

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by:

Developer \_\_\_\_\_ KALAHEO FARMERS IHU DEVELOPMENT LLC \_\_\_\_\_
Address \_\_\_\_\_ 675 Fairview Drive, Carson City, Nevada 89701 \_\_\_\_\_
P.O. Box 1065, Kalaheo Hawaii 96741 \_\_\_\_\_
Project Name (\*): \_\_\_\_\_ KALAHEO MACADAMIA PRESERVATION \_\_\_\_\_
Address: \_\_\_\_\_ Ihu Road, Kalaheo, Kauai, Hawaii 96741 \_\_\_\_\_

Registration No. 4853

Effective date: June 5, 2002

Expiration date: July 5, 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, if any, of the project or of purchasing an apartment in the project.

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

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

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

Type of Report:

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

(\*) Exactly as named in the Declaration

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

FORM: RECO-30 286/968/189/1190/8920197/1098/0800

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

Required and attached to this report  Not Required - Disclosures covered in this report.  
*as Exhibit "E".*

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL ATTENTION**

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

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

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

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

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### **General Information On Condominiums**

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

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

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

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

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

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

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

### **Operation of the Condominium Project**

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: KALAHEO IHU FARMERS DEVELOPMENT LLC Phone: (808) 6513047  
Name\* (Business)  
P. O. Box 1085  
Business Address  
Kalaheo, Kauai, Hawaii 96741

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

APOPO CORPORATION, Member PUEHU CORPORATION, Member  
Margaret Phillips, President Jack Phillips, President  
B. Ware, Treasurer G. Webber, Secretary  
G. Webber, Secretary B. Ware, Treasurer

Real Estate Broker\*: MICHAEL HARISMENDY Phone: (808) 3325031  
Name (Business)  
P. O. Box 1197  
Business Address  
Koloa, Kauai, Hawaii 96756

Escrow: Security Title Corporation Phone: (808) 3356000  
Name (Business)  
1164 Bishop Street, Suite 1611  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: AKIA CONSTRUCTION LLC Phone: (808) 8230044  
Name (Business)  
4-1191 Kuhio Highway #124  
Business Address  
Kapaa, Hawaii 96746

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

Attorney for Developer: HIROSHI SAKAI Phone: (808) 7348619  
Name (Business)  
3773 Diamond Head Circle  
Business Address  
Honolulu, Hawaii 96815

\* 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. 2002-061795  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 3418  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

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

The Bylaws for this condominium are:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2002-061796  
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:

	Minimum Set by Law	This Condominium
Declaration (and Condo Map)	75%*	_____75%_____
Bylaws	65%	_____65%_____
House Rules	—	_____Majority vote of Board_____

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

2. **Developer:**

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

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

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



Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

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

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

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

**B. Underlying Land:**

Address: Ihu Road Tax Map Key (TMK): (4) 2-3-07: 002  
Kalaheo, Kauai, Hawaii 96741

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

Land Area: 10.690  square feet  acre(s) Zoning: Agriculture

Fee Owner: JACK L. PHILLIPS and MARGARET C. PHILLIPS, Trustees of Kalaheo Macadamia Preservation Land Trust dated January 29, 2001

Name  
4-1191 Kuhio Highway #124                      751 Laurel Street, #212  
Kapaa, Kauai, Hawaii 96746                      San Carlos, California 94070  
 Address

Developer: KALAHEO IHU FARMERS DEVELOPMENT LLC  
P.O. Box 1065                                      675 Fairview Drive  
Kalaheo, Hawaii 96741                                      Carson City, Nevada 89701

C. **Buildings and Other Improvements:**

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

2.    Number of Buildings:      4                        Floors Per Building:      1  

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

3.    **Principal Construction Material:**

Concrete                       Hollow Tile                       Wood

Other   4 iron fence posts – shade cloth roof and 3 sides  

4.    **Uses Permitted by Zoning:**

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>  4  </u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?  
 Yes                                       No

5. Special Use Restrictions:

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

Pets: \_\_\_\_\_

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

Other: See Section 8 of Declaration and Exhibit E \_\_\_\_\_

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)*	Net Other Area (sf)	(Identify)
A-D	4	_____	_____	20	Shade Houses
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 4

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

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

Boundaries of Each Apartment:

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

Permitted Alterations to Apartments:

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

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has not elected to provide the information in a published announcement or advertisement.



11. Conformance to Present Zoning Code

- a.  No variances to zoning code have been granted.  
 Variance(s) to zoning code was/were granted as follows:

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

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

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

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

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit     A    

as follows:

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

There are no limited common elements in this project.

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

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

as follows:

Apartment A – 1.442 acres

Apartment B – 3.000 acres

Apartment C – 3.000 acres

Apartment D – 3.000 acres

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

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 – 25% appurtenant common interest

Apartment B – 25% appurtenant common interest

Apartment C – 25% appurtenant common interest

Apartment D – 25% appurtenant common interest

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

Exhibit  B  describes the encumbrances against the title contained in the title report dated  April 16, 2002  and issued by  Title Guaranty of Hawaii, Inc.

**Blanket Liens:**

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

There are no blanket liens affecting title to the individual apartments.

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

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

**Type of Lien**

**Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance**

Mortgage dated 6/6/01 in favor of Tsukasa Murakami, Special Trustee of Stanley S. and Doris Y. Momohara Charitable Remainder Trust recorded in the Bureau of Conveyances as Document No. 2001-090135.

Buyer's interest may be terminated, in which case Buyer's deposit shall be refunded.

**F. Construction Warranties:**

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

1. Building and Other Improvements:

None

2. Appliances:

None

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

Apartments A, B, C and D, Shade Houses, were completed on August 9, 2001.

H. **Project Phases:**

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

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

IV. CONDOMINIUM MANAGEMENT

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

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

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

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

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

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

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

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

C. **Utility Charges for Apartments:**

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

None  Electricity ( \_\_\_ Common Elements only \_\_\_ Common Elements & Apartments)  
 Gas ( \_\_\_ Common Elements only \_\_\_ Common Elements & Apartments)  
 Water  Sewer  Television Cable  
 Other \_\_\_\_\_

\* Note: Developer discloses that no reserve study was done in accordance with Chapter 514A-83.6 and replacement reserve rules, Subchapter 6, Title 16, Chapter 197, Hawaii Administrative Rules, as amended.

## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit C contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated April 16, 2002  
Exhibit D contains a summary of the pertinent provisions of the escrow agreement.
- Other See Exhibit G - Declaration of Covenants

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

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

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

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

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other \_\_\_\_\_

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

This Public Report is a part of Registration No. 4853 filed with the Real Estate Commission on May 16, 2002.

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**

None

- 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.

Jack L. Phillips and Margaret C. Phillips, alternate, individual Trustees of Kalaheo Macadamia Preservation Land Trust  
 Printed Name of Owner

By:  May 11, 2002  
 Duly Authorized Signatory Date

Jack L. Phillips, Trustee of Kalaheo Macadamia Preservation Land Trust  
 Printed Name & Title of Person Signing Above

By: Margaret C. Phillips May 11, 2002  
 Duly Authorized Signatory\* Date

Margaret C. Phillips, Trustee of Kalaheo Macadamia Preservation Land Trust  
 Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, \_\_\_\_\_ County of Kauai

Planning Department, \_\_\_\_\_ County of Kauai

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

- 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.

KALAHEO IHU FARMERS DEVELOPMENT LLC

\_\_\_\_\_  
Printed Name of Developer

BY PUEHU CORPORATION, Member

By: Jack L. Phillips  
Duly Authorized Signatory

May 11, 2012  
Date

Jack L. Phillips, President

\_\_\_\_\_  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

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

EXHIBIT A

Common Elements

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

a. The land within the boundaries of the Property in fee simple, subject to the limited common element designation set forth in section 5.3.

b. Perimeter fences or other boundary markers, gates, entryways and the common element roadway of 0.247 acres (Easement AU-3, as shown on the Condominium Map) servicing all of the Apartments in the Project.

c. The central and appurtenant installations for services benefiting all Apartments and/or the entire Project, including but not limited to power, light, gas, telephone, drainage and water management and like utilities.

d. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project.

EXHIBIT B

ENCUMBRANCES AGAINST TITLE

The title report of Title Guaranty of Hawaii, Inc. reports that title to the land is subject to the following encumbrances.

1. Real property taxes. To have a confirmation with respect to taxes contact the Director of Finance, County of Kauai.
2. Mortgage dated June 6, 2001 made by Jack L. Phillips and Margaret C. Phillips, Individually and as Joint Trustees of Phillips Benevolent Living Land Trust and Jack L. Phillips, as Trustee of the Jack L. Phillips Trust, collectively referred to as Mortgagor, and Tsukasa Murakami, Special Trustee of the Stanley S. Momohara & Doris Y. Momohara, Charitable Remainder Trust under that certain unrecorded Agreement dated March 8, 2001, as Mortgagee, recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2001-090135 in the amount of \$435,000.00.
3. Easement AU-3 for access and utility purposes shown on map dated ---, prepared by Dennis M. Esaki, Licensed Professional Land Surveyor.
4. Waiver and Release dated July 11, 2001 by KALAHEO MACADAMIA PRESERVATION TRUST and BUILDING DIVISION OF THE DEPARTMENT OF PUBLIC WORKS OF THE COUNTY OF KAUAI re: Water service, recorded as Document No. 2001-107536.
5. Waiver and Release dated July 26, 2001 by Stanley S. Momohara and Doris Y. Momohara with the Building Division of the Department of Public Works of the County of Kauai re: Water service, recorded as Document No. 2001-117137.
6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the DECLARATION OF RESTRICTIVE COVENANTS OF THE KALAHEO MACADAMIA PRESERVATION dated December 26, 2001, recorded as Document No. 2002-002612.
7. Grant to CITIZENS COMMUNICATIONS COMPANY and VERIZON HAWAII, INC. dated June 8, 2001, recorded as Document No. 2002-047538 granting a perpetual right and easement for electrical and communication purposes over, under, and upon "Easement R-1".
8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "KALAHEO MACADAMIA PRESERVATION" condominium project dated March 28, 2002, recorded as Document No. 2002-061795, together with

Condominium Map No. 3418 and any amendments thereto.

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the BY LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF "KALAHEO MACADAMIA PRESERVATION" condominium project dated March 28, 2002, recorded as Document No. 2002-061796.

EXHIBIT "C"

Summary of Sales Contract

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

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

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

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

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

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

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

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

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

EXHIBIT "D"

Summary of Escrow Agreement

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

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

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

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

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

(e) A summary of the conditions under which disbursement of the buyer's fund may be made are as follows:

(1) Escrow shall make no disbursements of purchaser's funds or proceeds on the sale of such apartments (including any payments made on loan commitments from Permanent Lenders), except by way of refunds thereof as provided hereinbelow, until:

(i) Escrow receives a copy of a "Receipt for Public Report(s) and Notice of Right to Cancel, in the form specified by Section 514A-62 of the Condominium Act for the Final and any Supplementary Public Reports, executed by the purchaser;

(ii) Escrow has received a certification from Developer, acceptable to Escrow, stating that the Sales Contract has become effective and requirements of Section 514A-39 and 514A-63 have been met as those quoted phrases are used in Section 514A-65 of the Condominium Act; and

(iii) until the purchaser's apartment deed is recorded in the Bureau of Conveyances of the State of Hawaii.

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

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

**EXHIBIT "E"**

KALAHEO MACADAMIA PRESERVATION  
REGISTRATION NO. 4853

DISCLOSURE STATEMENT AS OF APRIL 26, 2002

1. Name of Project: KALAHEO MACADAMIA PRESERVATION
2. Address: Ihu Road, Koloa, Kauai, Hawaii 96741
3. Name of Owner: JACK L. PHILLIPS and MARGARET C. PHILLIPS, husband and wife, alternate, individual trustees of the unrecorded Kalaheo Macadamia Preservation Land Trust dated January 29, 2001  
  
Address: 751 Laurel Street, #212, San Carlos, California 94070  
  
Kauai address: 4-1191 Kuhio Highway, Kapaa, Hawaii 06746  
  
Telephone in Kauai: (808) 7422638
4. Name of Developer: Kalaheo Ihu Farmers Development LLC  
  
Principal office and Address: 675 Fairview Drive, Carson City, Nevada 89701  
  
Telephone: (775) 8821390  
  
Kauai address: P. O. Box 1065, Kalaheo, Hawaii 96741  
  
Telephone: (808) 6513047
5. Project Manager or Agent: Self managed by Association of Apartment Owners. Agent Business Support Services, Inc., Project Real Estate Broker: Michael Harismendy
6. Address: 4-1191 Kuhio Highway, Kapaa, Hawaii 96746
7. Maintenance Fees: There are presently no maintenance fees since the project is divided with no party having improvements located within its own apartment unit. At such time that the majority of the apartments commence construction and completion of a farm dwelling unit the Developer to maintain the common elements. Each apartment owner to take out his or her own insurance for their respective apartment and their appurtenant limited common element and shall add the name of the Association as an additional assured.

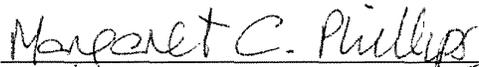
the name of the Association as an additional insured.

8. Commencement of Maintenance Fees: At such time that the majority of the owners decide that a maintenance fee is necessary and desire the maintenance fee to commence. Each owner to maintain his or her own respective premises at his or her own cost and expense.
9. Warranties: The Project is a fee simple condominium project and there are no warranties.
10. Project: The Project consists of four (4) condominium Apartments all of which are free standing detached Shade Houses. The uses will be agricultural and other uses that are allowed by the County of Kauai ordinances.

Dated: April Burlingame, California, this 26<sup>th</sup> day of \_\_\_\_\_, 2002.

OWNERS

  
\_\_\_\_\_  
JACK L. PHILLIPS, ~~alternate~~,  
individual trustee of Kalaheo  
Macadamia Preservation Trust

  
\_\_\_\_\_  
MARGARET C. PHILLIPS, ~~alternate~~.  
individual trustee of Kalaheo  
Macadamia Preservation Trust

DEVELOPER

KALAHEO IHU FARMERS  
DEVELOPMENT LLC, a Nevada limited  
liability company

By PUEHU CORPORATION

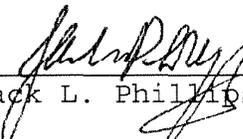
By   
\_\_\_\_\_  
Jack L. Phillips, President  
Its Authorized Member

EXHIBIT "F"

**BUILDING AND HOUSE RULES  
KALAHEO MACADAMIA PRESERVATION**

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

1. Definitions. As used herein:

- a. The "Area" refers to the land set aside for the use of each owner as a limited common element.
- b. The "Apartment" refers to any building built on the land designated as the limited common element for the owner and any subsequent improvements built within the Area.
- c. The "owner" or "Apartment owner" as used in the condominium documents shall refer to an owner of an Apartment in the Project.
- d. The "condominium documents" refers to the Declaration of Condominium Property Regime, By Laws, Building and House Rules, Certificate of Architect or Engineer, and the Condominium Map.
- e. The "Declarant" refers jointly and collectively to (i) Jack L. Phillips and Margaret C. Phillips, husband and wife, alternate individual Trustees of the unrecorded Kalaheo Macadamia Preservation Land Trust dated January 29, 2001, and their successors in interest and assigns, hereinafter called "Owner," and (ii) KALAHEO IHU FARMERS DEVELOPMENT LLC, a Nevada limited liability company, hereinafter called the "Developer".

2. Private Building Approvals. Any owner desiring to construct or install any Apartment in his/her Area is required to submit the plans and specifications to the Declarant so long as he owns an Apartment for approval of such plans and specifications to be in conformance with the condominium documents. Thereafter the plans and specification shall be submitted to the owners of the other Apartments for his or her review for conformance with the condominium documents. If there is a difference of opinion the matter is subject to dispute resolution as set forth in the By Laws.

3. Building Permit and Construction. Any owner desiring to construct and occupy or use a dwelling in his/her Area will comply with the applicable building and zoning ordinances as the same may be changed from time to time. The requirements of the County of Kauai ordinances are required to be observed in the securing of a building permit and construction and maintenance of any dwelling, as well as the Declaration of Restrictive Covenants and the following:

a. No house trailer, mobile home, motor home, permanent camping tent or similar facility or structure shall be kept, placed or maintained upon any Area at any time to serve as an additional dwelling unit, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one year during and used exclusively in connection with the construction or any work or improvement permitted on the Area.

b. Each dwelling and all improvements from time to time located thereon shall be maintained by the owner(s) thereof in good and clean condition and repair and in such manner as not to create any fire, safety, or health hazard to the Project or any part thereof, all at such owner's sole cost and expense.

4. Use Restrictions. The property is zoned for agricultural use and such use shall be observed by each owner of an Apartment in the Project. In addition the following Use Restrictions shall be observed by each Owner:

a. Pets. Dogs, cats and other typical household pets may be kept, but only in reasonable numbers and under reasonable conditions so as not to become a nuisance to the neighboring Apartment owners. All animals kept or maintained on or in an Area, whether domestic pets, livestock, game and fish or any other animal or aquatic life propagated for economic or personal use shall be kept and maintained only in a density compatible with the agricultural zoning of the Area and shall be cared for in conformance with practices of good animal husbandry, including but not limited to (i) fencing and animal housing facilities adequate to restrict such animals to their Apartment where they are being maintained and (ii) control of noise and noxious odors to levels which are customary under practices of good animal husbandry and which are compatible with the agricultural zoning of the land.

b. Animals and Noise. The keeping and maintaining of

pigs (except for personal use and consumption) and fighting cocks and chickens are expressly prohibited as being incompatible with the neighboring agricultural and residential use. No animals or fowl that are loud or obnoxious shall be maintained. This includes, but is not limited to, peacocks, donkeys, hunting dogs, pit bulls or any other vicious animals.

c. Noxious Activities. No noxious chemicals or pesticides shall be sprayed without giving a 24 hour notice to all Apartment owners or their agents prior to commencement of spraying. For the purpose of this paragraph, noxious shall be deemed to mean any chemical that presents a danger of physical injury to human beings, domestic pets and farm animals as well as offering a possible drift residue contamination to neighboring owners' crops that will be harvested for human consumption. No aircraft serial spraying of noxious chemical or pesticides shall be allowed. Any chemicals or pesticides shall be applied by any owner only to the extent reasonably necessary and with precautions to prevent them spreading through the air or by seepage to other parts of the Project.

d. Garbage and Trash. Each owner or occupant shall place his or her own garbage, trash and rubbish in covered receptacles or in plastic or fastened bags. Each owner or occupant shall exercise reasonable care to avoid exposure of waste materials to flies, roaches, rodents and other insects or materials.

## 5. General Appearance.

a. Signs. Signs, signals and lettering may be inscribed or exposed on any part of a building or in the common elements of the Project that meets the requirements of the ordinances of the County of Kauai.

b. Storage. No open storage of furniture, fixtures, appliances and other goods not in use will be permitted if not screened from the street and the other Apartments. This restriction does not apply to farm equipment, outdoor furniture, children's' swings or recreational equipment, or barbecues.

c. Antenna. No antenna, satellite dish, or other device to receive or transmit any television, radio, C.B. or any electronic signal shall be erected, placed or maintained on any building or area that is visible from any other Apartment without the prior written approval of the affected Apartment owner(s).

d. Vehicles in Disrepair. No vehicle that is unlicensed, or in non-working order, or in an extreme state of disrepair shall be abandoned or allowed to remain on the Property for a period in excess of five (5) days, unless placed in a garage, barn, or other covered space screened from view.

6. Upkeep of Area. Each owner will be responsible for the landscaping and upkeep of his/her own Area and shall not permit said Area to be overgrown with weeds and/or place used goods and/or storage of materials to make the Area become unsightly like a junkyard.

7. Water and Utilities. Declarant will have water and electricity brought to the Area boundary at the cost and expense of the Declarant. Each Apartment owner will be required to construct or extend the utilities to his/her own dwelling at his or her own cost and expense. If any Owner desires propane gas to be supplied to his/her Apartment, such supply will be his/her sole responsibility and at his/her sole expense.

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

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

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

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

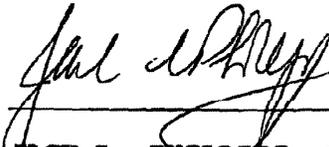
d. The owner will have prepared at his own cost an amendment to the Declaration of Condominium Property Regime, reflecting the change in description of the Apartment and an amendment to the Condominium Map. The Declarant or the Association (whichever is applicable)

will process the amendment for such approvals as are necessary pursuant to the Hawaii Revised Statutes and the condominium documents.

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

Executed this 28<sup>th</sup> day of March, 2002

**OWNER:**



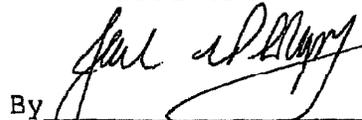
**JACK L. PHILLIPS**, alternate, individual trustee of Kalaheo Macadamia Preservation Land Trust



**MARGARET C. PHILLIPS**, alternate, individual trustee of Kalaheo Macadamia Preservation Land Trust

**DEVELOPER:**

**KALAHEO IPU FARMERS DEVELOPMENT LLC**, a Nevada limited liability company.  
By PUEHU CORPORATION, Its  
Authorized Member



By Jack L. Phillips, President,  
Puehu Corporation

EXHIBIT "G"

R-21

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JAN 08, 2002 08:01 AM

Doc No(s) 2002-002612

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( )

To Mr. and Mrs. Jack Phillips  
751 Laurel Street #212  
San Carlos, CA 94070

TITLE GUARANTY of Hawaii, Inc.  
Order No.  
Escrow No.

3139466  
PS

This document contains 9 Pages

T.M.K. 4th Div. 2-3-007: 002

DECLARATION OF RESTRICTIVE COVENANTS OF THE  
KALAHEO MACADAMIA PRESERVATION

KNOW ALL MEN BY THESE PRESENTS:

This Declaration of Restrictive Covenants made this 26th day of December, 2001 by JACK L. PHILLIPS and MARGARET C. PHILLIPS, husband and wife, alternate, individual Trustees of the unrecorded Kalaheo Macadamia Preservation Land Trust dated January 29, 2001, with full power and authority to buy, sell, mortgage, or lease the property herein described and other powers more fully set forth therein, whose residence and post office address is 751 Laurel Street, #212, San Carlos, California 94070, hereinafter called the "Declarant",

W I T N E S S E T H:

WHEREAS, Declarant owns 100% of the certain property in

Kalaheo, Kauai as described below;

WHEREAS, Declarant desires to subject the property to certain conditions, covenants and restrictions for the benefit of the property and its present and subsequent owners;

NOW THEREFORE, the Declarant hereby declares that the property in the Kalaheo Macadamia Preservation designated by Tax Map Key, 4th Division, 2-3-007: 002 is made subject to this Declaration and is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following terms and conditions, all of which shall be deemed to be covenants running with the land perpetually and shall be binding upon and shall inure to the benefit of all parties having or acquiring any right, title or interest in the property interests that are made subject to this Declaration.

1. Property Covered. The property covered by this Declaration is the parcel of land described above and more particularly described in Exhibit "A" (referred to as "the Property" in this document).

2. Restrictions. The Declarant hereby declares that the following conditions are to be observed with respect to any use and construction that will occur on the Property.

2.1. Underground Utilities. There shall be no outdoor overhead wires, lines or structures for the supply of electricity, telephone, cable television, or other utilities, and no pole, tower or other structure supporting such outdoor overhead wires, shall be erected, placed, or maintained on the Property. All utility lines and connections shall be placed underground unless otherwise required by the County, the State or a public utility company, or as may be necessary on a temporary basis during any construction work done at or on the Property.

2.2. Grades, Slopes and Drainage. In any grading and/or excavation of any limited common elements appurtenant to any future condominium Apartment, the grade shall not be altered in such a manner as to affect the drainage of any adjoining limited common elements appurtenant to any other Apartment. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken thereon, any of which may damage or interfere with established slopes or grades, or create a risk of flooding, erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow, of rainwater or irrigation water, or channel it onto any other owner's limited common elements or other parts of the

Property.

2.3. Dwellings. Each farm dwelling constructed on the Property shall contain not less than 800 square feet of livable floor area, exclusive of lanais, patios, garage, storage space, and workshop, except for the square footage of any permitted guest cottage which shall not exceed the maximum area permitted by County of Kauai zoning laws. Each dwelling shall have a garage or carport designed to accommodate at least two motor vehicles, which is architecturally harmonious with the dwelling to which it is appurtenant.

2.4. Fences. No fencing of any kind may be constructed within or upon any access easement or utility easement.

2.5. Building Setbacks. A building setback as may be required by the County of Kauai building and zoning code shall be observed from all boundaries in the Property. No permanent structure shall be built on any utility or setback easement area as shown in any further division by a condominium property regime.

2.6. Building Exteriors. Use of mirrored glass, reflective sun screens, or other highly reflective materials for exterior windows shall be prohibited.

2.7. Exterior Lighting. In order to minimize adverse impacts on the Federally Listed Threatened Species, Hawaii's shearwater and other seabirds, all external lighting shall be only of the following types: shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upwards and upward-directed spotlighting of structures and features shall be prohibited.

2.8. Sanitation. The Property does not have sewer lines, and there is no sanitary sewer system. Septic tanks shall be located no closer than 5 feet to any boundary of the Property, and/or easement, and/or any limited common element, and in compliance with all applicable State of Hawaii and County of Kauai laws, rules and regulations. No cesspools shall be installed anywhere on the Property.

2.9. Structures. The building and/or placing of structures that will fulfill the requirements of an apartment under the condominium property regime law of the State of Hawaii will not be subject to any of the foregoing restrictions.

3. Enforcement of Restrictions. The Declarant so long as it owns the Property (Kalaheo Macadamia Preservation) or any undivided interest therein, including an Apartment (if and when

the Property is converted into a condominium property regime), and any other owner who becomes an owner of an Apartment, or a lessee having a leasehold interest in any Apartment of more than 10 years, which is recorded in the Bureau of Conveyances, State of Hawaii ("Lessee"), may have the following rights and powers to enforce the restrictions contained herein.

3.1. Method of Enforcement of Restrictions. The Declarant, any future Association of Apartment Owners ("Association"), and any future owner or Lessee ("Requesting Party") by giving 30 days written notice by personal delivery or by certified mail, return receipt requested, to the defaulting party owning or occupying an Apartment of the Kalaheo Macadamia Preservation, at his/her address as it appears in the Declarant's or Association's records, specifying the type of remedy and/or action that it desires to be accomplished as specified in paragraphs 2.1 through 2.8 above and if no objection is raised by the defaulting party, then such Requesting Party may, at the defaulting party's expense, proceed to take such action and/or remedy that is specified in the notice. If there is objection by the defaulting party, then the Requesting Party and the defaulting party shall engage in good faith, informal attempt to resolve the noncompliance including an agreed timetable for so doing.

3.2. Enforcement by Court Action. If the informal dispute resolution specified in section 3.1 above does not succeed in resolving the noncompliance within thirty (30) days, then any Requesting Party may bring an action in the Fifth Circuit Court, State of Hawaii, for the violation of any restriction contained herein by way of mandatory injunction without the necessity of any bond, specific performance and/or damages. The person prevailing in such action shall be entitled to as part of its damages all costs of such court action and reasonable attorney's fees as awarded by the Court.

4. Amendment of Restrictions. The Declarant in its sole discretion may amend any of these restrictions so long as he/she owns an Apartment in the Project. After he/she conveys all of the Apartments in the Project, then the Association shall succeed to all of the powers of the Declarant including the sole power to amend this Declaration.

5. Binding Effect. This Declaration shall bind and inure to the benefit of the Declarant, any future owners, any future Association of Apartment Owners (if and when the Property becomes subject to a condominium property regime), their personal representatives, heirs and assigns, and any lessee who has a recorded lease of at least 10 years to occupy any apartment in the Project.

IN WITNESS WHEREOF, the Declarant has executed these presents this 26<sup>th</sup> day of December, 2001.

  
\_\_\_\_\_  
JACK L. PHILLIPS, Alternate,  
Individual Trustee of the KALAHEO  
MACADAMIA PRESERVATION LAND TRUST

STATE OF HAWAII                    )  
  )    ss.  
COUNTY OF Kauai                )

On this 26<sup>th</sup> day of December, 2001, before me personally appeared JACK L. PHILLIPS, to me known to be the person described in and who executed the foregoing instrument as the Alternate, Individual Trustee of the KALAHEO MACADAMIA PRESERVATION LAND TRUST dated June 27, 2001 and acknowledged that he executed the same as his free act and deed as such Trustee.

  
\_\_\_\_\_  
Print Name  
NOTARY PUBLIC, STATE OF HAWAII  
**AMY A. SILVA**  
Expiration Date: February 24, 2003  
My commission expires:

IN WITNESS WHEREOF, the Declarant has executed these presents this 26th day of December, 2001.

Margaret C. Phillips  
MARGARET C. PHILLIPS, Alternate,  
Individual Trustee of the KALAHEO  
MACADAMIA PRESERVATION LAND TRUST

STATE OF HAWAII )  
COUNTY OF Kauai ) ss.

On this 26th day of December, 2001, before me personally appeared MARGARET C. PHILLIPS, to me known to be the person described in and who executed the foregoing instrument as the Alternate, Individual Trustee of the KALAHEO MACADAMIA PRESERVATION LAND TRUST dated June 27, 2001 and acknowledged that she executed the same as her free act and deed as such Trustee.

Amy A. Silva  
Print Name \_\_\_\_\_  
NOTARY PUBLIC, STATE OF HAWAII \_\_\_\_\_

My commission expires:

AMY A. SILVA  
Expiration Date: February 24, 2003

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EXHIBIT "A"

All of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant 7313 to Johanna Gardner), situate, lying and being at Kalaheo, Koloa, Island and County of Kauai, being PARCEL 2 of the Kalaheo Homesteads, Second Series, and thus bounded and described as per survey of Esaki Surveying and Mapping, Inc. by Dennis M. Esaki, Licensed Professional Land Surveyor, dated June 2000:

Beginning at the northwest corner of this parcel of land on the southwest side of Lot 152, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAHIAWA" being 1,820.63 feet South and 1,110.73 feet West, then running by azimuths measured clockwise from true South:

1. 291° 05' 537.17 feet along the remainder of Grant 7313 (lot 152);
2. 18° 25' 77.35 feet along Ditch Right of Way No. 2 (Parcel 14-A)
3. 10° 20' 67.27 feet along Ditch Right of Way No. 2 (Parcel 14-A)
4. 8° 08' 117.98 feet along Ditch Right of Way No. 2 (Parcel 14-A);
5. 11° 00' 144.81 feet along Ditch Right of Way No. 2 (Parcel 14-A);
6. 15° 30' 179.78 feet along Ditch Right of Way No. 2 (Parcel 14-A);
7. 19° 16' 54.77 feet along Ditch Right of Way No. 2 (Parcel 14-A);
8. 26° 56' 72.09 feet along Ditch Right of Way No. 2 (Parcel 14-A);
9. 78° 03' 98.01 feet along Grant 7921 (Lot 150);
10. 101° 02' 561.72 feet along Grant 5205 (lot 2);
11. 217° 35' 11.36 feet along Ditch Right of Way No. 1-A (Parcel 14-B)
12. 207° 00' 135.54 feet along Ditch Right of Way No. 1-A (Parcel 14-B)
13. 208° 30' 81.55 feet along Ditch Right of Way No. 1-A (Parcel 14-B);

14. 207° 11' 106.19 feet along Ditch Right of Way No. 1-A (Parcel 14-B);
15. 201° 19' 62.25 feet along Ditch Right of Way No. 1-A (Parcel 14-B);
16. 197° 31' 96.03 feet along Ditch Right of Way No. 1-A (Parcel 14-B);
17. 200° 01' 63.33 feet along Ditch Right of Way No. 1-A (Parcel 14-B);
18. 197° 50' 236.38 feet along Ditch Right of Way No. 1-A (Parcel 14-B);
19. 201° 14' 45.68 feet along Ditch Right of Way No. 1-A (Parcel 14-B);
20. 199° 42' 22.61 feet along Ditch Right of Way No. 1-A (Parcel 14-B) to the point of beginning and containing an area of 10.690 acres, more or less.

Together with an exclusive perpetual easement for access and utility purposes over Easement "AU-2", as granted in GRANT OF ACCESS AND UTILITIES EASEMENTS, dated --- (acknowledged April 16, 2001), recorded as Document No. 2001-065159; more particularly described therein; and subject to the terms and provisions, including the failure to comply with covenants, conditions and reservations, contained therein.

Together with an exclusive perpetual easement for access and utility purposes over Easement "AU-1", as granted in GRANT OF EASEMENT, dated June 6, 2001, recorded as Document No. 2001-18500; more particularly described therein; and subject to the terms and provisions, including the failure to comply with covenants, conditions and reservations, contained therein.

Being the land conveyed by Warranty Deed dated June 29, 2001, the Grantor being JACK L. PHILLIPS and MARGARET C. PHILLIPS, individually and Joint Trustees of Phillips Benevolent Living Land Trust and JACK L. PHILLIPS, as Trustee of the J. L. Phillips Trust, as Grantor, and JACK L. PHILLIPS and MARGARET C. PHILLIPS, as alternate, individual trustees of Kalaheo Macadamia Preservation Land Trust, as Grantee, recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2001-102209, as corrected by Correction Warranty Deed dated October 1, 2001, recorded as Document No. 2001-193399; Re: to correct legal description.

SUBJECT, HOWEVER, to:

1. Purchase Money Real Estate Mortgage dated June 6, 2001 made by Jack L. Phillips and Margaret C. Phillips, Trustees of Phillips Benevolent Living Land Trust and Jack L. Phillips, as Trustee of the Jack L. Phillips Trust, collectively referred to as Mortgagor, and Tsukasa Murakami, Special Trustee of the Stanley S. Momohara & Doris Y. Momohara, Charitable Remainder Trust under that certain unrecorded Agreement dated March 8, 2001, as Mortgagee, recorded in the Bureau of Conveyances, State of Hawaii as Document No. 2001-090135 in the amount of \$435,000.00.

2. Easement AU-3 for access and utility purposes shown on map dated ---, prepared by Dennis M. Esaki, Licensed Professional Land Surveyor.

3. Waiver and Release dated July 11, 2001 by Kalaheo Macadamia Preservation Trust and the Building Division of the Department of Public Works of the County of Kauai re: Water, recorded as Document No. 2001-107536.

4. Waiver and Release dated July 26, 2001 by Stanley M. Momohara and Doris Y. Momohara with the Building Division of the Department of Public Works of the County of Kauai re: Water, recorded as Document No. 2001-117137.

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