Owner/Developer is not aware of any warranties from any general contractor, subcontractor or materials supplier that are in existence. The Owner/Developer will assign to the purchasers apartments such warranties as may exist, if any, and the Owner/Developer will cooperate with each apartment owner during the effective period of any warranty, if any, in asserting any claims.

2. Appliances:

None

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

All construction on Shed Apartment "A" was completed during 1999  
All construction on Shed Apartment "B" was completed during 1999

H. **Project Phase:**

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

Summary of Developer's plans or rights 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, your apartment may be liened and sold through a foreclosure proceeding.

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

Exhibit "E" 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

[X] Specimen Sales Contract

Exhibit "F" contains a summary of the pertinent provisions of the sales contract.

[X] Escrow Agreement dated FEBRUARY 20, 2000

Exhibit "G" contains a summary of the pertinent provisions of the escrow agreement.

[X] Other Specimen 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** 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 Changes 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 given an effective date by the Hawaii Real Estate Commission
- B) Declaration of Condominium Property Regime.
- C) Bylaws of the Association of Apartment Owners.
- D) House Rules.
- E) Condominium Map.
- F) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other Declaration of Covenants, Conditions and Restrictions of the Kaloko II Project and the Amendment to Declaration of Covenants, Conditions and Restrictions of the Kaloko II Project attached as Exhibit J.

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 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. 4408 filed with the Real Estate Commission on April 25, 2000.

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

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**C. Additional Information Not Covered Above**

The property is zoned for agriculture. The apartments were designed and built to be used for agricultural work and storage. They are not residential apartments, and they may not be used for residential purposes. The apartments may not be used for any trade or business that is not related to an agricultural use of the property.

**Residential Dwellings within State Land Use Agricultural District**

The Hawaii County Planning Department is requiring applicants for the first building permit of land zoned for agricultural to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling Notice reads as follows:

**FARM DWELLING NOTICE**

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

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

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

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

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

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

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

Applicants for the second building permit for a dwelling on land zoned for agriculture are required to enter into an Agricultural Agreement with the Planning Director of the County of Hawaii, a copy of which is attached hereto as Exhibit "I", and to comply with the provisions of Chapter 25, Article 6, Division 3 of the Hawaii County Code, as amended, and Rule 13 of Planning Department Rules. A brief summary of some of their provisions may be found on Exhibit "H".

The Declaration of Covenants, Conditions and Restrictions of Kaloko II Project (CC&Rs) are attached to this Public Report as Exhibit "J". Article II of the CC&Rs contains minimum building size restrictions, provisions for design approval and prohibits certain types of structures. The existence of such limitations and restrictions in the CC&Rs for Kaloko II Project is not a representation by the Developers that improvements may be built in accordance with those restrictions. All prospective purchasers of apartments are advised to discuss intended improvements with the County of Hawaii Planning Departments and Building Departments and their own legal advisers before entering into any agreement to purchase an apartment in this project.

- 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.

PHOENIX INVESTMENTS, INC., A HAWAII CORPORATION

Printed Name of Developer

By: Wallace Klein  
Duly Authorized Signatory\*

3/8/00

Date

WALLACE KLEIN, PRESIDENT

Print Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii  
Planning Department, County of Hawaii

*\*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 managing member; and for an individual by the individual.*

**EXHIBIT "A"**  
**DESCRIPTION OF BUILDINGS AND APARTMENTS**

**There are two (2) Buildings.**

<u>Description of Buildings</u>	<u>Building "A"</u>	<u>Building "B"</u>
Number of stories	1	1
Number of basements	0	0
Number of apartments	1	1
Approximate age of building	Less than 1- years	Less than 1- years
Principal materials of construction	Metal	Metal
<u>Description of Apartments</u>	<u>Apartment "A"</u>	<u>Apartment "B"</u>
Apartment number	A	B
Location of apartment	Building "A"	Building "B"
Living area of apartment (Approx.)	48 sq. ft.	48 sq. ft.
Number of bedrooms	0	0
Number of bathrooms	0	0
Number of lanais or patios	0	0
Area of lanais or patios	0.	0
Description of rooms in the apartment	The apartments consist of an agricultural shed that is intended to be used for agricultural purposes only. It is not intended for residential purposes	The apartments consist of an agricultural shed that is intended to be used for agricultural purposes only. It is not intended for residential purposes
Immediate common element to which the apartment has access	The Limited Common elements surrounding the apartment and Common Element "C" shown on the Condominium Plan.	The Limited Common elements surrounding the apartment and Common Element "C" shown on the Condominium Plan.
Number of parking stalls that are part of the Limited Common Area for each apartment	2	2
Percentage of undivided interest in Common Elements	50%	50%

Net living area of enclosed portions of apartments are measured from interior surfaces of apartment perimeter walls. Lanai or patio areas considered as part of the apartment are computed and reported separately from the apartment area.

NOTE: FLOOR AREAS ARE APPROXIMATELY ONLY. THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR APARTMENT, LANAI OR PATIO.



**EXHIBIT "C"**  
**DESCRIPTION OF COMMON ELEMENTS**  
**AND**  
**LIMITED COMMON ELEMENTS**

All of the property is Fee Simple.

In the various documents relating to this project, the term "Common Element" means the same thing as the term "Common Area", and the term "Limited Common Element" means the same thing as "Limited Common Area".

Common Elements are those portions of the condominium project other than the individual apartments. Common Elements are owned jointly by all apartment owners. The owners of each apartment own an undivided one-half (1/2) interest (undivided 50% interest) in all of the Common Elements for all purposes, including voting. This means that the ownership **does not** depend on the size of an apartment or the use to which an apartment is put. The Common Elements include the land upon which the project is located, in fee simple, and all other portions of the project, other than the Apartments, including, specifically, but not limited to, the Common Elements mentioned in the Act that are actually constructed on the land, and all other portions of the Project necessary or convenient to its existence, maintenance and safety or normally in common use and which are not included as part of an apartment, including but not limited to following:

- (a) The land in fee simple;
- (b) All ducts, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the project, if any, which serve more than one (1) apartment for services such as power, light, water, gas, sewer, telephone and radio and television signal distribution, if any.
- (c) The roof and all load bearing perimeter walls that serve more than one apartment, if any;
- (d) Any and all other elements and facilities rationally in common use or necessary to the existence, upkeep and safety of the Project.
- (e) The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided in the Condominium Property Act.
- (f) Any such partition or division shall be subject to the prior consent thereto by the holder(s) of all mortgage(s) of any condominium Apartment(s) which are filed of record.
- (g) All the rights, benefits and privileges, if any, inuring to the land or to the Condominium from all easements shown on the Condominium File Plan or listed in Exhibit "A", or acquired subsequent to the creation of those documents.
- (h) Any and all other portions of the land and improvements that are not specifically designated for use by one or more specific Apartments, but which are intended for common use, including any directory facilities that may be established, and all other apparatus and installations the use of which exists for, is rationally allocated to or is necessary to the existence, upkeep and safety of more than one Apartment of the Condominium Project or which may otherwise be of common use.
- (i) Common Element "C" shown on the Condominium File Plan. It serves as a driveway for both apartments.

Unless clearly repugnant to the context thereof, the term "Common Elements" also means and includes the limited common elements hereinafter described.

Limited Common Elements are those portions of the Common Elements which are reserved for the exclusive use of the owners of certain apartments. They are often referred to as Limited Common Area.

Limited Common Elements for Apartment "A". The Limited Common Elements for Apartment A are the approximately 47,843 square feet of land appurtenant to Apartment "A". The land appurtenant to Apartment "A" is indicated by a dashed line on the Condominium File Plan. The dashed line, metes and bounds, courses and distances, and statement of a land area on Condominium File Plan **do not** indicate that the land has been subdivided. They only define the Limited Common Area for Apartment "A".

Limited Common Elements for Apartment "B". The Limited Common Elements for Apartment "B" are the approximately 89,192 square feet appurtenant to Apartment "B". The dashed line, metes and bounds, courses and distances, and statement of a land area on the Condominium File Plan **do not** indicate that the land has been subdivided. They only define the Limited Common Area for Apartment "B".

Each apartment has an equal undivided one-half (1/2) interest (undivided 50% interest) in all of the common elements for all purposes, including voting.

END OF EXHIBIT "C"

**EXHIBIT "E"**

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

Estimate of Initial Maintenance Fees

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
A	\$00.00                      \$00.00
B	\$00.00                      \$00.00

Note – no monthly maintenance fees have been estimated for this project because the only Common Area available for the use of all Apartment Owners is an agricultural access road on rocky soil. It requires no maintenance. Each Apartment owner is required to maintain its own limited common area

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

**EXHIBIT "E" (Cont.)**

**Estimate of Monthly Fee Disbursements**

<b>Utilities and Service</b>	<b><u>Monthly Fee x 12 months = Yearly Total</u></b>	
Air Conditioning (Service)	0	0
Electricity	0	0
<input type="checkbox"/> common elements only	0	0
<input type="checkbox"/> common element and apartments	0	0
Elevator	0	0
Gas	0	0
Refuse Collection	0	0
Telephone	0	0
Water and Sewer	0	0
Maintenance, Repairs and Supplies		
Building	0	0
Grounds	0	0
Management		
Management Fee (bookkeeping)		
Payroll		
Office		
Insurance Reserve (*)		
Taxes and		
Audit Fees		
Other		
TOTAL		

Developer discloses that no reserve study was done in accordance with Section 514A-83.6 HRS and replacement reserve rules, Subchapter 6 Title 16, Chapter 107 Hawaii Administrative Rules as amended.

I, WALLACE KLEIN as agent for/and/or employed by PHOENIX INVESTMENTS, INC. the condominium managing agent/developer for the HOOKELE 78 condominium project hereby certify that the above estimate of initial maintenance fee assessment and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles

Wallace Klein  
Signature

3/8/00  
Date

(\*)Mandatory reserve 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 "Reserve", the Developer has conducted a reserve study in accordance with §514A-836, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514-A-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 meeting

End Exhibit "E"

**EXHIBIT "F"**

**SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT**

The Deposit, Receipt and 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 Deposit, Receipt and Sales Contract states:

1. The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.
2. That the Purchaser acknowledges having received and read a final public report for the Project prior to signing the Deposit, Receipt and Sales Contract.
3. That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefits to be derived from the purchase of an apartment.
4. That the Purchaser's money will be held in escrow, under the terms of the Escrow Agreement. The Purchaser's money can only be disbursed by escrow if the sale is canceled by the Purchaser, if the sale closes according to the terms of the Deposit, Receipt and Sales Contract, if the Purchaser is in default, if the Purchaser dies or is dissolved, or if the Seller and the Purchaser agree otherwise in writing.
5. The Purchaser has a right to cancel the Deposit, Receipt and Sales Contract before the apartment has been transferred to him or at any time within thirty (30) days after delivery of the Public Report, whichever is earlier and to have all money paid into escrow refunded less any escrow cancellation fees and other costs, up to \$250, by giving notice to the Seller as provided by HRS § 514-62 (d), as amended.
6. If the Purchaser does not cancel the Deposit, Receipt and Sales Contract as provided in Paragraph 5, and more than thirty days have passed since the delivery of the Public Report to the Purchaser then the Deposit, Receipt and Sales Contract is binding on the Purchaser. If the Purchaser fails purchase the apartment after the Deposit, Receipt and Sales Contract becomes binding upon the Purchaser then the Purchaser will be in default. If the Purchaser is in default then the Seller will be entitled to cancel the Deposit, Receipt and Sales Contract and retain all money paid by Purchaser up to 20% of the sales price as liquidated damages.
7. If the Purchaser dies prior to closing, or in the case of a corporation or partnership, dissolves prior to closing, the Seller may return the Purchaser's payments, without interest and less Escrow cancellation fees and all costs incurred by the Seller, Escrow, or any lending institution in processing this Deposit, Receipt and Sales Contract or by loan application, and this Deposit, Receipt and Sales Contract will be deemed to have been canceled and both the Seller and the Purchaser (including the Purchaser's estate and legal representatives) shall be released from all obligations and liability under that agreement.
8. Requirements relating to the Purchaser's financing of the purchase of an apartment.
  - a. The Purchaser's offer is **not** contingent on the Purchaser obtaining financing or on the Purchaser's ability to pay.
  - b. In the event the Purchaser wishes to finance the purchase of the Apartment, the Purchaser is required to apply for financing within ten business days from the date the agreement to purchase becomes a binding contract. The Purchaser is required to use his best efforts to obtain

the mortgage loan in good faith; to execute and deliver all necessary documents and disclose all information; to pay any and all costs, charges and expenses in connection with the mortgage loan; to otherwise promptly and diligently comply with all requests of the mortgagee and/or the Seller to apply for, obtain and close the mortgage loan; and, where deemed necessary by the Seller, to make further applications for a mortgage loan.

c. The Purchaser may be required to pay a loan fee in order to get a loan.

d. The Seller has no obligation to arrange for the Purchaser's mortgage or other financing.

9. That the apartment and the Project will be subject to various legal documents which Purchaser should examine, and that the Developer may change these documents under certain conditions.

10. That the Developer makes no warranties regarding the apartment, the Project or anything installed or contained in the apartment or the Project.

11. That the Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price. The closing date will be set by the Seller, but it will not be sooner than sixty (60) days after the Deposit, Receipt and Sales Contract becomes binding.

12. On closing the Purchaser will be responsible for the payment of certain costs in addition to the purchase price. Typical closing costs for the Purchaser and the Seller include:

<b>Item</b>	<b>Seller</b>	<b>Purchaser</b>
Escrow fees	\$212.50	\$212.50
Recording		\$20 per document
Lien Check	\$20	\$20
Real Property Tax Check	\$2.00	
Documents	\$104 for a deed	\$135 for a purchase money mortgage
Hurricane Insurance Fund		.001 x the amount of any mortgage
Real Property Taxes & assessments	Prorated	Prorated
Conveyance tax	.001 x sale price	

The Deposit, Receipt and Sales Contract contain various other important provisions relating to the purchase of an apartment in the Project. It is incumbent upon Purchasers and prospective Purchasers to read with care the specimen Deposit, Receipt and Sales Contract on file with the Real Estate Commission.

**EXHIBIT "G"**

**SUMMARY OF ESCROW AGREEMENT**

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

1. Escrow will let the Buyer know when payments are due.
2. Escrow will arrange for the Buyer to sign all necessary documents.

3. The Buyer will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract. Those circumstances include the following:

- a. If the Seller is not able to provide the Buyer with clear title at the time of closing;
- b. The Buyer has a right to cancel the Deposit, Receipt and Sales Contract before the apartment has been transferred to him or at any time within thirty (30) days after delivery of the Public Report, whichever is earlier and to have all money paid into escrow refunded less any escrow cancellation fees and other costs, up to \$250, by giving notice to the Seller as provided by HRS § 514-62 (d), as amended.

4. Subject to the conditions set forth below, the Buyer of a condominium unit under a sales contract shall be entitled to a refund of all payments made to date thereof, less such fee as hereinafter enumerated, if any, and without interest. Escrow agrees to make such refunds to Buyer out of funds then on deposit with Escrow, if Buyer shall so request in writing and any one of the following events shall have occurred.

- a. Escrow has received a written request from Developer to return to the buyer the funds of such buyer then held by Escrow; or
- b. Developer shall have notified Escrow of Developer's exercise to cancel or rescind the sales contract pursuant to any right of cancellation or recession provided therein or otherwise available to Developer; or
- c. With respect to a buyer whose funds were obtained prior to the issuance of the Final Public Report, the buyer has exercised his right to cancel the contract pursuant to § 514A-62, Hawaii Revised Statutes, as amended; or
- d. A buyer has exercised his right to rescind the contract pursuant to § 514A-63, Hawaii Revised Statutes, as amended; or
- e. If, in accordance with Part VI of Chapter 514A, Hawaii Revised Statutes, as amended:
  - i. No sales contract is offered to a buyer who was placed on the Developer's reservation list of owner-occupant applicants; or
  - ii. The buyer has been unable to obtain adequate financing, or a commitment for adequate financing, for his unit within thirty (30) calendar days following the end of the ten (10) calendar day period during which the developer is limited to selling to owner-occupants; or
  - iii. The buyer desires to cancel the contract on account of hardship circumstances such as those set forth in § 514A-104(1) Hawaii Revised Statutes, as amended; or
  - iv. The buyer indicates an intent not to become an owner-occupant of such unit.

5. The Escrow Agreement also establishes the procedures for the retention and/or disbursement of a Buyer's funds, and says what will happen to the funds upon a default under the Sales Contract.

a. Retention of Buyer's funds. The Escrow will retain the Buyer's funds until the escrow is ready to close. When the Escrow is ready to close, the Escrow will disburse the Buyer's funds according to the terms of the Escrow Agreement.

b. Disbursement of Buyer's funds. If for some reason the escrow cannot close, either because of the fault of the Seller or the Buyer, then the Escrow will disburse the Buyer's funds, less escrow costs and fees of up to \$250.00, as follows:

(a) To the Buyer if the Buyer is entitled to a refund;

(b) To the Seller if the Buyer is in default (see below); or

(c) In accordance with any subsequent agreement signed by both the Seller and the Buyer.

6. Indemnification of Escrow. In the Sales Contract the Seller and the Buyer agree that they will be jointly and severally liable to Escrow for all losses, costs, damages or money owed, including reasonable attorneys' fees, that Escrow must pay as a result of this Sales Contract. If Escrow has the right to collect these amounts from any other person, then that right shall belong to the Seller after the Seller pays Escrow. However, neither the Seller nor the Buyer has to pay to Escrow any losses, costs, damages, money owned or attorneys' fees if Escrow has done something wrong or doesn't do something it is supposed to do and that act or failure to act is not reasonable or responsible.

The Escrow Agreement contains various other important provisions and establishes certain charges with which a Buyer should be familiar, It is incumbent upon Buyers and prospective Buyers to read with care the executed Escrow Agreement on file with the Real Estate Commission.

**Exhibit “H”**  
**Farm Dwelling Agreement**

*Notice – the following is presented for informational purposes only. It is not intended to be legal advice, and it is not exhaustive of the subject. Anyone whose plans may be affected or limited by the Hawaii County Zoning Code or the Planning Commission Rules is urged to (1) consult their attorney, (2) consult with the County of Hawaii Planning Department, or (3) otherwise obtain a complete understanding on how the County of Hawaii Zoning Code, Building Code and the Planning Commission Rules may affect their plans for development.*

**Farm Dwelling Agreement**

A party seeking a building permit for the second dwelling on the project must enter into a Farm Dwelling Agreement with the Planning Director of the County of Hawaii. The agreement is supplied by the County of Hawaii Planning Department, and you are urged to obtain a copy of the agreement and read it before you commit yourself to purchasing this condominium apartment. In addition to signing the Farm Dwelling Agreement the landowner or lessee is required to provide:

- a. A notarized affidavit that the additional dwelling(s) shall be used for farm related purposes.
- b. Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
- c. Written authorization of the landowner if the request is filed by the lessee
- d. The landowner or lessee shall submit an agricultural development and use program, farm plan, or other evidence of the applicant's continual agricultural productivity or farming operation within the County. Such plan shall also show how the farm dwelling(s) will be utilized for farm-related purposes. To verify the applicant's engagement in any agricultural productivity or farming operation, the following evidences may be submitted:
  1. State of Hawaii Department of Taxation's Gross Income License.
  2. Approved agricultural dedication from the County of Hawaii Department of Finance, Real Property Tax Division.
  3. Receipts of income received from sale of agricultural products.

The County of Hawaii Zoning Code and the Planning Commission Rules may amend and other or additional requirements or limitations may be placed on your ability to build a dwelling on the subject property.

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
by and between \_\_\_\_\_ herein called the  
"First Party," whose mailing address is \_\_\_\_\_  
\_\_\_\_\_  
and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling  
located on the property described by Tax Map Key \_\_\_\_\_  
situated within the State Land Use \_\_\_\_\_ district  
and zoned \_\_\_\_\_ by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the \_\_\_\_\_  
(legal owner/lessee)  
of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct an additional farm  
dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s)  
involved in the agricultural or farm-related activity on the building site.
2. The agreement shall run with the land and apply to all persons who may now or in  
the future use or occupy the additional farm dwelling.
3. The landowner or lessee shall record the approved Additional Farm Dwelling  
Agreement with the State of Hawaii, Bureau of Conveyances and/or with the

Land Court System within thirty days from the date of receipt of approval. A copy of the recorded Additional Farm Dwelling Agreement shall be submitted to the Planning Director of the County of Hawaii prior to approval of the building permit.

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may imposed a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY

---

(Legal Owner)

---

(Lessee)

SECOND PARTY

---

Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII        )  
                                  ) SS.  
COUNTY OF HAWAII    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said \_\_\_\_\_, acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

RECORDATION REQUESTED BY: 13  
FIRST HAWAII TITLE CORPORATION  
Escrow # FL0826 JV  
AFTER RECORDATION, RETURN TO: 89 83120

FIRST HAWAII TITLE CORPORATION  
733 Bishop Street, Suite 1190  
Honolulu, Hawaii 96813

RETURN BY: MAIL ( ) PICK UP (V)

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE KALOKO II PROJECT

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KALOKO TWO PARTNERSHIP, a Hawaii limited partnership, whose principal place of business and post office address is 2313 Kapiolani Boulevard, Suite 2, Honolulu, Hawaii 96826, (the "Developer") the owner in fee simple of all that certain land described in Exhibit "A" attached hereto and incorporated herein by reference.

The Developer to establish a plan for the development, use and maintenance of the project, does hereby declare, certify and agree that the Project shall hereafter be held, leased, mortgaged, conveyed, used, occupied and improved subject to and with the benefit and protection of the following restrictions, covenants, conditions, provisions and assessments.

ARTICLE I - ASSOCIATION

1. Kaloiko II Association. All owners of lots in the Project shall become members of an association called "Kaloiko II Association" (the "Association"), now or hereafter to be formed under the laws of the State of Hawaii as a nonprofit corporation and at all times having Articles and Bylaws provisions for membership not inconsistent with this Declaration. The Association shall be organized to maintain and enforce the Common Areas of the Project and to supervise and enforce the compliance by the owners and occupants of lots in the Project with all applicable protective provisions and covenants contained herein. The Association shall act through its officers and Board of Directors.

2. Membership. Membership in the Association shall always consist of and be limited to the owners of lots or the lessees thereof under any valid and subsisting deeds, leases and/or subleases for a term of one year or more expiring them for the time being to possession of such lots, and the Developer will on request thereof furnish to the Association all information available in its records regarding holders of such leases and/or subleases if Developer leases and/or subleases any lot. Each lot shall be entitled to a single vote.

EXHIBIT "A"

In accordance with the provisions of Chapter 502-31 of the Hawaii Revised Statutes, amended, this sheet is attached to that certain instrument dated June 1, 1979 by and between Kaloiko Two Partnership

and

3. Voting Rights. The voting rights of the members of the Association shall be as set forth in the Articles and By Laws of the Association. The voting rights shall be based on the assessments being current in the payments of his and/or her assessments due to the Association and shall be based on the ownership of the lot. For purposes of membership if an owner of a lot enters into a long term lease of more than five years, then the lessee shall be considered a member except if the lessee fails to pay his assessments and the owner of the lot pays for the same, then the owner shall be a member for the purposes of voting in Association meetings. If there is more than one person or entity who owns any given lot, then such owner can vote as they shall so determine, and if they cannot agree, then they may each vote their fractional interest in the vote allotted to their membership. In no event, however, shall more than one vote be cast with respect to any such lot.

4. Duties and Powers of the Association. The Association shall have the rights, obligations and duties subject to the Community Restrictions, to do and perform each and every one of the following for the benefit of the owners and for the maintenance and improvement of the Project.

(a) The Association shall accept as part of the Project, the roadway, street lighting system, drainage system and any other utility and/or system that is not dedicated to the County of Hawaii and a private utility company.

(b) The Association may acquire and accept title to any other property, real, personal or mixed to carry out the purposes of the Association.

(c) The Association shall maintain or provide for the maintenance of the Common Areas and to enforce the Community Restrictions.

(d) The Association shall obtain and maintain in force public liability insurance for the Common Areas.

(e) The Association shall have the power to levy assessments and to collect the same including the power to record and enforce any lien against the owner of a lot for the nonpayment of assessments levied by the Association from time to time.

(f) The Association shall have the power to make contracts, and to acquire and dispose of property and to borrow

money and encumber the property of the Association to secure any loan made by the Association. The Association may also in the event that there is a foreclosure of any lien against a lot to be purchaser of such foreclosed lot and to dispose of the same within a period of five (5) years thereafter.

(g) To have power to promulgate such further community restrictions as is necessary from time to time.

#### ARTICLE II - COMMUNITY RESTRICTIONS

1. Purpose. The purpose of the Community Restrictions is to assure that the owners and occupants will enjoy harmonious living and be protected from any act constituting a nuisance or annoyance. Any complaints and reports of violations shall be directly immediately to the Association to its President and/or any other officer in writing.

2. Owner and Occupant. As used herein and owner means the owner of the lot and an occupant means the person actually residing in or using the lot, whether the owner or a person or persons other than the owner, occupying said lot by authority of the owner.

3. Grubbing. No parcel shall cut any trees over ten inches in diameter except within a tree fall of the main dwelling. Trees over 10 inches in diameter may be cut to establish view corridors but only with the Declarant's written authorization.

4. House Design Approval. Before obtaining a building permit, each parcel owner must submit to Declarant or his designee complete construction plans and specifications for approval. If approval is not granted, plans must be amended to meet the approval of the Declarant or his designee.

5. Minimum Building Size and Cost. No dwelling house shall be erected, altered, placed or permitted upon any of the said parcels which shall contain less than four thousand (4,000) square feet under roof including carports, garages, and lanais.

6. Prohibited Structures. No structure of temporary character, trailer or mobile home (or part thereof), tent, shack, outdoor privy, barn, or other out building shall be constructed,

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placed or maintained upon any lot at any time except for periods of construction and only with the Declarant's written permission.

7. Animals. Animals may be kept but the keeping of such shall not create disturbances of either excessive noise or odor to the other parcel owners. No parcel shall have more than 24 fowl or more than 1 pig. In the event any parcel owner shall complain about animal disturbances to the Declarant, the Declarant may demand that the offending animals be removed from the property.

8. Antennae, Towers, aerials, or other facilities for the reception and transmission of radio, television, or other means of communication may be had but only with the written approval of the Declarant. The Declarant may demand the erection of such to be out of the view planes of other parcels and may require landscaping to conceal them from view corridors.

9. Subdivision. In the event any of the parcels are subdivided all restrictive covenants, codes and restrictions will apply to the created parcels and all building permits will require the approval of the Declarant.

10. Prohibited Uses. No parcel shall be used as a base yard, dump, or parking lot. No junk or imperible equipment shall be stored on any parcel except inside the structures.

11. View Corridors. All new trees planted on the premises shall not unreasonably obstruct or interfere with the view corridors of other parcel owners.

12. Deeds, Mortgages, Etc. No deed, lease or instrument transferring any rights shall be made unless such deed, lease, or instrument contains the same restrictive codes and covenants as are in this indenture set forth.

### 13. Scope of Community Restrictions.

a. Application. These Community Restrictions apply to all owners, occupants, tenants, guests, invitees and licensees of any owner or occupant.

b. Interpretation. The interpretation and enforcement of the Community Restrictions shall be determined at the time of the occurrence, if possible, by the Managing Agent, or if no...

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Managing Agent by the Board. The decision shall be implemented at the time of such decision.

c. Enforcement. The full authority and responsibility for enforcement of these Community Restrictions may be delegated to a Managing Agent, if any; provided that the Managing Agent shall not be responsible for any noncompliance or violation of these Community Restrictions by any owner, occupant, tenant, guests, invitee or licensee. In the event an owner or occupant fails to comply with these Community Restrictions and it becomes necessary to initiate appropriate legal proceedings to obtain compliance and observance of these Community Restrictions, the offending party shall pay all costs of court and reasonable attorney's fee incurred by the successful party in such proceedings.

d. Appeals. All decisions or actions of the Managing Agent may be appealed to the Board. All appeals shall be in writing, indicating the decision complained of within ten (10) days of the Managing Agent's decision or action; otherwise the Managing Board's decision or action shall be final and binding. The Board shall act upon such appeal and render its decision in writing, within ten (10) days of receipt of such appeal. The decision of the Board shall be final and binding.

### ARTICLE III - FUNDS AND ASSESSMENTS

1. Funds. There shall be an operating fund in which the Association shall deposit all monies paid to it from time to time from the members and from any other sources.

2. Assessments. Within thirty (30) days prior to the commencement of each calendar year, the Board shall estimate the debts and expenses to be incurred by the Association in performing its functions and in paying all fees and expenses necessary to carry on the Association's activities.

3. Special Assessments. The Board shall levy a special assessment against any owner and/or occupant as a direct result of whose acts or failure or refusal to act or otherwise comply with the Community Restrictions, this Declaration, the Articles and By-Laws of the Association. Such assessments shall be in the amount so expended and deemed necessary by the Board including professional fees, accountant's fees and attorney's fees reasonably incurred by the Association.

4. Exemptions. Anything herein to the contrary notwithstanding the following there shall be no exemption from payment of assessments relating to the Association during the period when there are no improvements on any lot.

5. Default.

a. Each assessment under this article shall be a separate distinct and personal debt and obligation of the owner against whom it is assessed, and each owner of any lot by acceptance of a deed or lease therefor, whether or not it shall be so expressed in any such deed or lease, is deemed to covenant and agree to pay the same to the Association. If the owner does not pay such assessment or any installment thereof when due, the owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at ten percent (10%) and costs, including reasonable attorney's fees, shall be and become a lien upon the lot or lots of such owner upon recordation by the Association of a notice of default. Such lien shall be subject and subordinate to the lien of any mortgage upon the lot or lots of such owner, and the sale or transfer of any lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payments of assessments which become due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such lot or the purchaser or transfer thereof with regard to assessments thereafter becoming due. The Association shall record such notice of default within ninety (90) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by sale by the Association in like manner as mortgage of real property, and the Association shall have power to bid on the lot at foreclosure sale to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

b. The Association shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any lot or lots and such certificate shall be conclusive upon the Association and the owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall furnish a copy of such certificate to any owner upon request at a reasonable fee.

6. Notice of Assessment. Notice of any maintenance or special assessment provided for herein, with the exception of the first maintenance assessment, shall be mailed to all owners of lots at such addresses as are shown on the record of ownership of the Association; provided, however, that notice of any changes in any maintenance or special assessment shall be mailed not less than thirty (30) days before such assessment shall become effective.

ARTICLE IV - GENERAL PROVISIONS

1. Amendment. Any amendment to this Declaration may be made by the Developer until such time as Developer has conveyed title to 90% of the lots in the Project. Thereafter any amendment may be made by the Association through 66-2/3% of all of the lot owners after 20 days written notice given of the proposed amendment at a meeting duly called and held in which there is a quorum of not less than 66-2/3% of the owners.

2. Reservations. The Developer until such time as 100% of the lots are conveyed and thereafter until the obligations are fulfilled shall have the power to fulfill the terms and covenants of its obligations with the County of Hawaii's cluster permit approval and is authorized to do the following:

a. To grant easements, licenses, permits and rights-of-way for public or private utility purposes, drainage, gas distribution systems, pedestrian walkways, telephone and television cables and other similar uses, in, over, through and under the Project.

b. To enter on any lot for the purposes of construction any improvements or changes in or appurtenant to the common areas and perform other proper functions in connection with the care and maintenance thereof.

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c. To assign and transfer all or any of the rights, privileges, powers, interests and obligations hereunder to the Association or any successor designated by the Developer to administer the Common Areas.

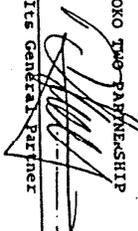
d. To dedicate any portion of the Common Areas to public use where such use will have the effect of transferring the responsibility and maintenance of the dedicated use to the governmental authority or private utility.

3. Liability of Officer and Board Members. No officer and member of the Board of the Association shall be personally liable to any owner, guest, lessee, or to any other person including the Developer, for any error or omission of the Association, its officers and employees, any committee or provided however, that such member has with actual knowledge possessed by him, acted in good faith.

4. Binding Effect. The restrictions, covenants, conditions and provisions hereof shall constitute covenants running with the lands of the Project perpetually after the date hereof through December 31, 2115, and shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, and all subsequent owners of the lots and common areas.

5. Severability. Invalidation of any restriction, covenant, condition, or provision hereof by final judgment order or decree of any court or governmental commission, board of the agency having jurisdiction thereof shall in no way affect the other restrictions, covenants, conditions and provisions hereof, which shall remain in full force and effect according to their terms.

IN WITNESS WHEREOF, the Developer has executed these presents this 17th day of November, 1989.

KALOKO TWO-PARTNERSHIP  
By   
Its General Partner

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STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU )  
) ss.  
On this 16th day of June, 1989, before me appeared Thomas F. Schmidt to me personally known, who, being by me duly sworn, did say that he is the General Partner of KALOKO TWO PARTNERSHIP, a Hawaii registered limited partnership, and said Thomas F. Schmidt acknowledged that he executed the same as the free act and deed of said partnership as such General Partner.

  
NOTARY PUBLIC, STATE OF HAWAII  
My commission expires: 12-29-89

KALOKO 2  
DEC

EXHIBIT "A"

All of that certain parcel of land (portion of the land described in and covered by Royal Patent 8214, land Commission Award 7715, Apana 11 to Lota Kamehameha) situate, lying and being Easterly of Old Government Road of Kalo, District of North Kona, Island and County of Hawaii, State of Hawaii, being Lot Number 2, and thus bounded and described:

Beginning at the West corner of this parcel of land, being also the southwest corner of Lot 1, on the northerly side of Lot A (10 foot wide road reserve). The coordinates of said point of beginning referred to Government Survey Triangulation Station "MOANUIAHIKA" being 14,041.85 feet south and 6,616.94 feet west and running by azimuths measured clockwise from true south:

1. 252° 00' 761.06 feet along Lot 1 and along remainder of R. P. 8214, L. C. AM. 7715, Apana 11 to Lota Kamehameha;
2. 162° 00' 1213.07 feet along Lot 1 and along remainder of R. P. 8214, L. C. AM. 7715, Apana 11 to Lota Kamehameha;
3. 252° 47' 594.88 feet along portion of Lot 29 of Kohanaiki Homesteads;
4. 252° 30' 470.82 feet along portion of Lot 30 of the Kohanaiki Homesteads;
5. 342° 00' 2242.49 feet along Lot 1, Block 1 of File Plan 994 and along remainder of R. P. 8214, L. C. AM. 7715, Apana 11 to Lota Kamehameha;
6. 51° 45' 821.63 feet along Lot 3 and along remainder of R. P. 8214, L. C. AM. 7715, Apana 11 to Lota Kamehameha;

7. 342° 00' 289.85 feet along Lot 3 and along remainder of R. P. 8214, L. C. AM. 7715, Apana 11 to Lota Kamehameha; thence along Lot (100 foot wide road reserve) along remainder of R. P. 8214 L. C. AM. 7715, Apana 11 to Lota Kamehameha on a curve to the right with a radius of 550.00 feet, the chord azimuth and distance being:

8. 108° 40' 49" 487.72 feet;
9. 135° 00' 1461.12 feet along Lot A (100 foot wide road reserve) and along remainder of R. P. 8214, L. C. AM. 7715, Apana 11 to Lota Kamehameha to the point of beginning and containing an area of 71.000 acres, more or less.

Being all of the land conveyed by Deed dated October 8, 1986, recorded on October 8, 1986 in Book 19929, Page 659, in Bureau of Conveyances, State of Hawaii.

SUBJECT, HOWEVER, to Easement for operation and maintenance of water tanks and water pipelines dated December 20, 1971, recorded in Book 8062, Page 1, in the Bureau of Conveyances, State of Hawaii.

89 192005 ✓

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDS SECTION

1989 DEC 15 AM 8:01  
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KAOHE K. WELA, REGISTRAR

REGULAR SYSTEM ✓

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1808  
FIRST HAWAII TITLE CORPORATION  
201 Merchant Street, Suite 2000  
Honolulu, Hawaii 96813  
E-0026, K

DOCUMENT TITLE: AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE KALOHO II PROJECT

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE KALOHO II PROJECT

23999 657

KALOHO TWO PARTNERSHIP, a Hawaii limited partnership, whose principal place of business and post office address is 2333 Kapiolani Boulevard, Suite 2, Honolulu, Hawaii 96826, (the "Developer") hereby amends the Declaration of Covenants dated June 1, 1989, recorded in the Bureau of Conveyance, State of Hawaii, in Book 23720, Page 785, in the following respects:

1. Article II - COMMUNITY RESTRICTION is amended as follows:

A. Amend Paragraph 6 to read as follows:

"6. Temporary Prohibited Structures. No structure of temporary character, trailer or mobile home (or part thereof), tent, shack, outdoor privy, or other out building shall be constructed, placed or maintained upon any lot at any time except for periods of construction and only with the Declarant's written permission."

B. Amend Paragraph 7 to read as follows:

"7. Animals. Animals may be kept but the keeping of such shall not create disturbance of either excessive noise or odor to the other parcel owners. In the event any parcel owner shall complain about animal disturbances to the Declarant, the Declarant may demand that the offending animals be removed from the property."

C. Add to Paragraph 13, SCOPE of Community Restrictions, the following subparagraph:

"e. Rezoning. Should the requirement of Section 2 of the County of Hawaii, Ordinance No. 8461 effective September 11, 1984 not be met, rezoning of the area to its original or more appropriate designation may be initiated."

23999 658

D. Add a new Paragraph 14, Definitions:

"14. Definitions. The following definitions are applicable to the Community Restrictions:

"a. 'Agriculture'. Agriculture shall be defined as the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber game propagation, raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use."

"b. 'Agriculture Activity'. An agriculture activity will be considered substantial: (1) if such activity is implementing a conservation program for the affected property(ies), as approved by the applicable soil and water conservation district directors and filed with the Soil Conservation Service; (2) if it provides a major source of income to the person(s) who reside on the property; or (3) if the property is dedicated for agriculture uses in accordance with applicable Tax Department procedures and that such agriculture dedication shall be made a deed covenant and duly recorded with the Planning Department and Bureau of Conveyances."

2. Article IV, GENERAL PROVISIONS, is hereby amended by amending the introductory paragraph of Paragraph 2 to read as follows:

"7. Reservations. The Developer until such time as 100% of the lots are conveyed and thereafter until the obligations are fulfilled shall have the power to fulfill the terms and covenants of its obligations with the County of Hawaii's change of district classification from Agricultural (A-20a) to Agricultural (A-3e) approval and is authorized to do the following:"

23999 659

3. The foregoing shall take effect upon its execution by the undersigned.

IN WITNESS WHEREOF, the Developer has executed these presents this 5<sup>th</sup> day of December, 1989.

KALOKO TWO PARTNERSHIP

By [Signature]  
Its General Partner

STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) ss.

On this 5<sup>th</sup> day of December, 1989, before me appeared Thomas F. Schmutz, to me personally known, who, being by me duly sworn, did say that he is the General Partner of KALOKO TWO PARTNERSHIP, a Hawaii registered limited partnership, and said Thomas F. Schmutz acknowledged that he executed the same as the free act and deed of said partnership as such General Partner.

[Signature]  
NOTARY PUBLIC, STATE OF HAWAII  
My commission expires: 11/29/92

KALOKO 3  
AM