

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer:

PHYLLIS ELLIOTT, as Successor Trustee of the Elliott Trust
dated August 8, 1989

Address:

3631 Seaview Way, Carlsbad, California 92008

Project Name(*):

The Elliott Valley Project Condominium

Address:

Lot 116-S-1, Kapaa Homesteads, Second Series
Kapaa, Kauai, Hawaii

Registration No. 4622

Effective date: December 6, 2001

Expiration date: January 6, 2003

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, in 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. 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: July 30, 2001

Supplementary Public Report dated: _____

And

Supersedes all prior public reports

Must be read together with the Final Public Report dated July 30, 2001

This report reactivates the _____

public report(s) which expired on _____

(*) Exactly as named in the Declaration

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

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report Not required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.

Changes made are as follows:

1. Exhibit "A" to the Declaration of Condominium Property Regime of The Elliott Valley Project Condominium is amended by deleting it in its entirety and substituting in its place Exhibit "A" attached to the Second Amendment to Declaration of Condominium Property Regime of The Elliott Valley Project Condominium. Exhibit "A" was amended to include the metes and bounds description of the property, and to update various title matters reflected in the most current title report for the property.
2. The Second Amendment provides for the addition of a new subparagraph 10 to paragraph O. of the Declaration, which states, in part, that water service to the project is provided through KPLA, Inc., a Hawaii nonprofit corporation.
3. The Second Amendment was recorded in the Bureau of Conveyances of the State of Hawaii to note the above changes.
4. Exhibit "E" to the Final Public Report is amended by deleting it in its entirety and substituting in its place Exhibit "E" to this Supplementary Public Report, which updates the encumbrances against title.

**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. 2001-057743

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 of The Elliott Valley Project Condominium dated July 2, 2001, and recorded as Document No. 2001-110389; and Second Amendment to Declaration of Condominium Property Regime of The Elliott Valley Project Condominium dated October 24, 2001, and recorded as Document No. 2001-173380.

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. 3246

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]: First Amendment to Declaration of Condominium Property Regime of The Elliott Valley Project Condominium dated July 2, 2001, and recorded as Document No. 2001-110389.

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. 2001-057744

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]:

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 "D".

as follows:

NOTE: Land areas referenced herein are not legally subdivided lots.

3. Common Interests: Each apartment will have an undivided fractional interests in all of the common elements. This interest is called the "common interests." 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:

Each unit shall have appurtenant thereto an undivided one-half (1/2) interest in all common elements of the property, and the same proportionate share in all common profits and common expenses of the property (except as may be otherwise provided in the Bylaws) and for all other purposes, including voting. The fractional common interest for each unit is determined by assigning a 1/2 fractional interest to both of the units irrespective of the actual land areas contained in the limited common elements appurtenant to each unit.

- 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 on or your purchase and ownership of an apartment in the project.

Exhibit "E" describes the encumbrances against the title contained in the title report dated November 2, 2001 and issued by Fidelity National Title Insurance Company.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all the 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, as amended.
 - C) Bylaws of the Association of Apartment Owners, as amended.
 - D) House Rules, if any.
 - E) Condominium Map, as amended.
 - F) Escrow Agreement.
 - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
 - H) Other _____

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

This Public Report is a part of Registration No. 4622 filed with the Real Estate Commission on April 30, 2001.

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

YELLOW paper stock WHITE paper stock PINK paper stock

C. **Additional Information Not Covered Above:**

1. Purchasers should be aware that Chapter 205, Hawaii Revised Statutes ("H.R.S."), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

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

The penalty for violation of H.R.S. Section 205-4.5, 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.

In order for any purchaser to obtain a building permit to construct a single family residential unit (farm dwelling), the County of Kauai will require the purchase to sign a Farm Dwelling Agreement in the form attached hereto as Exhibit "I".

In addition, Section K.2. of the Declaration imposes a duty of each unit owner to bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units with the Project. See Section K.2. of Exhibit "B", Alteration of Project.

2. The use of hazardous material is restricted except as provided under Article H of the Declaration and all hazardous materials laws.
3. The Project and any development within shall be subject to the following:
 - a. The covenants, conditions and restrictions as set forth in that certain Subdivision Deed dated August 5, 1993, and recorded in said Bureau as Document No. 93-204150, attached hereto as Exhibit "J".
4. Purchasers should be aware that because a portion of the Project is located within the Open District of the County of Kauai CZO, as shown on the Condominium Map, land coverage within the Open District portion of the Project is limited to ten percent (10%) of the total size of the Open District portion. As a result, the total land coverage allowed in the Open District portion of the Project is approximately 25,000 square feet, more or less. The priorities for use of the land coverage area within the Open District portion of the Project shall be as follows:
 - a. The concrete driveway located within Easement "E-8", and any extension of the concrete driveway located within Easement "AU-1" as of the effective date of this Final Public Report, shall have first priority for land coverage area.
 - b. Any dwelling to be constructed on Unit 2, together with structures and improvements appurtenant thereto, shall have second priority for land coverage area.
 - c. Any additional improvements to be constructed within the Open District portion of Unit 1 shall have third priority for land coverage area.

No improvements that might apply against the allowed Open District land coverage area and that are not constructed as of the effective date of this Final Public Report may be constructed within the Open District portion of Unit 1 unless and until the dwelling and other structures or improvements to be constructed on Unit 2 are completed, and it is thus possible to compute how much coverage area, if any, remains for use on Unit 1. The precise land coverage area available within the Open District of the Project should be verified by a survey by a licensed surveyor.

5. The Owner of Unit 1 shall be entitled to create a separate condominium Unit within the Unit 1 Yard Area on the following terms and conditions:
 - a. The separate Unit created within Unit 1 shall include the "warehouse building" as shown on the CPR Map and such portion of the Unit 1 Yard Area around the "warehouse building" as the Unit 1 Owner shall determine, in his or her discretion.
 - b. There shall be no residential use allowed to occur or be maintained on any portion of, or in any structure located on, the separate Unit. The separate Unit shall be used solely and exclusively for agricultural or storage purposes, and shall be maintained in compliance with all applicable State of Hawaii and County of Kauai Statutes, rules and regulations.
 - c. Creation of the separate Unit shall not diminish or otherwise affect the area of the Unit 2 Yard Area, as shown on the CPR map, or in any way cause an adverse effect upon the access or utility services to Unit 2, nor shall the creation of the separate Unit diminish the undivided interest in the common elements of the Project that are allocated to Unit 2 as provided in the Declaration. The undivided interest formerly allocated to Unit 1 shall be re-allocated between the separate Unit and the remaining portion of Unit 1 in such manner as the Owner of Unit 1 shall determine.
 - d. The Owner of Unit 1 shall record an amended CPR Map and an amendment to the Declaration to detail the terms and conditions of the creation of the separate CPR Unit. The Unit 2 Owner shall not be required to execute the said amendment to the Declaration in order for it to be effective; however, the Unit 1 Owner shall, immediately upon recordation of the amended CPR Map and the amendment of the Declaration, provide a true and correct copy of each of said documents to the Unit 2 Owner. The creation of the separate CPR Unit shall not be legally effective or binding on any party unless and until such CPR Map amendment and Declaration amendment have been recorded with the Bureau of Conveyances of the State of Hawaii, and unless and until the Owner of Unit 1 has complied with any and all other legal requirements of the State of Hawaii and/or the County of Kauai that are applicable to the separate Unit or the structures or improvements located thereon.
 - e. Creation of the separate Unit shall be accomplished at the sole cost and expense of the Owner of Unit 1, and the Unit 1 Owner shall indemnify, defend and hold the Unit 2 Owner harmless from and against any and all such costs and expenses.
6. Water service to the Project, and to each Unit within the Project, is provided through KPLA, Inc., a Hawaii nonprofit corporation (the "Association"), the membership in which is comprised of the owners of all properties in the Konohiki Plantation II and Puka Lani Subdivisions that are provided with water service by the Association. Governance, operation and maintenance of the private water system, payment of water fees and assessments, and other matters related to the water system and the Association are subject to the Association's Articles of Incorporation, Bylaws, and such other rules and regulations as may be promulgated or amended by the Association from time to time. Each Unit owner shall comply with all such Articles, Bylaws, rules and regulations and shall indemnify, defend and hold the other Unit owner(s) harmless from and against all claims or liabilities related to the indemnifying owner's default or breach of the same.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-] (The developer is required to make this declaration for issuance of an effective date for a final public report.
- E. 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.

PHYLLIS ELLIOTT, as Successor Trustee
of the Elliott Trust dated August 8, 1989
Owners/Developers


PHYLLIS ELLIOTT, as Successor Trustee

11-3-01
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.

Note: The property described herein is subject to possible rollback taxes. Verification should be made with the Kauai County, Real Property Tax Office.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Reservation of that portion of the stream within the property herein described and all riparian and other rights in or to this stream and the waters thereof, as contained in Land Patent Grant Number 7719 dated February 17, 1921.
4. Easement "E-8" (30 feet wide) as per survey of Cesar C. Portugal, Professional Registered Surveyor, with Portugal, Ibara & Associates, Inc., dated May 4, 1979, revised November 27, 1981 and March 24, 1982, as contained in Deed dated August 24, 1988, recorded in said Bureau in Book 22373 at Page 167.
5. A flood setback line, 16 feet on the north side and 20 feet on the south side of the center of the valley, as per survey of Cesar C. Portugal, Professional Registered Surveyor, with Portugal, Ibara & Associates, Inc., dated May 4, 1979, revised November 27, 1981 and March 24, 1982.
6. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document in favor of Citizens Utilities Company, and GTE Hawaiian Telephone Company Incorporated, recorded in said Bureau in Book 17109 at Page 548, for the purposes of granting a perpetual right and easement to build, etc., pole and wire lines and/or underground lines, etc., affecting the land described herein.
7. Elevation Agreement, upon and subject to all of the provisions contained therein by and between Rick Ioli and the Department of Water, County of Kauai, dated April 26, 1989, recorded in said Bureau in Book 23215 at Page 580.
8. Easement(s) for the purpose(s) show below and rights incidental thereto as set forth in a document in favor of Citizens Utilities Company and GTE Hawaiian Telephone Company Incorporated, granting a perpetual right and easement to build, etc., pole and wire lines and/or underground lines, etc., for the transmission and distribution of electricity, recorded in said Bureau in Book 23271 at Page 747, affecting the land herein described.

The foregoing instrument was amended by that certain Amendment dated March 5, 1990, and recorded in said Bureau as Document No. 90-059680.

9. Farm Dwelling Agreement, upon and subject to all of the provisions contained therein by and between Anthony Rick Ioli, Jr. and the County of Kauai Planning Department, dated December 18, 1989, and recorded in said Bureau as Document No. 90-008522.
10. Waiver and Release dated March 6, 1990, recorded in said Bureau as Document No. 90-035199.
11. Grant of Easement and Agreement to Consolidate, upon and subject to all of the provisions contained therein, by and between Anthony Ricardo Ioli, Jr., husband of Diane Ioli, and Randy Boyer and Mona Boyer, dated March 6, 1992, recorded in said Bureau as Document No. 92-045660.
12. A 36-foot flood setback line, as shown on survey map dated June 9, 1992, prepared by Masao Fujishige, Registered Land Surveyor.
13. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in that certain Deed dated August 5, 1993, recorded in said Bureau as Document No. 93-204150.
14. Waiver and Release dated December 23, 1993, recorded in said Bureau as Document No. 94-097624.
15. Elevation Agreement, upon and subject to all of the provisions contained therein, by and between Rick Ioli and the Department of Water, County of Kauai, dated July 28, 1994, recorded in said Bureau as Document No. 94-134797.
16. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document in favor of Citizens Utilities Company and GTE Hawaiian Telephone Company Incorporated, granting a perpetual right and easement to build, etc., pole and wire lines and/or underground lines, recorded in said Bureau as Document No. 94-200773, affecting the land herein described.
17. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document in favor of Citizens Utilities Company, granting a perpetual right and easement to build, etc., pole and wire lines and/or underground lines, recorded in said Bureau as Document No. 97-069215, affecting the land herein described.
18. That certain Mortgage dated July 21, 2000, in favor of James Kaplan and Toni Kaplan, Trustees of the James and Toni Kaplan Trust dated January 24, 1995, recorded in said Bureau as Document No. 2000-111905.

19. Terms, provisions, conditions and restrictions and the failure to comply with said terms, contained in that certain Elliott Trust, dated August 8, 1989, to which reference is hereby made.
20. The requirement that a Statement of Trust Certification be executed stating that the trust(s) referred to herein has not been amended, modified, supplemented or revoked.
21. Waiver and Release dated [none shown] and recorded in said Bureau as Document No. 2001-029483.
22. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

Declaration of Condominium Property Regime of The Elliott Valley Project Condominium dated March 30, 2001, and recorded in said Bureau as Document No. 2001-057743.

Condominium Map No. 3246 to which reference is hereby made.

The Declaration was amended by that certain First Amendment to Declaration of Condominium Property Regime of The Elliott Valley Project Condominium dated July 2, 2001, and recorded as Document No. 2001-110389.

The Declaration was further amended by that certain Second Amendment to Declaration of Condominium Property Regime of The Elliott Valley Project Condominium dated October 24, 2001, and recorded as Document No. 2001-173380.

23. Bylaws of the Association of Unit Owners of The Elliott Valley Project Condominium dated March 3, 2001, and recorded in said Bureau as Document No. 2001-057744.