

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer: RICHARD WAXMAN and CATHY MORATTO
Address: 66 Meadow Street, Mill Valley, California 94941

Project Name(\*): KIKALA KULEANA
Address: Lot 43-D-1-C and Lot 44-E-1B, Kikala Road, Kalaheo, Kauai, Hawaii

Registration No. 5150

Effective date: September 16, 2003

Expiration date: October 16, 2004

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.

X FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission. [x] No prior reports have been issued. [ ] This report supersedes all prior public reports. [ ] This report must be read together with

SUPPLEMENTARY: (pink) This report updates information contained in the: [ ] Preliminary Public Report dated: [ ] Final Public Report dated: [ ] Supplementary Public Report dated:

And [ ] Supersedes all prior public reports [ ] Must be read together with [ ] This report reactivates the public report(s) which expired on

(\* ) Exactly as named in the Declaration

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

- Required and attached to this report (attached hereto as Exhibit G)                       Not required - Disclosures covered in this report.

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

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

- No prior reports have been issued by the developer.

- Changes made are as follows:

**SPECIAL NOTICE:**

THIS IS A CONDOMINIUM PROJECT, NOT A SUBDIVISION. There are County restrictions on the number of dwelling units, or other structures, which may be built upon the property. Therefore, unless the purchaser is purchasing an existing dwelling, there is no assurance that the purchaser will be able to build a dwelling unit on the property. There also is no assurance that the purchaser will be able to convert an existing non-residential structure to residential use. The purchaser should consult with the appropriate County agencies to determine whether the purchaser may build a dwelling unit, or any other type of structure.

1. There are presently NO RESIDENTIAL STRUCTURES on the project. The only buildings on the project are shade structures, each of which may be defined as an "apartment" under the Condominium Property Act.
2. Issuance of an effective date for this Public Report does not constitute an approval of the project by the Real Estate Commission, or any other governmental agency, nor does it imply that all County codes, ordinances and subdivision requirements have been complied with.
3. This project does not involve the sale of individual subdivided lots. The land area beneath and immediately adjacent to each unit, as shown on the Condominium Map, is designated as a limited common element for that unit and does not represent a legally subdivided lot. The dotted or dash lines on the Condominium Map generally represent the location of the limited common element or easements assigned to each unit.
4. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads and driveways.
5. At present there is a county public water system available from the public road adjacent to this project. Those desiring to construct improvements on such units will be required to connect to County water at their own expense.

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

## TABLE OF CONTENTS

	Page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information of Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	5
Developer                      Attorney for Developer                      General Contractor	
Real Estate Broker          Escrow Company                      Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A:	Condominium Map and Limited Common Element Locations
EXHIBIT B:	Summary of Sales Contract
EXHIBIT C:	Schedule of Apartments and Common Interest
EXHIBIT D:	Summary of Portions of Escrow Agreement
EXHIBIT E:	Common Elements and Limited Common Elements of the Project
EXHIBIT F:	Encumbrances Against Title
EXHIBIT G:	Disclosure Abstract
EXHIBIT H:	Estimate of Initial Maintenance Fees and Disbursements
EXHIBIT I:	Summary of Covenants, Conditions and Restrictions
EXHIBIT J:	Memorandum from the County of Kauai Planning Department dated August 6, 2003
EXHIBIT K:	Sample Farm Dwelling Agreement

## **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: Richard Waxman and Cathy Moratto Phone: (C) 415-717-0513  
Name\* (Business)  
66 Meadow Street  
Business Address  
Mill Valley, California 94941

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

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker\*: N/A For Sale by owner Phone: \_\_\_\_\_  
Name (Business)  
Business Address  
\_\_\_\_\_

Escrow: Title Guaranty Escrow Services, Inc. Phone: 808-521-0211  
Name (Business)  
235 Queen Street, First Floor  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: Us Guys Builders, LLC Phone: 808-245-7788  
Name (Business)  
3385 Unahe Street  
Business Address  
Lihue, Hawaii 96766

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

Attorney for Developer: Glen T. Hale Phone: 808-245-4100  
Name (Business)  
2970 Kele Street Suite 110  
Business Address  
Lihue, Hawaii 96766-1803

\*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. 2003-095915

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. 3576

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. 2003-095916

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  
 (a summary of which is attached hereto as Exhibit I)

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 interests which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>100%</u>

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

2. **Developer**

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

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

The Developer reserves the right to amend the Condominium Map and Declaration to reflect a change in the Building Setback line as shown on the Condominium Map. A pending application is before the County of Kauai to approve the change. See also Exhibit G attached hereto.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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

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

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

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

Lease Rent Payable:             Monthly                             Quarterly  
    Semi-Annually                             Annually

Exhibit\_\_\_\_\_contains a schedule of the lease rent for each apartment per  Month  Year

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:  
 Canceled                             Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

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

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

Lease Rent Payable:             Monthly                             Quarterly  
    Semi-Annually                             Annually

Exhibit\_\_\_\_\_contains a schedule of the lease rent for each apartment per:  Month  Year

[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

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

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

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

**B. Underlying Land:**

Address: Lots 43-D-1-C and 44-E-1-B, Kikala Road, Kalaheo, Kauai, Hawaii Tax Map Key: (TMK): (4) 2-4-005:118 and 220

[ ] Address [ ] TMK is expected to change because each future unit will receive it's own address.

Land Area: 1.779 (parcel 118) [ ] square feet [ x ] acre(s) Zoning: AG  
1.049 (parcel 220)  
Total: 2.828

Fee Owner: RICHARD WAXMAN and CATHY MORATTO  
 Name  
66 Meadow Drive  
 Address  
Mill Valley, California 94941

Lessor: N/A  
 Name  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_

**C. Buildings and Other Improvements:**

1.  New Building(s)  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion
2. Number of Buildings: four (4) Floors Per Building one (1)  
 Exhibit \_\_\_\_\_ contains further explanations.
3. Principal Construction Material:  
 Concrete       Hollow Tile       Wood  
 Other shade cloth and iron fence posts
4. Permitted Uses by Zoning:

	No. of Apts.	<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	*	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: (shade sheds) <u>4</u>	_____	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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

Yes                       No

\*NOTE: The subject property is within the State Land Use Agricultural District and is zoned Agricultural by the County of Kauai. "Farm Dwellings" and other structures appropriate to agricultural usage are permitted, subject to certain guidelines. See the disclosures on Page 20 of this Final Public Report and Exhibit "K", Farm Dwelling requirements.

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:

- Household pets may be kept consistent with any applicable law or restrictive covenants
- [ x ] Pets: applicable to the project so long as they do not become a nuisance to the other owners.
- [ ] Number of Occupants: \_\_\_\_\_  
Protective Covenants, Conditions and Restrictions, a summary of which is attached
- [ x ] Other: hereto as Exhibit "I".
- [ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: -0- Stairways: -0- Trash Chutes: -0-

<u>Apt. No.</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
<u>1</u>	<u>1</u>	<u>0/0</u>	<u>-0-</u>	<u>16</u>	<u>shade shed</u>
<u>2</u>	<u>1</u>	<u>0/0</u>	<u>-0-</u>	<u>16</u>	<u>shade shed</u>
<u>3</u>	<u>1</u>	<u>0/0</u>	<u>-0-</u>	<u>16</u>	<u>shade shed</u>
<u>4</u>	<u>1</u>	<u>0/0</u>	<u>-0-</u>	<u>16</u>	<u>shade shed</u>

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

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

**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 N/A elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 4

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>      </u>	<u>1*</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>4</u>
Guest	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Unassigned	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
* Although not identified on the CPR map.							
Other: Units 1, 2, 3 and 4 have ample space for at least one parking stall within their limited common element land areas.							
Total Covered & Open:	<u>4</u>		<u>-0-</u>		<u>-0-</u>		<u>4</u>

Each apartment will have the exclusive use of at least 1\* parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.
- Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool                       Storage Area                       Recreation Area
- Laundry Area                       Tennis court                       Trash Chute/Enclosure(s)
- Other: \_\_\_\_\_

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

- There are no violations.                       Violations will not be cured.
- Violations and cost to cure are listed below.                       Violations will be cured by \_\_\_\_\_  
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
(For conversions of residential apartments in existence for at least five years):

N/A

11. Conformance to Present Zoning Code

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

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

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

	Conforming	Non-Conforming	Illegal
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 Interests:

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

- described in Exhibit     E    .  
 as follows:

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

There are no limited common elements in this project.

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

described in Exhibit E.

as follows:

3. Common Interests: Each apartment will have an undivided fractional interest 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 C.

as follows:

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 F describes the encumbrances against the title contained in the title report dated June 16, 2003 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.

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	A lender has priority over a Buyer's rights under a Sales Contract and has a right to terminate a sales contract upon foreclosure of its mortgage before an apartment sale is closed. If foreclosed, Buyer's deposit shall be refunded (less any escrow cancellation fees) and the sales contract between Seller and Buyer shall be cancelled.

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:**

Units 1, 2, 3, and 4 shade sheds were completed in February 2003.

H. **Project Phases:**

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

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

IV. CONDOMINIUM MANAGEMENT

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

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

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

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

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

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

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

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

- C. **Utility Charges for Apartments:**

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

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

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen sales Contract  
Exhibit  B  contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated  June 12, 2003 .  
Exhibit  D  contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

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 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 Declaration of Protective Covenants and House Rules for Kikala Kuleana; Agreement To Incorporate Agricultural Restrictions Into Instruments of Conveyance; Mortgage; Elevation Agreement; Grant; Road Widening Reserve Agreement; Declaration of Covenants, Conditions and Restrictions; Encroachment Agreement

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the Developer's sales agent, if any. 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. 5150 filed with the Real Estate Commission on July 1, 2003.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

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

This is a condominium project, not a subdivision. Units purchased are not on subdivided lots. To determine whether your expectations can be realized, you should carefully review the contents of this Report, especially Exhibit "I" to this report which is a summary of the recorded restrictive covenants for the subdivision within which this project is located. Among other things, the restrictive covenants govern land use, building type and materials, possession of animals, and cultivation of crops. You should also conduct your own investigations and ascertain the validity of information provided.

Residential improvements are not yet located on Units 1, 2, 3, and 4 of the project. There are four shade structures on the Project. These can be replaced by or remodeled as allowed by law and project documents. The prospective purchaser shall have the right to undertake such work at purchaser's expense. The purchaser shall also, in such event, file the "as-built" certificate within thirty days of completion of the residence in conformance with Section 514A-12, Hawaii Revised Statutes, and record an amendment of the Declaration of Condominium Property Regime ("Declaration") to describe the residence. The County of Kauai Planning Department, in order to process the necessary permits for the construction of any other structure, requires authorization from at least 75% of the legal and equitable ownership of the entire project, consistent with the Declaration and the Bylaws ("condominium documents").

Except as limited specifically by the condominium documents and subdivision restrictive covenants, all uses permitted in the residential zone are permitted. Uses in one zone are not the same as in the other, and the prospective purchaser should consult the appropriate county agency for information on uses and construction in the respective zones.

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

Units 1 and 2 are subject to a building setback line as designated on the Condominium Map. The building setback line prevents the construction of structures located on the West Side of the line. The developer requested the County of Kauai Planning Department to amend the setback line. A prospective purchaser should contact the County of Kauai Planning Department to determine acceptable building locations on these units.

Units 3 and 4 are subject to a drainage and building setback line as shown on the Condominium Map. The drainage and building setback line prevents construction on the West Side of the line. A prospective purchaser should contact the County of Kauai Planning Department to determine acceptable building locations on these units.

Access to Units 2, 3, and 4 is provided by a common element driveway as shown on the Condominium Map. The common element is designated and set aside for the exclusive use of Units 2, 3, and 4. Those units also share the maintenance costs associated with the common element driveway. Access to Unit 2 is provided by the common element driveway and access is **not** provided to Unit 2 by Easement U-1 or Easement W-1.

The premises covered herein may be subject to possible rollback or retroactive taxes.

C. Additional Information Not Covered Above: (continued)

The underlying property is classified and zoned "Agricultural". County ordinance and the Hawaii Land Use laws allows only the construction of farm dwellings on such lands. A farm dwelling is a single-family dwelling that is located on or used in connection with a farm or if the agricultural activity provides income to the family occupying the dwelling. More than one farm dwelling may be allowed on a parcel of land if (a) a farm dwelling agreement is executed for each additional farm dwelling which requires that the dwelling be used for farm-related purposes and (b) the applicant for the permit submits an agricultural development and use program, farm program or other evidence of the applicant's continual agricultural productivity or farming operations in the County of Kauai, and such plan shows how the farm dwelling will be utilized for farm related purposes.

Buyers are advised that the developer makes no representations or warranties with respect to (i) the improvements that are or will be allowed on the real property, (ii) the uses that are allowed or required for real property located in an "Agricultural" land use classification, or (iii) the restrictions, requirements or conditions that may be imposed by any governmental entity with respect to Prospective buyers are advised to verify the legality of and the requirements for the buyer's intended use of the unit and the land with the County of Kauai.

Residential Dwellings within State Land Use Agricultural District

Buyers should be aware that the State Land Use Commission issued a Declaratory Ruling in December, 1994, regarding the construction of residential dwellings on properties located within the State Land Use Agricultural District. In response to said ruling, the Kauai County Planning Department is requiring applicants for building permits on such lands to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling Notice reads as follows:

FARM DWELLING NOTICE

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

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

Farm Dwelling is defined in Chapter 205.4.5(a)(4) as a "single-family dwelling located on and used in connection with a farm, including clusters of single-family dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling. "

Penalty for violation of Section 205.4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000.00. 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 \$5,000.00 for any additional violation.

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

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

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

Mailboxes. Mailboxes have not been provided for the units, as there is no mail delivery to this area. People in this area customarily maintain a post office box at the local post office.

- 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-1.6] (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.

RICHARD WAXMAN and CATHY MORATTO  
Name of Developer

By: Richard Waxman  
Duly Authorized Signatory\*

5/27/03  
Date

By: Cathy Moratto  
Duly Authorized Signatory\*

5-27-03  
Date

RICHARD WAXMAN and CATHY MORATTO, Owner/Developer  
Printed Name & Title of Person Signing Above

Distribution:

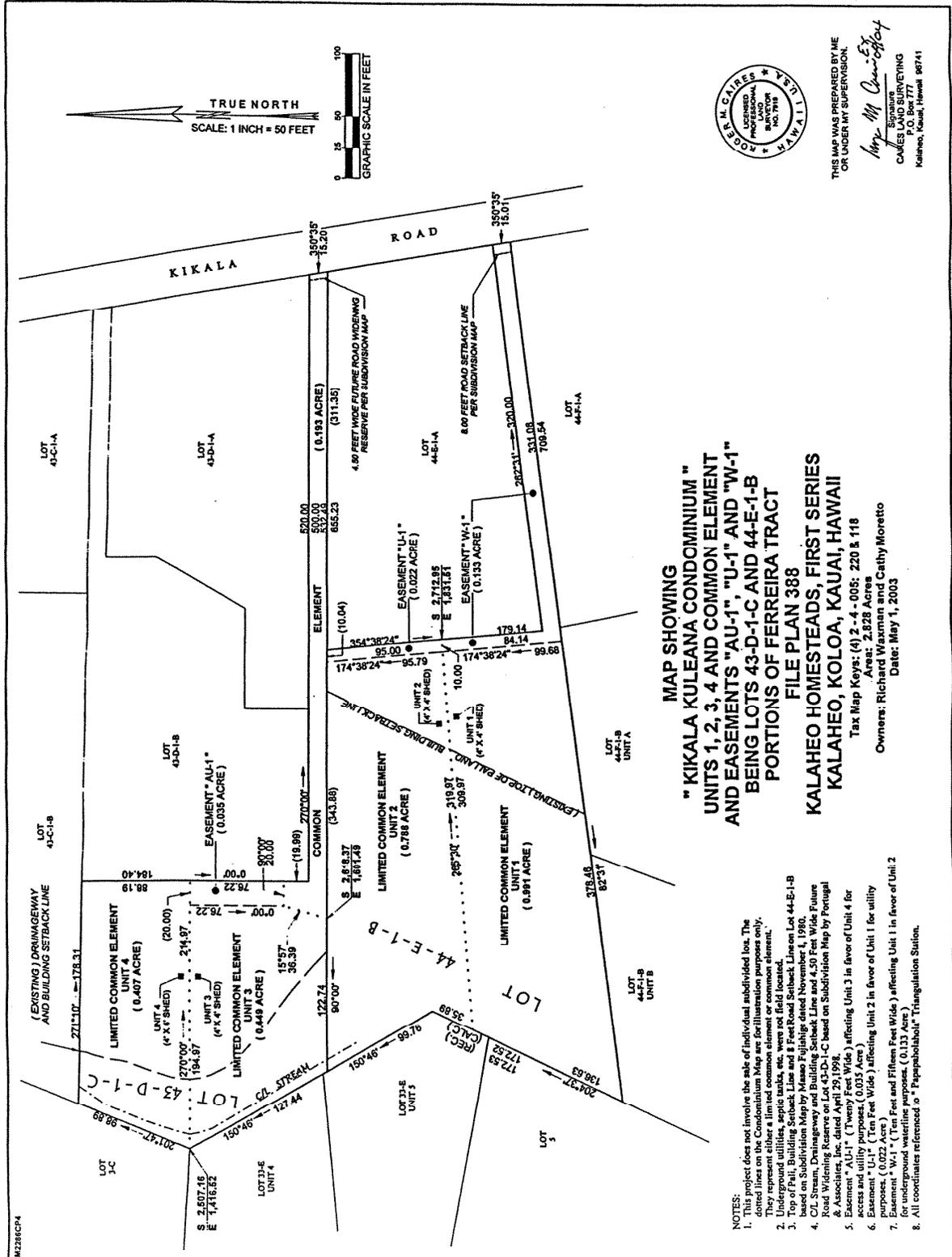
Department of Finance, County of Kauai

Planning Department, County of Kauai

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

# EXHIBIT "A"

## CONDOMINIUM MAP AND LIMITED COMMON ELEMENT LOCATIONS



**MAP SHOWING**  
**" KIKALA KULEANA CONDOMINIUM "**  
**UNITS 1, 2, 3, 4 AND COMMON ELEMENT**  
**AND EASEMENTS "AU-1", "U-1" AND "W-1"**  
**BEING LOTS 43-D-1-C AND 44-E-1-B**  
**PORTIONS OF FERREIRA TRACT**  
**FILE PLAN 388**  
**KALAHEO HOMESTEADS, FIRST SERIES**  
**KALAHEO, KOLOA, KAUAI, HAWAII**

THIS MAP WAS PREPARED BY ME  
 OR UNDER MY SUPERVISION,  
 My Commission Expires  
 Cakes Land Surveying  
 P.O. Box 777  
 Kalaheo, Kauai, Hawaii 96741



Tax Map Keys: (4) 2-4-005; 220 & 118  
 Area: 2.828 Acres  
 Owners: Richard Waxman and Cathy Moretto  
 Date: May 1, 2003

- NOTES:
- This project does not involve the sale of individual subdivided lots. The dotted lines on the Condominium Map are for illustration purposes only. They represent either a limited common element or common element.
  - Underground utilities, septic tanks, etc. were not field located.
  - Top of Fall, Building Setback Line and 8 Feet Road Setback Line on Lot 44-E-1-B are shown for information only. They are not to be used for any purpose.
  - Based on Subdivision Map by Cakes Land Surveying, Inc. dated April 29, 1998, and 8 Feet Road Setback Line and 8 Feet Road Setback Line on Lot 43-D-1-C based on Subdivision Map by Portugal & Associates, Inc. dated April 29, 1998.
  - Easement "AU-1" (Twenty Feet Wide) affecting Unit 3 in favor of Unit 4 for access and utility purposes, (0.035 Acre)
  - Easement "U-1" (Ten Feet Wide) affecting Unit 2 in favor of Unit 1 for utility purposes, (0.022 Acre)
  - Easement "W-1" (Ten Feet and Fifteen Feet Wide) affecting Unit 1 in favor of Unit 2 for utility purposes, (0.113 Acre)
  - All coordinates referenced to "Papapohohoku" Triangulation Station.

## EXHIBIT B

### SUMMARY OF SALES CONTRACT

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

1. The method of payment of the purchase price to the escrow agent, subject to other terms.
2. The closing date for the purchase.
3. Whether, at the time of execution of the contract, an effective date for a final public report has been issued.
4. The terms and conditions of the sale which include, among other provisions, the following:
  - (a) That Purchaser will receive a copy of the final public report for the project.
  - (b) Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow Agreement, and Purchaser is subject to all of the terms of the Escrow Agreement.
  - (c) Seller has a right to extend the closing date by 31 days or by 31 days after the public report effective date is issued, whichever is later.
  - (d) After issuance of the Final Public Report effective date and Buyer's waiver of its right to cancel under Hawaii Revised Statutes Section 514A-62, Purchaser shall not have the right to rescind the contract.
  - (e) Purchaser has received a copy of the Escrow Agreement.
  - (f) If Purchaser defaults, Seller may cancel the contract or bring legal action against Purchaser to force sale, obtain money damages, or retain Purchaser's deposit money held in escrow.
  - (g) The unit the Purchaser is purchasing is shown on the condominium map attached as Exhibit A to the Sales Contract and Receipt; Purchaser will have the right to cancel if the Unit is different from that shown on said Exhibit A.
  - (h) That a deed conveying clear title will be given at closing, subject to certain obligations.

- (i) The Purchaser agrees to give future easements if reasonably required for the project.
- (j) Except for unexpired builder's statutory warranties and assignable appliance warranties, the Purchaser will accept the Unit "AS-IS". Purchaser assumes all risks regarding any potential hazardous materials on the condo property or property adjoining or in the vicinity, including liability for suits by third parties. Seller is, however, unaware of any such conditions on the property.
- (k) The payment of commissions, if any, is set out in the contract.
- (l) Time is of the essence of the obligations of Purchaser under the contract.

**SPECIAL NOTICE:**

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

**END OF EXHIBIT B**

## EXHIBIT C

### SCHEDULE OF APARTMENTS AND COMMON INTERESTS

Quantity	Unit No.	Area of Limited Common Element* (Sq. Ft.)	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	% of Common Int.
1	1	.991 acres	None	None	16 (shed)	25%
1	2	.788 acres	None	None	16 (shed)	25%
1	3	.449 acres	None	None	16 (shed)	25%
1	4	.407 acres	None	None	16 (shed)	25%

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. There are four units, each of which will burden the common elements equally. Therefore, the assessment of undivided interest both for common expense and for voting is 25% for each unit.

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

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

END OF EXHIBIT C

## EXHIBIT D

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between TITLE GUARANTY ESCROW SERVICES, INC. (referred to as "Escrow"), and RICHARD WAXMAN, single, and CATHY MORATTO, single (jointly referred to as "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.
2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.
3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected within seven days of signing the sales contract to cancel and receive all funds paid, without deduction; or (b) the Real Estate Commission has not issued a Final Public Report on the project or the requirements of the sales contract have not been met; or (c) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met.
4. Escrow will return deposited sums to the Buyer without interest if Seller and Buyer give Escrow written notice to return the funds to Buyer, if there is a right to cancellation and refund of monies under the sales contract or otherwise. If there is a cancellation under the seven-day right, no fees will be charged Buyer. Thereafter, in the event of a cancellation as a matter of agreement or right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, and all other costs incurred in connection with the Escrow, not less than \$25.00.
5. Escrow will arrange for and supervise the signing of all documents which are to be signed subsequent to and contemplated by the sales contract.
6. As Escrow's compensation for its performance under this Agreement, Escrow will receive its schedule rate for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon schedule rate.

SPECIAL NOTICE:

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

**END OF EXHIBIT D**

## EXHIBIT E

### COMMON ELEMENTS OF THE PROJECT

The common elements of the project are:

- (a) The land in fee simple;
- (b) The common element designated on the Condominium Map for access and utilities (0.193 acre);
- (c) All commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; and
- (d) Any and all other future elements and facilities in common use or necessary to the Project.

The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided in the Condominium Property Act. Any such partition or division shall be subject to the prior consent thereto by the holder(s) of all mortgage(s) of any condominium unit(s) which are filed of record.

### LIMITED COMMON ELEMENTS OF THE PROJECT

Certain parts of the common elements, referred to as the "limited common elements," have been designated and set aside for the exclusive use of one or more units, and such unit(s) have appurtenant exclusive easements for the use of such limited common elements. The limited common elements set aside, reserved and deemed a limited common element appurtenant to and for the exclusive use of each respective unit is that certain land area upon and around which Units 1, 2, 3 and 4 are located, shown and designated on the Condominium Map and the table below.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
1	.991 acre
2	.788 acre
3	.449 acre
4	.407 acre

Except for liability created by negligence or intentional acts, all costs of every kind pertaining to the aforesaid limited common elements, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne solely by the owner of the unit to which said limited common elements are appurtenant.

The common elements, being that certain land area shown and designated on the Condominium Map, is hereby designated and set aside for the exclusive use of Units 2, 3, and 4 for purposes of access and utilities and such units shall have appurtenant thereto exclusive easements for the use of the Common Element.

Except for liability created by negligence or intentional acts, all costs of every kind pertaining to the Common Element, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne solely by the owners of Units 2, 3, and 4 to which said limited common element is appurtenant. Costs of improvement, maintenance and repair of the Common Element shall be shared equally by the owners of Units 2, 3 and 4 in proportion to the portion of the Common Element area actually used by each Unit.

**\*Note:** Land areas referenced herein are not legally subdivided lots. Also, See Note at bottom of Exhibit C.

**END OF EXHIBIT E**

**EXHIBIT F**

ENCUMBRANCES AGAINST TITLE

1. Real Property Taxes. Check with the County of Kauai, Department of Finance, Real Property Tax Division, for detailed information.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: LAND PATENT GRANT NUMBER 10,326

DATED: October 11, 1935.

The foregoing includes, but is not limited to, matters relating to water reservation.

3. -AS TO PARCEL FIRST:-

(A) AGREEMENT TO INCORPORATE AGRICULTURAL RESTRICTIONS INTO INSTRUMENT OF CONVEYANCE dated April 21, 1981, recorded in Liber 15551 at page 626, by JAMES R. JOHNSON and VIRGINIA M. JOHNSON, husband and wife, and with COUNTY OF KAUAI Planning Department; re: to subdivide Lot into 44-E-1-A and 44-E-1-B.

(B) SETBACK (8 feet wide)

PURPOSE: future road widening

ALONG: Kikala Road

SHOWN: on subdivision map prepared by Masao Fujishige, Registered Land Surveyor, dated May 21, 1981

(C) SETBACK

PURPOSE: building

SHOWN: on subdivision map prepared by Masao Fujishige, Registered Land Surveyor, dated May 21, 1981.

(D) Centerline Stream, as shown on Tax Map Key.

(E) Encroachment(s) as shown on the survey map prepared by Roger M. Caires, Land Surveyor, with CAIRES LAND SURVEYING, dated May 25, 2002.

(F) Structure position discrepancies as shown on the Survey map prepared by Roger M. Caires, Land Surveyor, with CAIRES LAND SURVEYING, dated May 25, 2002.

(G) MORTGAGE

MORTGAGOR: RICHARD WAXMAN, single, and CATHY MORATTO, single

MORTGAGEE: BANK OF HAWAII, a Hawaii corporation

DATED: May 24, 2002

RECORDED: Document No. 2002-098307

(H) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: ELEVATION AGREEMENT

DATED: August 26, 2002

RECORDED: Document No. 2002-218802

PARTIES: RICHARD WAXMAN, CATHY MORATTO, and the COUNTY OF KAUAI

3. -AS TO PARCEL SECOND:-

(A) GRANT

TO: CITIZENS UTILITIES COMPANY, a Delaware corporation, and VERIZON HAWAII, INC.

DATED: September 9, 1980

RECORDED: Liber 15046 at Page 86

GRANTING: a perpetual right and easement for utility purposes as shown on map attached thereto

(B) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: ROAD WIDENING RESERVE AGREEMENT

DATED: April 29, 1992

RECORDED: Document No. 92-074492

PARTIES: JOHN M. TOWNSEND and STEPHENE P. TOWNSEND and COUNTY OF KAUAI PLANNING DEPARTMENT

(C) 4.50 feet wide future road widening along Kikala Road, as shown on subdivision map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated June 25, 1998.

(D) Centerline Stream, as shown on subdivision map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated June 25, 1998.

(E) SETBACK

PURPOSE: building  
SHOWN: on subdivision map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated June 25, 1998.

(F) Drainageway as shown on subdivision map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated June 25, 1998.

(G) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: DECLARATION

DATED: July 7, 1998

RECORDED: Document No. 98-102518

(H) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: ENCROACHMENT AGREEMENT

DATED: August 26, 2002

RECORDED: Document No. 2002-176421

PARTIES: RICHARD WAXMAN, single, CATHY MORATTO, single, and CAROL PURDY, single

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

INSTRUMENT: DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "KIKALA KULEANA" CONDOMINIUM PROJECT

DATED: March 18, 2003

RECORDED: Document No. 2003-095915

MAP: 3576 and any amendments thereto

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
INSTRUMENT: BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
  
DATED: March 18, 2003  
RECORDED: Document No. 2003-095916
  
6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
INSTRUMENT: DECLARATION OF PROTECTIVE COVENANTS AND HOUSE RULES  
  
DATED: March 18, 2003  
RECORDED: Document No. 2003-095917
  
7. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

**END OF EXHIBIT F**

## **EXHIBIT G**

### **DISCLOSURE ABSTRACT FOR KIKALA KULEANA**

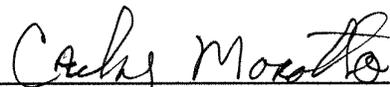
Pursuant to Hawaii Revised Statutes, Section 514(A)-61, the Developer of KIKALA KULEANA makes the following disclosures:

1. The Developers of the project are RICHARD WAXMAN, single, and CATHY MORATTO, single, both of whose address is 66 Meadow Street, Mill Valley, California 94941.
2. See Exhibit H to the Final Public Report for the projected annual maintenance fees. The Developers hereby certify that the estimations have been based on generally accepted accounting principles.
3. There are no warranties against defects of material and workmanship in individual apartments, common elements or exclusive use areas, and the purchaser buys his/her unit in an "as is" condition.
4. All of the apartments of the project are to be used for agricultural and permitted residential purposes in the agricultural zone only. No units shall be used for hotel or timeshare purposes. There will be no commercial use except those activities permitted by County Ordinance.
5. There is no real estate broker for the Project. The Developers intend to sell the units themselves and do not intend to use a real estate broker.
6. The Developer has not conducted a reserve study in accordance with 514A-83.6, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. There are no depreciable common elements in the Project.
7. This project includes existing structures being converted to condominium ownership.
8. Units 1 and 2 are subject to a building setback line as designated on the Condominium Map. The building setback line prevents the construction of structures located on the West Side of the line. The developer requested the County of Kauai Planning Department to amend the setback line. A prospective purchaser should contact the County of Kauai Planning Department to determine acceptable building locations on these units.

9. Units 3 and 4 are subject to a drainage and building setback line as shown on the Condominium Map. The drainage and building setback line prevents construction on the West Side of the line. A prospective purchaser should contact the County of Kauai Planning Department to determine acceptable building locations on these units.
  
10. Access to Units 2, 3, and 4 is provided by a common element driveway as shown on the Condominium Map. The common element is designated and set aside for the exclusive use of Units 2, 3, and 4. Those units also share the maintenance costs associated with the common element driveway. Access to Unit 2 is provided by the common element driveway and access **is not** provided to Unit 2 by Easement U-1 or Easement W-1.

In witness whereof, the developers have executed this disclosure abstract this 27 day of MAY, 2003.

  
\_\_\_\_\_  
RICHARD WAXMAN

  
\_\_\_\_\_  
CATHY MORATTO

---

**RECEIPT**

The undersigned has received a copy of the foregoing Disclosure Abstract with Exhibit H this \_\_\_ day of \_\_\_\_\_, 200\_\_.

Purchaser(s):

---

END OF EXHIBIT G

EXHIBIT H  
ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

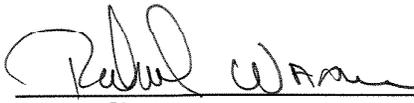
<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
UNIT 1	\$25.00                      \$300.00
UNIT 2	\$25.00                      \$300.00
UNIT 3	\$25.00                      \$300.00
UNIT 4	\$25.00                      \$300.00

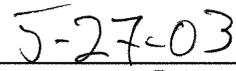
***The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.***

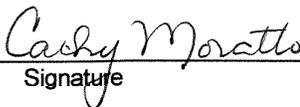
**Estimate of Maintenance Fee Disbursements:**

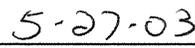
	<u>Monthly Fee x 12 months = Yearly Total</u>	
<b>Utilities and Services</b>		
Air Conditioning	\$	\$
Electricity		
[ ] common elements only		
[ ] common elements and apartments		
Elevator		
Gas		
[ ] common elements only		
[ ] common elements and apartments		
Refuse Collection		
Telephone		
Water and Sewer		
<b>Maintenance, Repairs and Supplies</b>		
Building		
Grounds	50.00	600.00
<b>Management</b>		
Management Fee		
Payroll and Payroll Taxes		
Office Expenses		
Insurance	50.00	600.00
Reserves(*)		
<b>Taxes and Government Assessments</b>		
Audit Fees		
Other	_____	_____
TOTAL	\$ 100.00	\$ 1,200.00

We, RICHARD WAXMAN and CATHY MORATTO, developers, for the KIKALA KULEANA condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
 \_\_\_\_\_  
 Signature

  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Signature

  
 \_\_\_\_\_  
 Date

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with Section 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to Section 514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

**END OF EXHIBIT H**

## EXHIBIT I

### SUMMARY OF PROTECTIVE COVENANTS AND HOUSE RULES FOR KIKALA KULEANA

This is a summary of the recorded Declaration of Protective Covenants and House Rules ("House Rules") for the condominium Project. This is not meant to completely recite the actual provisions of the House Rules, nor to cover every issue in which a purchaser might have interest. The prospective purchaser is urged to obtain a full copy of the House Rules from the condominium Developer prior to entering into an agreement to purchase a unit in this Project.

- Building Permits:** Any owner desiring to construct improvements on a unit will have to comply with County of Kauai building and zoning codes.
- Water and Utilities:** Each unit owner will be required to connect water, electricity and telephone to his/her improvements at his/her own cost and expense.
- Wastewater Treatment:** Each unit will be required to have its own state-approved wastewater treatment system located within its own limited common element area.
- Farming:** Units in the Project must engage in agricultural activity as a condition precedent to the ability to build or occupy a "Farm Dwelling." Farming materials and equipment shall be kept in good order and repair.
- Construction:** There are limits on materials and types of construction.
- Pets and Farm Animals/Noise in General:** There are restrictions on types and numbers of animals as well as the levels of noise and dust permissible within the Project.
- Common Area Land:** The Association shall determine and control the common area land, if any.
- Noxious Activities:** There are restrictions regarding the spraying of chemicals and pesticides.

Common Element  
Expenses and  
Enforcement:

The Association shall provide for common area expenses necessary to maintain the project in acceptable condition.

Repeal or  
Modification:

These Covenants may be modified by an affirmative vote of the holders of 75% of the common interests in the Project.

Arbitration:

Disputes concerning any unit owner, the Association, its Board, Managing Agent or the condominium documents shall be submitted to arbitration.

**END OF EXHIBIT I**

EXHIBIT J

MEMORANDUM FROM THE COUNTY OF KAUAI PLANNING DEPARTMENT

BRYAN J. BAPTISTE  
Mayor



IAN K. COSTA  
Director of Planning

SHEILAH N. MIYAKE  
Deputy Director of Planning

COUNTY OF KAUAI  
PLANNING DEPARTMENT

Kapule Building  
4444 Rice Street Suite A473  
Lihu'e, Hawai'i, 96766-1326

TELEPHONE: 808.241.6677  
FAX: 808.241.6699

DATE: August 6, 2003

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

FROM: Sheilah N. Miyake, Deputy Planning Director

SUBJECT: Certification of Inspection of Existing Buildings

Project Name: KIKALA KULEANA  
Condominium Project (103)  
Tax Map Keys: (4) 2-4-005: 118  
(4) 2-4-005: 220

The attorney for the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai (Section 515A-40 (b), (l), Hawaii Revised Statutes. Subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developer has contracted architect Palmer Hafdaahl to certify that the buildings on the proposed project referred to as Kikala Kuleana Condominium Unit 1 through Unit 4 inclusive are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by the Department.
2. There are no variances approved for the subject property.

Senior Condominium Specialist  
Kikala Kuleana Condominium  
TMKs: (4) 2-4-005: 118 and (4) 2-4-005: 220  
August 6, 2003  
Page two

3. The parcel does not contain any outstanding nonconforming uses or structures as a result of the adoption or amendments of any ordinances or codes and regulations.
4. There are no notices of violation of County building or zoning codes outstanding according to our records.
5. **WAIVER**  
The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under subsection 514 A-40, (b), and (l), Hawaii Revised Statutes.

If you have any questions, please contact me at 241-6677.

cc: Glen Hale, Attorney at Law  
Richard Waxman and Cathy Moratto, Project Developers

**END OF EXHIBIT J**

**EXHIBIT "K"**

**\*\*FOR ILLUSTRATION ONLY\*\***

**LAND COURT**

**REGULAR SYSTEM**

**AFTER RECORDATION, RETURN BY MAIL TO:**

COUNTY OF KAUAI  
Planning Department  
Building A, Suite 473  
4444 Rice Street  
Lihue HI 96766

Document contains \_\_ pages

**FARM DWELLING AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by and between \_\_\_\_\_,  
\_\_\_\_\_, whose residence and post office address  
is \_\_\_\_\_

\_\_\_\_\_, hereinafter called the  
"APPLICANT(S)", and the COUNTY OF KAUAI, Planning Department, its  
business and mailing address being Building A, Suite 473, 4444 Rice Street,  
Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT",

**WITNESSETH:**

WHEREAS, the APPLICANT(S) warrant and represent that he/she/they  
is/are the \_\_\_\_\_ of a portion of those certain parcels of  
land, Tax Map Key Nos. (4) 2-4-005:118 and 220, more particularly described  
in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, this document pertains only to Unit(s) \_\_\_\_ as shown in Exhibit "B" and made a part hereof; and

WHEREAS, those certain parcels of land are classified Agriculture by the State Land Use Commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, the parcels identified by Tax Map Key Nos. (4) 2-4-005:118 and 220, are entitled to four (4) residential units; and

WHEREAS, this Agreement is evidenced that \_\_\_\_\_ is entitled to one of those residential units; and

WHEREAS, a "family" as used in the definition of a "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the State Land Use District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this Agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes; and

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on those certain parcels of land described in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcels of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District Regulations and as recited herein, who derive income from the agricultural activity on the parcels; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this Agreement; and

4. That this Agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this Agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this Agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this Agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S); and

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself/herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is Building A, Suite 473, 4444 Rice Street, Lihue, Hawaii 96766, Lihue, Hawaii 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT's execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT's execution of said Farm Dwelling Agreement; and

11. This Agreement shall be a covenant running with the portion of land described in Exhibit A, and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors, and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnify agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED:

APPLICANT(S)

\_\_\_\_\_  
Planning Director

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
County Attorney



STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
Notary Public, in and for said  
County and State.

Print Name: \_\_\_\_\_

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

**EXHIBIT A**

**-PARCEL FIRST:-**

All of that certain parcel of land situate, lying and being at the west side of Kikala Road at Kalaheo, District of Koloa, Island and County of Kauai, State of Hawaii, being LOT 44-E-1-B, a portion of Lot 44-E of "FERREIRA TRACT" (File Plan 388) and thus bounded and described as per survey of Maso Fujishige, Registered Land Surveyor, dated November 8, 1980, to-wit:

Beginning at a pipe at the northeast corner of the pole portion of this parcel of land, and at the southeast corner of Lot 44-E-1-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAPAPAHOLAHOLA" being 2,755.05 feet south and 2,156.65 feet east and running by azimuths measured clockwise from true South:

1. 350° 35' 00" 15.01 feet along Kikala Road to a pipe;
2. 82° 31' 00" 709.54 feet along Lot 44-F-1 to a pipe;
3. 204° 37' 00" 172.53 feet along Lots 32 and 33 to a pipe;
4. 150° 46' 00" 99.76 feet along Lot 33 to a pipe;
5. 270° 00' 00" 343.88 feet along Lot 43-D-1 to a pipe;
6. 354° 38' 24" 179.14 feet along Lot 44-E-1-A to a pipe;
7. 262° 31' 00" 320.00 feet along same to the point of beginning and containing an area of 1.779 acres, more or less.

**BEING THE PREMISES ACQUIRED BY WARRANTY DEED**

**GRANTOR:** LOTUS COLEMAN-PATNO, wife of David Patno

**GRANTEE:** RICHARD WAXMAN, single, as Tenant in Severalty, an undivided 50% interest, and CATHY MORATTO, single, as Tenant in Severalty, an undivided 50% interest, as Tenants in Common

**DATED:** May 23, 2002

**RECORDED:** Document No. 2002-098305

**-PARCEL SECOND:-**

All of that certain parcel of land (being portions of land(s) described in and covered by Land Patent Grant Number 6465 to Carlos M. Fraticelli and also Land Patent Grant Number 10,326 to Marion Ferreira) situate, lying and being at Kalaheo, Koloa, Island and County of Kauai, State of Hawaii, being LOT 43-D-1-C, being a portion of LOT 43-D-1 of the "FERREIRA TRACT", File Plan No. 388, being portion of the Kalaheo Homesteads, 1<sup>st</sup> Series and thus bounded and described as per survey of Thomas H. Oi, Licensed Professional Land Surveyor, with Portugal & Associates, Inc., dated April 29, 1998, to-wit:

Beginning at the southeast corner of this parcel of land and the northeast corner of Lot 44-E-1-A, and also the west side of Kikala Road, the coordinates of which referred to Government Survey Triangulation Station "PAPAPAHOLAHOLA" being 2,618.37 feet south and 2,133.98 feet east and running by azimuths measured clockwise from true South:

1. 90° 00' 00" 655.22 feet along Lot 44-E-1-A and Lot 44-E-1-B, portion of Ferreira Tract, File Plan 388, portion of Grant 6996 to Manuel Sallas, and also a portion of Grant 10,326 to Marion Ferreira, Kalaheo Homesteads, 1<sup>st</sup> Series;
2. 156° 46' 00" 127.44 feet along Unit 5 and Unit 4 of Puwai Gardens, being a portion of Lot 33-E, Kalaheo Homesteads, 1<sup>st</sup> Series;
3. 201° 47' 00" 98.89 feet along Lot 3-D, Kalaheo Homesteads, 1<sup>st</sup> Series;
4. 271° 10' 00" 178.31 feet along Lot 43-C-1-B, portion of Ferreira Tract, File Plan 388, portion of Grant 6465 to Carlos M. Fraticelli, and also portion of Grant 10,326 to Marion Ferreira, Kalaheo Homesteads, 1<sup>st</sup> Series;
5. 0° 00' 00" 184.40 feet along Lot 43-D-1-B, portion of Ferreira Tract, File Plan 388, portion of Grant 6465 to Carlos M. Fraticelli, Kalaheo Homesteads, 1<sup>st</sup> Series;
6. 270° 00' 00" 500.00 feet along Lot 43-D-1-B and Lot 43-D-1-A, portion of Ferreira Tract, File Plan 388, portion of Grant 6465 to Carlos M. Fraticelli, Kalaheo Homesteads, 1<sup>st</sup> Series;
7. 350° 35' 00" 15.20 feet along the west side of Kikala Road, to the point of beginning and containing an area of 1.049 acres, more or less.

**BEING THE PREMISES ACQUIRED BY WARRANTY DEED**

GRANTOR: DAVID PATNO and LOTUS COLEMAN-PATNO, husband and wife

GRANTEE: RICHARD WAXMAN, single, as Tenant in Severalty, an undivided 50% interest, and CATHY MORATTO, single, as Tenant in Severalty, an undivided 50% interest, as Tenants in Common

DATED: May 23, 2002

RECORDED: Document No. 2002-098308

**SUBJECT, HOWEVER, to the following:**

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

INSTRUMENT: LAND PATENT GRANT NUMBER 10,326

DATED: October 11, 1935.

The foregoing includes, but is not limited to, matters relating to water reservation.

2. -AS TO PARCEL FIRST:-

(A) AGREEMENT TO INCORPORATE AGRICULTURAL RESTRICTIONS INTO INSTRUMENT OF CONVEYANCE dated April 21, 1981, recorded in Liber 15551 at page 626, by JAMES R. JOHNSON and VIRGINIA M. JOHNSON, husband and wife, and with COUNTY OF KAUAI Planning Department; re: to subdivide Lot into 44-E-1-A and 44-E-1-B.

(B) SETBACK (8 feet wide)

PURPOSE: future road widening

ALONG: Kikala Road

SHOWN: on subdivision map prepared by Masao Fujishige, Registered Land Surveyor, dated May 21, 1981

(C) SETBACK

PURPOSE: building

SHOWN: on subdivision map prepared by Masao Fujishige, Registered Land Surveyor, dated May 21, 1981.

- (D) Centerline Stream, as shown on Tax Map Key.
- (E) Encroachment(s) as shown on the survey map prepared by Roger M. Caires, Land Surveyor, with CAIRES LAND SURVEYING, dated May 25, 2002.
- (F) Structure position discrepancies as shown on the Survey map prepared by Roger M. Caires, Land Surveyor, with CAIRES LAND SURVEYING , dated May 25, 2002.

(G) MORTGAGE

MORTGAGOR: RICHARD WAXMAN, single, and CATHY MORATTO, single

MORTGAGEE: BANK OF HAWAII, a Hawaii corporation

DATED: May 24, 2002

RECORDED: Document No. 2002-098307

- (H) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: ELEVATION AGREEMENT

DATED: August 26, 2002

RECORDED: Document No. 2002-218802

PARTIES: RICHARD WAXMAN, CATHY MORATTO, and the COUNTY OF KAUAI

3. -AS TO PARCEL SECOND:-

(A) GRANT

TO: CITIZENS UTILITIES COMPANY, a Delaware corporation, and VERIZON HAWAII, INC.

DATED: September 9, 1980

RECORDED: Liber 15046 at Page 86

GRANTING: a perpetual right and easement for utility purposes as shown on map attached thereto

- (B) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: ROAD WIDENING RESERVE AGREEMENT

DATED: April 29, 1992

RECORDED: Document No. 92-074492

PARTIES: JOHN M. TOWNSEND and STEPHENE P. TOWNSEND  
and COUNTY OF KAUAI PLANNING DEPARTMENT

- (C) 4.50 feet wide future road widening along Kikala Road, as shown on subdivision map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated June 25, 1998.

- (D) Centerline Stream, as shown on subdivision map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated June 25, 1998.

- (E) SETBACK

PURPOSE: building

SHOWN: on subdivision map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated June 25, 1998.

- (F) Drainage as shown on subdivision map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated June 25, 1998.

- (G) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: DECLARATION

DATED: July 7, 1998

RECORDED: Document No. 98-102518

- (H) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: ENCROACHMENT AGREEMENT

DATED: August 26, 2002

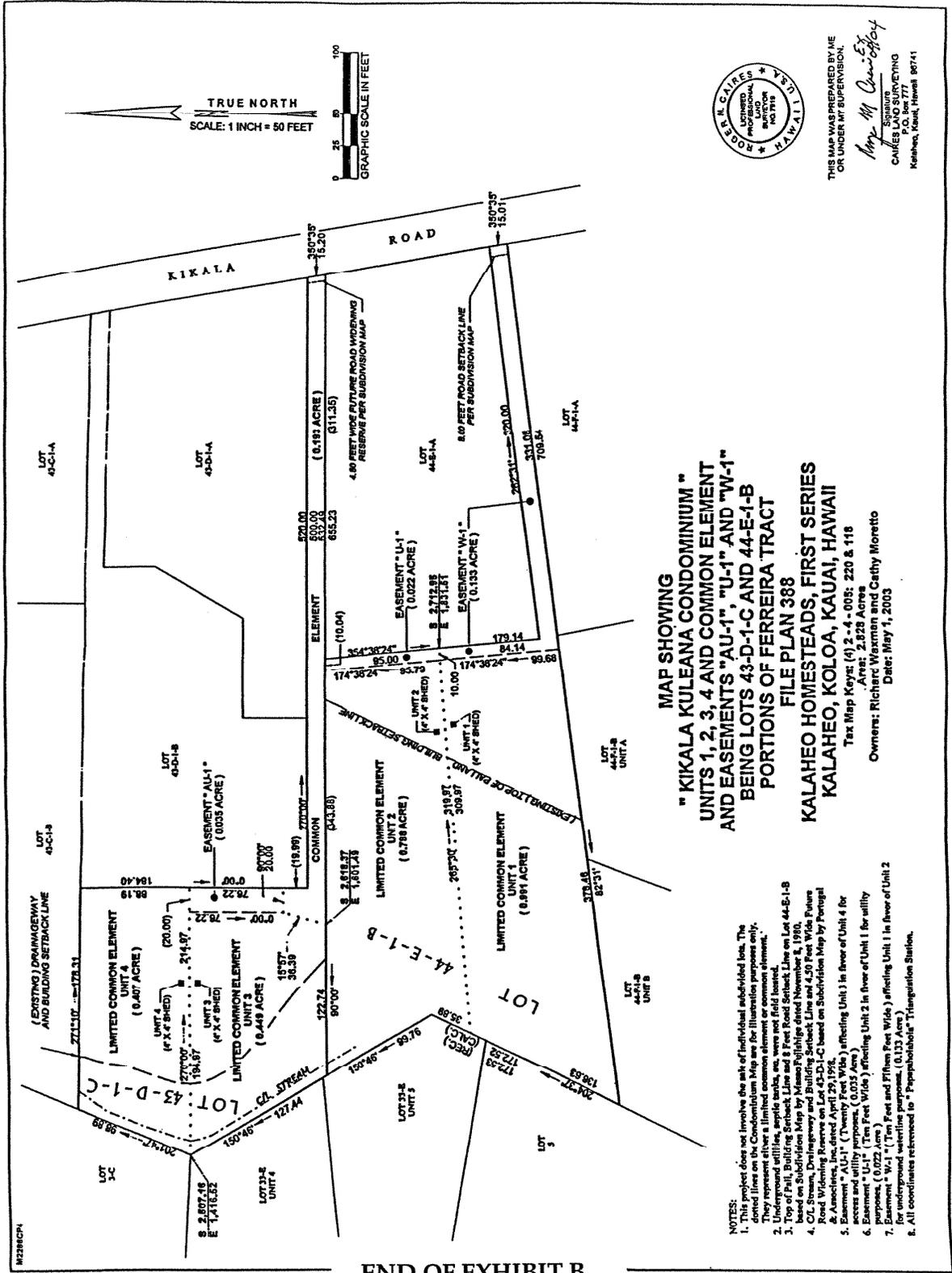
RECORDED: Document No. 2002-176421

PARTIES: RICHARD WAXMAN, single, CATHY MORATTO, single,  
and CAROL PURDY, single

4. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

**END OF EXHIBIT A**

**EXHIBIT B**



THIS MAP WAS PREPARED BY ME  
OR UNDER MY SUPERVISION.  
*My M. Gares*  
ROBERT M. GARES  
PROFESSIONAL SURVEYOR  
NO. 11111  
STATE OF HAWAII  
CAMEL SURVEYING  
P.O. Box 777  
Kalaheo, Kauai, Hawaii 96741

**MAP SHOWING**  
**" KIKALA KULEANA CONDOMINIUM "**  
**UNITS 1, 2, 3, 4 AND COMMON ELEMENT**  
**AND EASEMENTS "AU-1", "U-1" AND "W-1"**  
**BEING LOTS 43-D-1-C AND 44-E-1-B**  
**PORTIONS OF FERREIRA TRACT**  
**FILE PLAN 388**  
**KALAHEO HOMESTEADS, FIRST SERIES**  
**KALAHEO, KOLOA, KAUAI, HAWAII**  
Tax Map Keys: (4) 2-4-009; 220 & 118  
Area: 2,528 Acres  
Owners: Richard Waxman and Cathy Moretto  
Date: May 1, 2003

- NOTES:**
- This project does not involve the sale of individual subdivided lots. The only project on the Condominium Map are for illustration purposes only. They represent either a limited common element or common element.
  - Underground utilities, septic tanks, etc. were not field located.
  - Top of Fall Building Setback Line and 8 Feet Road Setback Line on Lot 44-E-1-B based on Subdivisions Map by Messrs. Fujihira dated November 8, 1950.
  - C/L Stream, Drainage and Building Setback Line and 4.50 Feet Wide Future Road Widening Reserve on Lot 43-D-1-C based on Subdivision Map by Perogal dated August 19, 1998.
  - Easement "AU-1" (Twenty Feet Wide) affecting Unit 1 in favor of Unit 4 for access and utility purposes. (0.023 Acre)
  - Easement "U-1" (Ten Feet Wide) affecting Unit 2 in favor of Unit 1 for utility purposes. (0.022 Acre)
  - Easement "W-1" (Ten Feet and Fifteen Feet Wide) affecting Unit 1 in favor of Unit 2 for underground waterline purposes. (0.133 Acre)
  - All coordinates referenced to "Papahānaoia" Triangulation Station.

**END OF EXHIBIT B**

**END OF EXHIBIT K**