

CONDOMINIUM PUBLIC REPORT

Prepared &
Issued by:

Developer: PAUL IVAN SCHURCH
Address: P.O. BOX 231
KOLOA, HI 96756

Project Name(*): KALAWAI RESERVOIR II
Address: 4706A LAE ROAD
KALAHEO, HI 96741

Registration No. 5302
(Conversion)

Effective date: May 7, 2004
Expiration date: June 7, 2005

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: The developer may not as yet have created the condominium but has filed with the (yellow) Real Estate Commission minimal information sufficient for a Preliminary Public Report. A final Public Report will be issued by the developer when complete information is filed.
- FINAL: The developer has legally created a condominium and has filed complete information (white) 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: This report updates information contained in the:
(pink) [] 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

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report As Exhibit "G" Not required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.

Changes made are as follows:

SPECIAL NOTICE:

THIS IS A CONDOMINIUM PROJECT, NOT A SUBDIVISION. THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING THE UNIT WITH THE 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, UPON THE PROPERTY.

1. Issuance of an effective date for this Public Report does not constitute an approval of the project by the Real Estate Commission or other agency, nor does it imply that all County codes, ordinances or other requirements have been complied with.
2. This project does not involve the sale of subdivided lots. The land area beneath and 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 lines on the Condominium Map merely represent the location of the limited common element assigned to each unit.
3. Facilities and improvements normally associated with County approved subdivisions, such as improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior driveways.
4. The land may be subject to rollback real property taxes. The failure of an owner to observe restrictions on the use of the land may cancel the County dedication and special real property tax assessment. Please refer to the Director of Finance, County of Kauai for further information.
5. Unit B only is dedicated to agricultural use. Association of all or part of the agricultural use may result in roll-back taxes on Unit B.
6. Developer Paul Schurch is a licensed contractor who constructed Unit B. There are no construction warranties on Unit B.

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

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General Information On Condominiums

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

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

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

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

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

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

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

Operation of the Condominium Project

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: PAUL IVAN SCHURCH _____ Phone: (808) 332-8428
Name*
P.O. BOX 231 _____
Business Address
KOLOA, HI 96756 _____

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*: NOT FOR SALE _____ Phone: _____
Name
SEE PAGE 20 AND EXHIBIT "G" _____
Business Address

Escrow: TITLE GUARANTY ESCROW SERVICES, INC. _____ Phone: (808) 533-6261
Name
235 QUEEN STREET _____
Business Address
HONOLULU, HI 96813 _____

General Contractor*: PAUL IVAN SCHURCH _____ Phone: (808) 332-8428
Name d/b/a Paul Schurch Construction
P.O. BOX 231 _____
Business Address
KOLOA, HI 96756 _____

Condominium Managing Agent* : SELF MANAGED BY ASSOCIATION _____ Phone: _____
Name
OF APARTMENT OWNERS _____
Business Address

Attorney for Developer: STEVEN R. LEE, ESQ. _____ Phone: (808) 246-1101
Name
4473 PAHE'E STREET, SUITE L _____
Business Address
LIHUE, HI 96766 _____

*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**II. CREATION OF THE CONDOMINIUM;
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

| | | |
|---|------------------------|------|
| <input type="checkbox"/> Proposed | | |
| <input checked="" type="checkbox"/> Recorded - Bureau of Conveyances: | Document No. 93-135060 | |
| | Book | Page |
| <input type="checkbox"/> Filed - Land Court: | Document No. | |

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

First Amendment to Declaration of Condominium Property Regime of Kalawai Reservoir II Condominium and Condominium Map No. 1911 recorded September 3, 2002 as Document No. 2002-155076

Second Amendment to Declaration of Condominium Property Regime of Kalawai Reservoir II and Condominium Map No. 1911 recorded as Document No. 2004-080527

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:

| | |
|---|--|
| <input type="checkbox"/> Proposed | |
| <input checked="" type="checkbox"/> Recorded - Bureau of Conveyances Condo Map No. 1911 | |
| <input type="checkbox"/> 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]:

Amended Condominium Map No. 1911 dated June 6, 2000, and filed September 3, 2002.
Amended Condominium Map No. 1911 recorded on April 22, 2004.

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:

| | | |
|---|------------------------|------|
| <input type="checkbox"/> Proposed | | |
| <input checked="" type="checkbox"/> Recorded - Bureau of Conveyances: | Document No. 93-135061 | |
| | Book | Page |
| <input type="checkbox"/> Filed - Land Court: | Document No. | |

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

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents.** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common 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%* | 75% |
| Bylaws | 65% | 65% |
| House Rules | ---- | N/A |

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

2. **Developer**

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

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

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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

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

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

Exhibit _____ contains further 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: 4706 LAE ROAD
KALAHEO, HI 96741

Tax Map Key: (TMK): Unit A: (4) 2-4-005-044; CPR No. 001
Unit B: (4) 2-4-005-044; CPR No. 002

Address TMK is expected to change because EACH UNIT IS ENTITLED TO ITS OWN ADDRESS

Land Area: 1.000 square feet acre(s) Zoning: Agricultural

Fee Owner: PAUL IVAN SCHURCH
 Name
P.O. BOX 231
 Address
KOLOA, HI 96756

Lessor:
 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: 2 Floors Per Building UNIT A – 1 STORY
UNIT B – 2 STORY

Exhibit "C" contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other: MASONRY

4. Uses Permitted by Zoning:

| | <u>No. of Apts.</u> | <u>Use Permitted by Zoning</u> | |
|--|-------------------------|---|-----------------------------|
| <input type="checkbox"/> Residential | _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Commercial | _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Mix Res/Comm | _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Hotel | _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Timeshare | _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Ohana | _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Industrial | _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Agricultural | <u>2 *</u> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Other: | _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

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

* 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 under the paragraph entitled "Additional Information Not Covered Above".

5. Special Use Restrictions:

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

Pets: SEE BYLAWS ARTICLE IV, SECTION 5.3(9)

Number of Occupants: _____

Other: SEE "OTHER DOCUMENTS", DECLARATION OF COVENANTS AND RESTRICTIONS

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

| <u>Apt. Type</u> | <u>Quantity</u> | <u>BR/Bath</u> | <u>Net Living Area (sf)*</u> | <u>Net Other Area (sf)</u> | <u>Identify</u> |
|------------------|-----------------|----------------|------------------------------|----------------------------|-----------------|
| A | 1 | 3 / 1 ¾ | 1051 | | Residence |
| A | | | | 225 | Lanai |
| A | | | | 680 | Garage |
| A | | | | 58 | Entryway |
| B | 1 | 3 / 3 | 2025 | | Residence |
| B | | | | 336 | Lanai |
| B | | | | 216 | Lanai |
| B | | | | 320 | Covered balcony |
| B | | | | 440 | Garage |

Total number of Apartments: 2

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

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

Boundaries of Each Apartment: Per 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:

| | <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) | 2 | | | | | | 4 |
| Guest | | | | | | | |
| Unassigned | | | | | | | |
| Extra for Purchase | | | | | | | |
| Other: | | | | | | | |
| Total Covered & Open: | | | 4 | | | | 4 |

Each apartment will have the exclusive use of at least TWO (2) 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):

Developer adopts the Condition Report of Palmer Hafdahl dated October 14, 2003, which recites the expected useful life of Unit A to be in excess of thirty (30) years.

11. Conformance to Present Zoning Code

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

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

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

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

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

described in Exhibit "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 SEPTEMBER 29, 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.

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 | LENDER HAS PRIORITY OVER A BUYER'S RIGHTS UNDER A SALES CONTRACT, AND HAS A RIGHT TO TERMINATE SALES CONTRACT UPON FORECLOSURE OF ITS MORTGAGE BEFORE AN APARTMENT SALE IS CLOSED. IN SUCH EVENT BUYER SHALL BE ENTITLED TO A REFUND OF ALL DEPOSITS, LESS ESCROW CANCELLATION FEES. |

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 Completion Date:**

THE RESIDENCE ON UNIT A WAS ORIGINALLY CONSTRUCTED IN 1941 AND WAS COMPLETELY RENOVATED AND NEWLY CONSTRUCTED AS A RESTORED PLANTATION HOME IN 1993.

THE RESIDENCE ON UNIT B WAS COMPLETED IN JUNE OF 2000.

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.
[X] 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:

- [X] None [] Electricity _____ Common Elements only _____ Common Elements & Apartments)
[] Gas (_____ Common Elements only _____ Common Elements & Apartments)
[] Water [] Sewer [] Television Cable
[] Other _____

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract
Exhibit "B" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated SEPTEMBER 12, 2003.
Exhibit "D" contains a summary of the pertinent provisions of the escrow agreement.
- Other SPECIMEN APARTMENT DEED

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all 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 Covenants and Restrictions of Lots 15A through 15F, Kalaheo Homesteads, recorded May 15, 1992, as Document No. 92-076366.

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. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website access official copy of laws: www.capitol.hawaii.gov

Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs

Website to access rules: www.hawaii.gov/dcca/har

This Public Report is a part of Registration No. 5302 filed with the Real Estate Commission on February 25, 2004

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

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

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

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.

Except as limited specifically by the condominium documents and subdivision restrictive covenants, all uses permitted in the agricultural zone is permitted.

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

The Developer has not selected a real estate broker for the sale of said condominium apartments in the project at this time.

In the event the Developer chooses to use a real estate broker for the sale of a condominium apartment, prior to entering into a binding contract for such sale the Developer shall: (1) submit to the Real Estate Commission a duly executed copy of a broker listing agreement with a Hawaii-licenses broker, together with a duly executed Disclosure Abstract; and (2) provide a copy of the Disclosure Abstract to the purchaser together with a copy of this Public Report.

Unit B only is dedicated to agricultural use. Association of all or part of the agricultural use may result in roll-back taxes on Unit B.

Developer Paul Ivan Schurch is the general contractor for the project and holds Hawaii Contractor's License No. CT-20534. There is no remaining builder's warranty on any improvements on the project.

County Restrictions

Purchasers should be aware that there is no public sewer system available, which requires the project to comply with the requirements of Chapter 11-62, H.A.R. "Wastewater Systems". Purchasers of each apartment or unit would bear the cost of designing and installing the wastewater system as part of their construction costs. The County of Kauai may allow the first apartment/unit applying for such a permit to use a cesspool; the second would require a septic system. Any prospective purchaser should verify requirements with the County of Kauai and seek design and installation estimates prior to proceeding with the wastewater system.

Mail boxes and mail delivery services are not provided for this condominium project. Post office boxes must be obtained for mail delivery. Owners are responsible for the cost of their post office boxes.

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

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

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

In order for any purchaser to obtain a building permit to construct a single family residential (farm dwelling), the County of Kauai will require the purchaser to sign a Farm Dwelling Agreement.

- 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.

Paul Ivan Schurch PAUL IVAN SCHURCH
Printed Name of Developer

By: *P. Schurch*
Paul Ivan Schurch*

9-11-03
Date

PAUL IVAN SCHURCH, 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 "B"

SUMMARY OF SALES CONTRACT

If this project engages in sale, it will use a Condominium Addendum to Sales Contract (the "Addendum") to be utilized in conjunction with a standard printed form contract provided by the Hawaii Association of Realtors. The Addendum protects the rights of the Purchasers and the handling of the funds under the Condominium Property Act (the "Act"), as well as the insuring compliance with the Act by all parties. Relevant portions of the Addendum are summarized as follows:

1. The fact that the Act controls over any portion of a contract to sell a condominium unit.
2. That an effective date for a final or supplementary public report must be in place and a receipt for the same signed by the buyer to have an effective date.
3. That all purchaser funds must be held in escrow until the law allows closing and disbursement of the funds.

The conditions precedent to release of the funds are enumerated, including in part:

- (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) If there is a dual agency by a single broker, it will be disclosed in the contract.

SPECIAL NOTICE: THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL THE 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 AND NOT THIS SUMMARY.

EXHIBIT "C"

SCHEDULE OF APARTMENTS AND COMMON INTERESTS

| Qty. | Unit No. | Area of Limited Common Element* (Acres) | No. of Br./Bath | Appx. Net Living Area (Sq. Ft.) | Appx. Other Area (Sq. Ft.) | % of Common Int. |
|------|----------|---|-----------------|---------------------------------|----------------------------|------------------|
| 1 | A | 0.311 | 3 1 ¼ | 1051 | 963 | 50% |
| 1 | B | 0.689 | 3 3 | 2025 | 1312 | 50% |

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. Units 1 and 2 will each burden the common elements as follows: Unit A – 50%; Unit B – 50%. The assessment of undivided interest both for common expense and for voting is as stated above.

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 Law and the Declaration of Protective Covenants and House Rules, if any permit desirable, so long as it. 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.

EXHIBIT "D"

SUMMARY OF PORTIONS OF ESCROW AGREEMENT KALAWAI RESERVOIR II

The Escrow Agreement ("Agreement") between TITLE GUARANTY ESCROW SERVICES, INC. the "Escrow"), and PAUL IVAN SCHURCH (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

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

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.

EXHIBIT "E"

COMMON ELEMENTS OF THE PROJECT

The common elements of the project are:

- (a) the land in fee simple;
- (b) the private roadway common access and the utility easement
- (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.

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 and 2 are located, shown and designated on the Condominium Map and the table below.

| Unit Number | Area of Limited Common Element* |
|-------------|---------------------------------|
| A | 0.311 acres |
| B | 0.689 acres |

*Land areas referenced herein are not legally subdivided lots.

EXHIBIT "F"

ENCUMBRANCES AGAINST TITLE

1. The property described herein is subject to possible rollback taxes. Verification should be made with the County of Kauai, real Property Tax Office.

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

INSTRUMENT : DEED

DATED : June 29, 1990
RECORDED : Document No. 90-125709

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

INSTRUMENT : DECLARATION OF COVENANTS AND RESTRICTIONS

DATED : May 6, 1992
RECORDED : Document No. 92-076366

4. Restriction of access rights along Lae Road, as stated in unrecorded County of Kauai Tentative Subdivision Approval Letter dated June 14, 1991.

5. WAIVER AND RELEASE dated July 9, 1993, recorded as Document No. 93-116847, by PAUL SCHURCH, with COUNTY OF KAUAI, re: building permit.

6. 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 "KALAWAI
RESERVOIR II" CONDOMINIUM PROJECT

DATED : August 4, 1993
RECORDED : Document No. 93-135060
MAP : 1911 and any amendments thereto

Said above Declaration was amended by instrument dated June 17, 2002, recorded as Document No. 2002-155076.

7. 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 : August 4, 1993
RECORDED : Document No. 93-135061

8. GRANT

TO : LAE ROAD PARTNERS, a Hawaii general
partnership

DATED : September 15, 1993
RECORDED : Document No. 93-155380
GRANTING : a non-exclusive easement for vehicular and
pedestrian ingress and egress and utility purposes to
and from Lots 15-A through 15-F, said easement
being over and across Remnant Lot 15-F,
containing an area of 0.210 acre

9. MORTGAGE

MORTGAGOR : PAUL IVAN SCHURCH, unmarried

MORTGAGEE : NORWEST MORTGAGE, INC., which is organized and existing under the laws of the State of California, now known as WELLS FARGO HOME MORTGAGE, INC.

DATED : August 19, 1997
RECORDED : Document No. 97-115425
AMOUNT : \$152,400.00

10. MORTGAGE

MORTGAGOR : PAUL IVAN SCHURCH, husband of Ivy Takenaka Schurch

MORTGAGEE : FIRST HAWAIIAN BANK, a Hawaii corporation

DATED : August 22, 2002
RECORDED : Document No. 2002-150670
AMOUNT : Revolving Line of Credit, sums not to exceed \$150,000.00

11. -AS TO UNIT B ONLY:-

NOTICE OF DEDICATION

DATED : January 19, 2000
RECORDED : Document No. 2000-014389
BY : PAUL I. SCHURCH
RE : dedication of land for agriculture purposes
PERIOD : 10 years

END OF EXHIBIT "F"

EXHIBIT "G"

**DISCLOSURE ABSTRACT FOR
KALAWAI RESERVOIR II**

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

1. The Developer of the project is PAUL IVAN SCHURCH P. O. Box 231, KOLOA HI 96756; his telephone number is (808) 332-8428.

2. THERE ARE NO MAINTENANCE FEES FOR THIS PROJECT. Developer advises there are no depreciable common elements and each unit has separate access and utilities. Each unit shall maintain its own separate insurance for both liability and casualty purposes.

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.

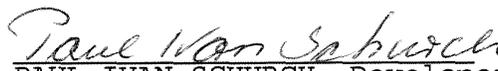
4. All of the apartments of the project are to be used for residential purposes only and other permitted uses within the residential zone. No unit will be used for hotel use; these are condominium units in which residential use is permitted, but hotel use is not. No commercial uses except as permitted by Kauai County ordinances are allowed.

4. There is no realtor or broker for the project. Units will be sold "By Owner" unless the owner retains the services of a Real Estate Broker and files a proper listing and amended disclosure abstract with the Hawaii Real Estate Commission. Developer does not intent to enter into sales transactions in the immediate future.

5. The Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, 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.**

6. Developer discloses that the common interest is divided equally between the two units and that they equally burden the common elements so share voting and control equally.

Date: 9-11-03


PAUL IVAN SCHURCH, Developer/Owner

RECEIPT

The undersigned has received a copy of the foregoing disclosure abstract this ___ day of _____, 2003.

Purchaser(s): _____

END OF EXHIBIT "G"

EXHIBIT "H" OMITTED

NO MAINTENANCE FEES FOR PROJECT

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

GARY L. HENNIGH
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

COPY

DATE: February 20, 2004

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

FROM: Ian K. Costa, Planning Director 

SUBJECT: **Certification of Inspection of Existing Buildings**

Project Name: **KALAWAI RESERVOIR II
Condominium Project (117)**

Tax Map Key: (4) 2-4-005:044

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 515 A-40 (b), (1), 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 W. Hafdahl to certify that the buildings on the proposed project referred to as KALAWAI RESERVOIR II Unit A and Unit B 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.
3. The parcel does not contain any outstanding nonconforming use or structures as a result of the adoption or amendments of any ordinances or codes and regulations.

EXHIBIT "I"

**Senior Condominium Specialist
Real Estate Commission
February 20, 2004
Page 2**

4. There are no notices of violation of the 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 515-40, (b), (1), Hawaii Revised Statutes.

If you have any questions, please contact Andres Emayo Jr., inspector in charge at 241-6677.

cc: Paul Ivan Schurch, Project Developer
Steven Lee, Attorney at Law ✓

END OF EXHIBIT "I"

R-164

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

MAY 15, 1992 08:01 AM

Doc No(s) 92-076366

/s/ S. FURUKAWA
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION RETURN BY MAIL (XX)

PICK-UP ()

Mr. Richard Shaw
C/O Makai Properties
P.O. Box 905
Koloa, HI 96756

①
MS
R10

TG: ACCM 135754
TGE: 92999-1265
FAY T RAPOZO

DECLARATION OF COVENANTS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, LAE ROAD PARTNERS, a Hawaii general partnership, hereinafter called the "Declarant," is the owner of that certain real property known as Lot 15, Grant 5446, Por. Kalaheo Homesteads, First Series, Koloa, Kauai, Hawaii, and more particularly identified as Kauai Tax Map Key: 4:2-4-05-44; and

WHEREAS, the Declarant has caused the above-described real property to be subdivided into Lots 15-A, 15-B, 15-C, 15-D, 15-E and 15-F which was approved by the Planning Commission of the County of Kauai on March 12, 1992, as evidenced by the map of said subdivision attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, the Declarant desires to declare certain covenants and restrictions regarding the use and improvement of certain of the Lots in said subdivision.

NOW, THEREFORE, the Declarant does hereby declare the restrictive covenants and conditions stated in Exhibit "B" attached hereto and incorporated herein by reference on the

aforesaid property, said covenants and conditions to run with title to each of the Lots affected thereby.

The said restrictive covenants and conditions shall be binding upon the Declarant and its successors and assigns.

DATED: Lihue, Kauai, Hawaii, this 6th day of May, 1992.

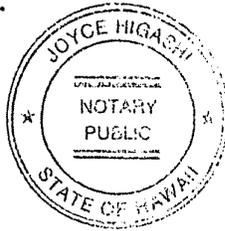
LAE ROAD PARTNERS

By Susan M. Maxwell
Its General Partner

By Richard H. ...
Its General Partner

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

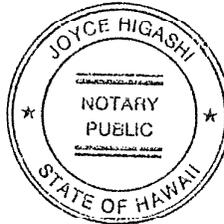
On this 6th day of May, 1992, before me appeared Susan M. Manuel, to me personally known, who being by me duly sworn, did say that he is the General Partner of LAE ROAD PARTNERS, a Hawaii General Partnership; that the foregoing instrument was signed in the name of and in behalf of said partnership and the said General Partner acknowledged he executed the same as his free act and deed and the free act and deed of said Partnership.



[Signature]
Notary Public, State of Hawaii
My commission expires: 8/29/93

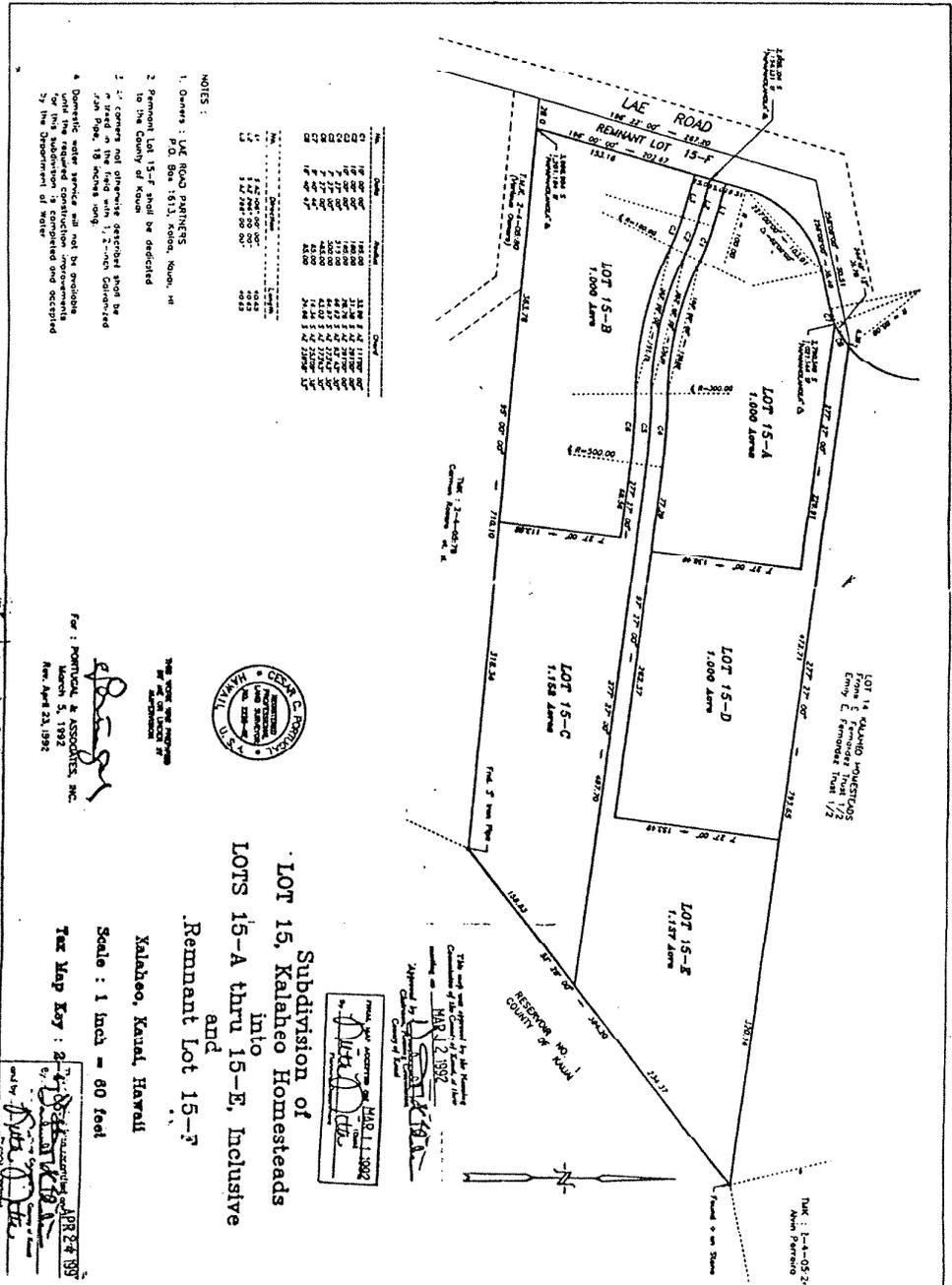
STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this 6th day of May, 1992, before me appeared Richard A. Shaw, to me personally known, who being by me duly sworn, did say that he is the General Partner of LAE ROAD PARTNERS, a Hawaii General Partnership; that the foregoing instrument was signed in the name of and in behalf of said partnership and the said General Partner acknowledged he executed the same as his free act and deed and the free act and deed of said Partnership.



[Signature]
Notary Public, State of Hawaii
My commission expires: 8/29/93

EXHIBIT "A"



| Lot No. | Area (Acres) | Area (Sq. Feet) |
|--------------|--------------|-------------------|
| 15-A | 1.000 | 69,696.00 |
| 15-B | 1.000 | 69,696.00 |
| 15-C | 1.153 | 79,800.00 |
| 15-D | 1.000 | 69,696.00 |
| 15-E | 1.157 | 80,304.00 |
| 15-F | Remnant | 1,000.00 |
| 15-G | Remnant | 1,000.00 |
| Total | 7.360 | 510,492.00 |

- NOTES:
1. Owners: LAK ROAD PARTNERS, P.O. Box 1813, Kalaheo, Kauai, HI 96741
 2. Remnant Lot 15-F shall be dedicated to the County of Kauai.
 3. All corners and oblique detached shall be as shown on the map with 1/2-inch dimensions from Paper 18 inches long.
 4. Domestic water service will not be available until the required construction improvements are approved by the Department of Health.



FOR THE COUNTY OF KAUAI
 COUNTY ENGINEER
 DATE: MARCH 2, 1992

Subdivision of
 LOT 15, KALAHEO HOMESTEADS
 into
 LOTS 15-A thru 15-E, Inclusive
 and
 Remnant Lot 15-F
 Kalaheo, Kauai, Hawaii

Scale: 1 inch = 60 feet
 Tax Map Key: 2

Prepared by: [Signature]
 Date: [Date]

This map was prepared by the Planning Commission of the County of Kauai, HI, on
 MAR 2 1992
 Approved by: [Signature]
 County of Kauai

Professional seal of a surveyor, featuring a circular emblem with text around the perimeter and a central design.

EXHIBIT "B"

1. Each lot within Lae Road Development and any private or co-tenancy area appurtenant thereto shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restriction:

(a) No improvement or other work which in any way significantly alters any lot from its natural or improved state existing on the date such lot was first conveyed by the Declarant to an Owner shall be made or done except upon strict compliance with and within the restrictions of this Declaration;

(b) So long as the zoning of the lots in Kalawai Oceanview Subdivision remains unchanged, only farm dwellings, as may be permitted by applicable law, shall be constructed on any lot. In keeping with the intent of the State Land Use Law (Chapter 205, Hawaii Revised Statute, as may be amended), agricultural activity must be established before any additional farm dwellings in excess of one (1) per parcel will be permitted by the County of Kauai;

(c) To protect views and to maximize a blending of structures with the natural environment, no structure erected on any of the said lots shall exceed a building height limit of thirty (30) feet, measured from grade at the highest point along the structure of the roof peak;

(d) Notwithstanding any other law to the contrary, there shall be no more than two (2) farm dwellings permitted on any lot within the subdivision, except in accordance with the terms and conditions of this Declaration. For the purposes of this Declaration, farm dwelling units shall mean a detached dwelling unit designed for the use and occupancy of a single family (as opposed to a multi-family unit), and includes an "ohana" unit if permitted by the appropriate governmental authorities. However, farm dwelling unit shall not include a guest house, as the same is defined and may be permitted by the appropriate governmental authorities.;

(e) Any newly constructed farm dwellings on the lot shall contain not less than 1,200 square feet of liveable floor area, exclusive of lanais, patios, servant's quarters, attached guest house of facility, garage, storage space, and workshop. Each farm dwelling shall have appurtenant to it a carport or garage which is architecturally harmonious with the farm dwelling to which it is appurtenant;

(f) All structures must not exceed two stories. A third level, or basement, may be permitted if the same is cut below the existing grade and the completed structure does not exceed the 30 feet height limit measured from grade at the highest point along the structure;

(g) All structures shall be built entirely of new materials, and no old and/or "quonset" or "geodesic dome" type of building shall be erected, placed or maintained on any of said lots;

(h) No structure erected on the lots shall use mirrored glass, reflective sun screens, or other highly reflective materials for any exterior windows;

(i) The roofs of all structures erected on the lots shall be surfaced with wood shakes, tile, corrugated iron, metal, Architect 80 or similar composite roof shingles or shakes. The use of rolled or build-up composition roof shall be prohibited.

(j) All structures erected on the lots, including the roof, shall have a non-obtrusive color.

(k) Any bare areas resulting from excavation or fill shall be revegetated immediately to avoid erosion and visual impacts;

(l) No fences, corrals, and the like shall be painted or contain a finish other than earthen tones;

(m) No chain link fences shall be permitted except minimally around the vicinity of the farm dwelling as may reasonably be necessary to confine pets or for security purposes, provided, however, that any such green vinyl chain link fence shall be screened through hedges and other plantings so as not to be visible to the neighboring property;

(n) Each farm dwelling shall be occupied and used only as a farm dwelling by the respective owner thereof, his tenants (other than transient vacation renters), family, employees and guests, and for no other purpose. The dwellings shall not be used for any bed and breakfast or other short term or transient vacation rental business;

(o) Each farm dwelling and any and all improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create any fire, safety or health hazard to Kalawai Oceanview Subdivision or any part thereof, all at such Owners's sole cost and expense;

(p) No signs whatsoever, including without limitation, commercial, political or similar signs, visible from neighboring property, shall be erected or maintained upon any lot except:

(1) Such signs as may be required by legal proceedings;

(2) Residential identification signs of a combined total face area of three (3) square feet or less for each dwelling;

(3) During the time of construction of any farm dwelling or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen; and

(4) Not more than one (1) "For Sale" or "For Rent" sign.

(q) All power and communications wiring shall be underground on newly constructed roads except for connection to television and radio antennas.

(r) No house trailer, mobile home, permanent tent of similar facility or structure shall be kept, placed or maintained upon any lot at any time, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted on the lot;

(s) No vehicle of more than one (1) ton capacity shall be kept, placed or maintained upon any lot in such a manner that such vehicle is visible from the adjoining street and neighboring property, unless such vehicle is necessary to and regularly used for agricultural activities conducted on the lot, provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted on the lot;

(t) No accessories, structures of buildings shall be constructed, placed or maintained upon any lot prior to the construction of the main structure of the farm dwelling, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of the main structure of the farm dwelling, nor apply to facilities reasonably required in the conducting of agricultural activities on the lot or the maintaining of the lot in its natural state. Guest houses (as allowed by law) may be permitted to be constructed prior to the construction of the main structure of the farm dwelling if, and only if, such guest house is part of the master plan for the construction of the farm dwelling(s) on the lot and the farm dwelling(s) shown on such master plan is built in accordance therewith within a reasonable time not to exceed two (2) years;

(u) No trailer, vehicle or boat shall be constructed, reconstructed or repaired upon any lot in such a manner that such construction, reconstruction or repair is visible from the neighboring properties, nor shall any vehicle, trailer or boat not in good operating condition be maintained upon any lot so as to be visible from any adjoining street or neighboring properties in the subdivision, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his own trailer, vehicle or boat in his garage;

(v) No open storage of boats, vehicles, furniture, fixtures, appliances and other goods and chattels will be permitted.

(w) No garbage or trash shall be permitted on any lot except in closed receptacles screen from view from any adjoining street and neighboring property, and no accumulated waste plant materials will be permitted on any lot, except as part of an established compost pile maintained in such a manner as not be visible from neighboring property or as a necessary part of the agricultural activities conducted on such lot;

(x) No Owner shall violate or permit the violation of his lot of any applicable law or ordinance pertaining to zoning, building, fires, signs or other matter relating to the use and development of his lot or farm dwelling.

(y) No garage shall be for other than the parking of vehicles and boats, unless the same be enclosed so as not to be visible from neighboring properties by a partition, wall, door or screen, normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage not so enclosed shall be used for laundry or for storage purposes;

(z) All driveways between the street and the farm dwelling(s) on any lot in the subdivision shall be of concrete or asphalt. No dirt, coral or gravel driveways shall be permitted, provided that this paragraph shall not apply to temporary driveways and access for a period not to exceed one (1) year during and used exclusively in connection with the construction of the farm dwelling on the lot;

(aa) Dogs, cats and other typical household pets may be kept but only in reasonable numbers and under reasonable conditions so as not to become a nuisance to the neighboring lot owners. All animals kept or maintained on a lot, whether domestic pets, livestock, game and fish or any other animal or aquatic life propagated for economic or personal use shall be kept and maintained only in a density compatible with the neighboring residential and agricultural use and shall be cared for in conformance with practices of good animal husbandry, including but not limited to: (a) prompt removal of excess amounts of manure and other waste; (b) disposal in an ecologically sound manner of any effluent from the practice of agriculture or other processes; (c) control of flies, insects, worms and other pests; (d) control of weeds and other noxious grasses, (e) adequate fencing and animal housing facilities adequate to restrict such animals to the lot where maintained; and (f) control of noise and noxious odors to levels which are customary under practiced of good animal husbandry and which are compatible with neighboring residential and agricultural use. Storage of hay, fodder and other food supplies shall be accomplished in such a manner as to prevent scattering of such materials by the wind and water runoff. Notwithstanding the foregoing, the keeping and maintaining of pigs, chickens, fighting chickens and exotic birds are expressly prohibited as being incompatible with the neighboring residential and agricultural use;

(bb) No noxious or offensive activities shall be carried on upon any lot in the subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All occupants shall exercise extreme care about making noise and in the use of musical instruments, radios, televisions, and amplifiers that may disturb the neighboring occupants;

(cc) Cottage industries and businesses which can be conducted within the confines of structures on any lot; which do not result in increased noise, fumes, odors and waste generation; which do not require the presence of customers and employees on site with resulting additional traffic; and which does not pose a nuisance to the neighboring lots in the subdivision, may be permitted if also allowed by the governmental authorities having jurisdiction thereover;

(dd) The condominiumizing of any lot within the Kalawai Oceanview Subdivision may be permitted if such condominiumizing does not result in a number of units or interest larger than the maximum number of two (2) farm dwellings permitted under this Declaration, notwithstanding that a larger number of units or interests than two may be permitted by law;

2. As long as a Lot shall remain in the State Land Use Agriculture District, then such Lot shall be subject to the following conditions, pursuant to Chapter 205, Hawaii Revised Statutes: the use of the Lots shall be primarily in pursuit of agricultural activities and only for those uses permissible in an agricultural district as contained in Section 205-4.5, Hawaii Revised Statutes ("HRS"), as amended from time to time, which lists permissible uses as follows:

(a) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber;

(b) Game and fish propagation;

(c) Raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use;

(d) Farm dwellings, employee housing, farm buildings or activity or uses related to farming and animal husbandry. Farm dwelling as used in this paragraph means a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling;

(e) Public institutions and buildings which are necessary for agricultural practices;

(f) Public and private open area types of recreational uses including day camps, picnic grounds, parks and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs and overnight camps;

(g) Public, private and quasi-public utility lines and roadways, transformer stations, communications equipment building, solid waste transfer stations, major water storage tanks and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;

(h) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interest;

(i) Roadside stands for the sale of agricultural products grown on the premises;

(j) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-mentioned uses;

(k) Agricultural parks; or

(l) Wind energy facilities, including the appurtenances associated with the production and transmission of wind-generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.

3. These covenants and restrictions are to run with the land and shall be binding upon all parties and all persons claiming under them from the date hereof until the first day of January 2010, after which time said covenants and restrictions shall be automatically extended for successive periods of 10 years each unless an instrument signed by no less than ninety percent (90%) of the then owners of Kalawai Oceanview Subdivision has been recorded, agreeing to change said covenants in whole or in part.

4. Each and all of the foregoing covenants and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in and to any lot in the Kalawai Oceanview subdivision, and jurisdiction may be taken in equity at suit of the Declarant, or its successors and assigns, or of any other owner of any of the said lots in Kalawai Oceanview Subdivision, to restrict or prevent by injunction, mandatory or restraining, any violation of any of said covenants upon the part of the lot owners to be observed and performed, without prejudice to the right of the Declarant or its successors and assigns, or of any other owner of any of the said lots in the subdivision, to adopt or pursue any other remedy simultaneously or thereafter for the same breach or failure, or for any subsequent breach of failure, or to take any action to recover damages for any such breach or failure; and

5. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect;

IN WITNESS WHEREOF, the Declarant has hereunto set forth its hand as of this 6th day of May, 1992.

LAE ROAD PARTNERS

By Susan M. Manuel
Its General Partner

By Richard A. [Signature]
Its General Partner

RECEIVED
TITLE GUARANTEE
BANK OF AMERICA

Apr 27 3 59 PM '92

END OF EXHIBIT "J"