

# REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

1010 RICHARDS STREET  
P. O. BOX 3469  
HONOLULU, HAWAII 96801

## PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON

KALAPAKI VILLAS - THIRD INCREMENT  
Rice Street  
Lihue, Kauai, Hawaii

Registration No. 1245

### **IMPORTANT — Read This Report Before Buying**

#### **This Report Is Not an Approval or Disapproval of This Condominium Project**

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project but may only take reservations therefore after

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: March 4, 1980  
Expires: April 4, 1981

#### SPECIAL ATTENTION

A comprehensive reading of this report by prospective purchasers is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED ON FEBRUARY 14, 1980, AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED AS OF FEBRUARY 28, 1980. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. KALAPAKI VILLAS is a proposed fee simple condominium project, presently planned to be developed incrementally. THIS PUBLIC REPORT SHALL ALLOW THE DEVELOPER TO ENTER INTO SALES AND RESERVATION AGREEMENTS ONLY WITH RESPECT TO APARTMENTS IN THE THIRD INCREMENT. The third increment is presently planned to consist of eighty-four (84) residential apartments with 116 parking stalls, to be built in accordance with floor plans filed with the Real Estate Commission. Upon completion of the first, second and third increments, the project is expected to contain a total of 264 apartments and 528 parking spaces.
2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of a condominium project and issuance of this Preliminary Public Report. The Developer shall be responsible for placing this Preliminary Public Report (yellow paper stock) and Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed copy of the receipt therefor.
3. Advertising and promotional matter has been submitted pursuant to the rules and regulations promulgated by the Commission.
4. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners, and a copy of the Condominium Map) have not been recorded in the Bureau of Conveyances of the State of Hawaii.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A of the Hawaii Revised Statutes, and the Rules and Regulations of the Hawaii Real Estate Commission which relates to Horizontal Property Regimes.
6. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance March 4, 1980, unless a Supplementary or Final Public Report is issued or the Commission, upon review of the registration, issues an order extending the effective period of this report.

NAME OF PROJECT: KALAPAKI VILLAS - Note: All increments of the project shall take the name "Kalapaki Villas".

LOCATION: The project is located at Rice Street, Lihue, Island of Kauai, State of Hawaii and consists of 15.304 acres.

TAX KEY: Fourth Division, 3-6-03-26

ZONING: R-20

DEVELOPER: Kalapaki Associates, a registered Hawaii Joint Venture; Suite 1800, 841 Bishop Street, Honolulu, Hawaii 96813; Telephone: 524-1700. The partners are: Kalapaki Partners, Suite 1800, 841 Bishop Street, Honolulu, Hawaii and Kalapaki Development, Inc., Suite 2020, 130 Merchant Street, Honolulu, Hawaii.

ATTORNEY REPRESENTING DEVELOPER: Carlsmith & Dwyer, Suite 2102, Davies Pacific Center, 841 Bishop Street, Honolulu, Hawaii 96813 (Attention: Mitchell A. Imanaka, Charles Edward Pear, Jr. or Curtis W. Carlsmith), Telephone No. 524-7200.

DESCRIPTION OF THE PROJECT:

A. Incremental Development. The Developer is considering the development of the property in separate increments. THE DEVELOPER DOES NOT REPRESENT THAT ANY INCREMENT AFTER THE FIRST INCREMENT WILL BE DEVELOPED. The present plan of incremental development is as follows:

(1) First Increment: The first increment shall consist of nine (9) apartment buildings, those being buildings number 1, 2, 3, 4, 24, 25, 26, 27 and 28 as shown on the Condominium Map and as described hereinbelow. A total of eighty-eight (88) apartments shall be included within the nine (9) apartment buildings. The first increment shall also contain a cabana/manager's office/maintenance building.

(2) Second Increment: The second increment, if constructed, is presently planned to add approximately eleven (11) apartment buildings, those being buildings number 5, 6, 7, 8, 9, 10, 11, 12, 20, 21 and 22 as shown on the proposed amended Condominium Map and as described hereinbelow, containing a total of ninety-two (92) apartments.

(3) Third Increment: The third increment, if constructed, is presently planned to add approximately eight (8) apartment buildings, those being buildings number 13, 14, 15, 16, 17, 18, 19 and 23 as shown on the proposed amended Condominium Map and as described hereinbelow, containing approximately eighty-four (84) apartments.

The second and third increments, collectively or individually, as appropriate, are herein sometimes referred to as "subsequent increments" or similar reference.

B. Description of Buildings. Subject to the provisions hereinabove, the third increment shall contain eight (8) separate apartment buildings constructed principally of wood, glass, concrete and gypsum board. There shall be four (4) different and distinct building types, designated as types A, B, C and D. Building types A, B and C shall contain eight (8) apartments, and type D shall contain twelve (12) apartments. No building exceeds two stories in height and no building contains a basement.

In addition to the apartment buildings in the three increments, the first increment shall contain a cabana/manager's office/maintenance building, which building

shall consist of one story, without basement, and contain no apartments.

The apartment buildings in the third increment shall be numbered as follows: 13, 14, 15, 16, 17, 18, 19 and 23 all as shown on the Condominium Map.

C. Description of the Apartments: Eighty-four (84) separate condominium apartments will be designated in the space within the perimeter and party walls, windows, doors, floors and ceilings of each of the eighty-four (84) apartment units (specifically including the appurtenant lanais) of the third increment of the property, distributed among the eight (8) apartment buildings of the third increment as described above, which spaces together with appurtenant lanai air spaces are referred to herein as "apartments", and are designated on said Condominium Map and described as follows:

(1) Apartment Numbers and Locations: The apartment designations will be composed of the building number and the apartment number. The apartments contained in each apartment building will be numbered from "01" to "08" or "12", as appropriate. The designations for the apartments in building number fourteen (14), for instance, will be as follows: "1401", "1402", "1403", "1404", "1405", "1406", "1407", "1408", "1409", "1410", "1411" and "1412". The numbers are assigned in such a way that odd-numbered apartments are on the first floor and even numbered apartments are on the second floor, with those apartments on the second floor receiving the number immediately subsequent to the number received by the apartment located immediately below on the first floor. The numbering of the apartments in the buildings commences from that side of the building closest to Rice Street. The apartment numbers and locations are more fully illustrated on the Condominium Map.

(2) Layout and Area of Individual Apartments: The apartments will be constructed according to ten different floor plans designated as follows: "A" (first floor plan); "B" (second floor plan); "C" (first floor plan); "D" (second floor plan); "E" (second floor plan); "F" (first floor plan); "G" (second floor plan); "H" (first floor plan); "I" (second floor plan); "J" (second floor plan).

Types A, B, C, D and E shall consist of two bedrooms, two bathrooms, living room, dining area, kitchen, entry, exterior storage room and two lanais.

Types F, G, H, I and J shall consist of three bedrooms, two bathrooms, living room, dining area, kitchen, entry, exterior storage room and two lanais.

The distinguishing characteristics between the apartments will be as follows:

<u>UNIT TYPE</u>	<u>CHARACTERISTICS</u>	<u>APARTMENT NUMBERS</u>	<u>TOTAL AREA</u>
A	The interior floor area is 1,070 square feet; lanais, 155 square feet. This is a first floor unit and lanais have direct access to the grounds.	1301, 1311, 1401, 1411, 1501, 1511, 1601, 1611, 1701, 1711, 2301, 2307	1,225

B	The interior floor area is the same as in A. The lanai area is 183 square feet. This is a second floor unit and lanais do not have direct access to the grounds.	1302, 1312, 1402, 1412, 1502, 1512, 1602, 1612, 1702, 1712, 2302, 2308	1,253
C	The interior floor area is 1,010 square feet; lanais, 153 square feet. This is a first floor unit and lanais have direct access to the grounds.	1303, 1305, 1307, 1309, 1403, 1405, 1407, 1409, 1503, 1505, 1507, 1509, 1603, 1605, 1607, 1609, 1703, 1705, 1707, 1709, 1803, 1805, 1903, 1905	1,163
D	The interior floor area is the same as in C. The lanai area is 139 square feet. This is a second floor unit and lanais do not have direct access to the grounds.	1304, 1310, 1404, 1410, 1504, 1510, 1604, 1610, 1704, 1710, 1804, 1806, 1904, 1906	1,149
E	The interior floor area is 1,050 square feet; lanais, 152 square feet. This particular type is found only on the second floor, and as such lanais do not have direct access to the grounds.	1306, 1308, 1406, 1408, 1506, 1508, 1606, 1608, 1706, 1708	1,202
F	The interior floor area and lanai square footages are the same as in H. This is a first floor unit and lanais have direct access to the grounds.	2303, 2305	1,397
G	The interior floor area and lanai square footages are the same as in I. This is a second floor unit and lanais do not have direct access to the grounds.	2304, 2306	1,383
H	The interior floor area is 1,244 square feet; lanais, 153 square feet. This is a first floor unit and lanais have direct access to the grounds.	1801, 1807, 1901, 1907	1,397
I	The interior floor area is the same as in H. The lanai area is 139 square feet. This is a second floor unit and lanais do not have direct access to the grounds.	1802, 1808, 1902, 1908	1,383

NOTE: In accordance with local architectural practice, the approximate floor area of each apartment as set forth above includes all of the walls and partitions within its perimeter walls, the entirety of its perimeter non-party walls, and the interior half of its perimeter party walls, whether load-bearing or non-load bearing. THE AREAS SHOWN ABOVE ARE APPROXIMATE ONLY, AND THE ACTUAL APARTMENT AREAS ARE LIKELY TO VARY SOMEWHAT.

(3) Access to Common Elements: Each apartment will have immediate access to the grounds of the property or to a walkway or stairway leading to the grounds of the property.

(4) Other Data Identifying and Defining the Apartments: The respective apartments shall not be deemed to include the perimeter or party walls or the undecorated or unfinished surfaces thereof; the exterior surfaces of all perimeter walls, doors, door frames, windows and window frames; the interior load-bearing walls, the floor and ceilings surrounding each apartment or any pipes, wires, conduits or other utility or service lines which are utilized for or serve more than one apartment, the same being common elements as hereinafter provided. Each apartment, if constructed, shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, the inner decorated or finished surfaces of all walls, floors and ceilings, doors and door frames, windows and window frames, the lanai air space, and all fixtures originally installed in the apartment.

COMMON ELEMENTS: One freehold estate is designated in all of the remaining portions of the property, herein called the "common elements", including specifically but not limited to:

(1) Said land in fee simple;

(2) All structural components, such as foundations, girders, beams, supports, main walls, roofs, halls, corridors, exterior stairs, stairways, entrances, exits, floor slabs, unfinished perimeter, party and load-bearing walls, and walkways of said buildings;

(3) All common spaces such as yards, gardens, planting areas, trash collection areas, all parking areas, driveways and access lanes;

(4) All common premises for the use of janitors or other persons employed for operation of the property, if any;

(5) Installations for services such as pipes, cables, conduits, ducts, electrical equipment, wiring and other central appurtenant transmission facilities and installations over, under, or across the property which serve more than one apartment for services such as power, light, gas, hot water, cold water, incineration, sewage, telephone, radio and television signal distribution, if any;

(6) Any apparatus and installations existing for common use, including tanks, pumps, motors, fans, compressors, ducts, vents, and other such installations and apparatus;

(7) All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

LIMITED COMMON ELEMENTS: The proposed Declaration of Horizontal Property Regime provides that certain parts of the common elements, called "limited common elements" will be designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

(1) Each apartment shall have for its exclusive use one (1) parking stall bearing the same designation as the apartment to which the stall is appurtenant, as depicted on the Condominium Map; except that apartment number "2712" shall have assigned to it all stalls not assigned to any particular apartment.

(2) Each apartment shall have for its exclusive use the mailbox bearing the same number as such apartment.

(3) All other common elements of the property which are rationally related to less than all of said apartments shall be limited common elements appurtenant to the apartments to which they are so related.

INTEREST TO BE CONVEYED TO PURCHASER: Each apartment in the third increment shall have appurtenant thereto an undivided percentage interest in all common elements of the property (herein called the "common interest"), and the same proportionate share in all common profits and expenses of the property and for all other purposes, including voting, as set forth in Exhibit "A".

EASEMENTS: The proposed Declaration of Horizontal Property Regime provides that the apartments and common elements (including limited common elements) shall have and be subject to a number of easements including but not limited to the following which purchaser should note:

(1) With respect to each increment, Developer shall have the right to conduct extensive sales activities on the property, including the use of model apartments, sales, and management offices, and extensive sales displays and activities until the earlier to occur of (a) forty-eight (48) months from the date of recording in the Bureau of Conveyances of the State of Hawaii of the first apartment deed conveying an apartment in that increment or (b) the closing of the sale of the last unsold apartment in the property. In the event that the Developer is unable to sell all of the apartments within the forty-eight (48) month period, the Developer shall have the right to conduct sales activities on the property until the closing of the sale of the last unsold apartment in the project provided that such sales activities are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession and aesthetic enjoyment of the property by the other apartment owners. In the event that the Developer's mortgage lender or any successor to or assignee of the Developer's mortgage lender shall acquire any portion of the property in the course of any foreclosure or other legal

proceeding or by an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns shall have the right to conduct such extensive sales activities on the property until at least ninety-five percent (95%) of all of the apartments have been sold and recorded, notwithstanding the foregoing.

(2) With respect to each increment, Developer, its agents, employees, contractors, licensees, successors and assigns shall have an easement over and upon the property as may be reasonably necessary for the completion of improvements to and correction of defects in the property. Such easement shall terminate twenty-four (24) months after the later of (i) the date of the recording in the Bureau of Conveyances of the State of Hawaii of the first apartment deed conveying an apartment in that increment, or (ii) "substantial completion" (as that term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the improvement to be completed or corrected in that increment. Such period shall be extended for such additional period (not to exceed twenty-four (24) months) as may be reasonably necessary for the completion of such improvements in the exercise of due diligence or such additional period as may become necessary if such completion is delayed by reason of force majeure.

(3) Developer, its agents, employees, contractors, licensees, successors and assigns shall have an easement over, under and upon the property or any portion thereof, to create and cause noise, dust and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of any apartment or other improvements in any subsequent increment.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration of Horizontal Property Regime provides:

(1) The apartments shall be occupied and used as dwellings in accordance with any and all applicable zoning laws. The Association shall have the power to enact resolutions, rules and regulations, and have the power to amend and repeal the same from time to time, reasonably restricting and regulating the use of the apartments and the common elements; provided, that any such resolutions, rules or regulations shall be consistent with the terms of this Declaration, and the By-Laws.

(2) The owners of the respective apartments shall have the absolute right to sell, lease, rent or otherwise transfer such apartments subject to all provisions of the Horizontal Property Act, the Declaration and the By-Laws attached thereto, provided, however, that no apartment owner may sell, lease, rent or otherwise transfer less than the entire apartment.

(3) No apartment owner shall use his apartment or appurtenant limited common elements for any purpose which will injure the reputation of the property, or suffer anything to be done or kept in his apartment or elsewhere on the property which will (a) jeopardize the soundness of the property, or (b) interfere with or unreasonably disturb the rights of other owners and occupants, or (c) reduce the value of the property,



or (d) increase the rate (unless such owner pays such increase) or result in the cancellation of fire insurance on the apartments or the contents thereof.

The proposed House Rules provide, in part: (1) No waterbeds shall be permitted in the apartments; (2) No livestock, poultry, rabbits or other animals shall be allowed on the premises except that household pets in reasonable number may be kept by the owners and occupants of residential apartments. All pets must be registered immediately with the Managing Agent; and (3) Occupancy is limited to not more than two persons per bedroom contained in each apartment, excluding children under the age of five (5), except that in no event and under no circumstances shall the number of occupants per bedroom contained in each apartment exceed three (3) per bedroom, inclusive of children under the age of five (5).

OWNERSHIP OF TITLE: A Preliminary Title Report issued by Hawaii Escrow & Title Inc., dated January 29, 1980, reflects that fee simple title to the land is held in the name of Kalapaki Associates.

ENCUMBRANCES AGAINST TITLE: The Preliminary Title Report issued by Hawaii Escrow & Title Inc., dated January 29, 1980, states that title to the land is subject to the following encumbrances:

(1) For any taxes that may be due and owing, reference is made to the Office of the Tax Assessor, Fourth Division.

(2) Assessments or charges levied by Municipal or Governmental Authority or imposed by any other lawfully constituted body authorized by statute to assess, levy and collect the same, if any.

(3) Title to all minerals and metallic mines reserved to the State of Hawaii.

(4) An easement affecting a portion of said land and for the purposes stated therein, and incidental purposes, in favor of Tomotsu Shinseki and Fudeko Shinseki, husband and wife, for non-exclusive ingress and egress in, to and over Lot 6, dated April 7, 1952, recorded in Liber 2575, Page 121.

(5) An easement affecting a portion of said land and for the purposes stated therein, and incidental purposes, as disclosed by an instrument dated August 24, 1965, recorded in Liber 5165, Page 1.

(6) A water tunnel easement in favor of The Lihue Plantation Company, Limited, which water tunnel, 10 feet wide, lies within the Southerly portion of the said land.

(7) An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, in favor of Citizens Utilities Company, a Delaware corporation, for electrical purposes within Easement 11, dated December 4, 1978, recorded in Liber 13351, Page 721.

(8) An easement affecting a portion of said land and for the purposes stated therein, and incidental purposes, in favor of The Lihue Plantation Company, Limited, a Hawaii corporation, as disclosed by an instrument recorded on December 28, 1978, in Liber 13379, Page 41.

(9) Mortgage dated September 6, 1979, by and between Kalapaki Associates, as Mortgagor, and Amfac, Inc., as Mortgagee, recorded in Liber 13979, Page 450.

PURCHASE MONEY HANDLING: A specimen Condominium Reservation Agreement, Deposit Receipt and Sales Agreement (hereinafter called "Reservation and Sales Agreement") and the Escrow Agreement have been submitted to the Real Estate Commission as part of the registration. The Escrow Agreement dated February 1, 1980 identifies Hawaii Escrow & Title, Inc. as the escrow agent. Upon examination, the specimen Reservation and Sales Agreement and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, and particularly with Section 514A-40, Section 514A-39 and Section 514A-63 through Section 514A-67. The provisions of the Reservation and Sales Agreement and the Escrow Agreement should be carefully read by the purchasers. The specimen Reservation and Sales Agreement filed as part of the registration recites the conditions under which the purchaser acknowledges receipt of the Public Report.

Among other provisions, the Escrow Agreement provides that the purchaser shall be entitled to a refund of his funds only if (a) seller asks Escrow to refund the purchaser's funds or (b) seller notifies Escrow of seller's rescission of the Reservation and Sales Agreement or (c) the conditions provided in Sections 514A-63, 514A-64 or 514A-66 of the Horizontal Property Act (as amended on the date the Reservation and Sales Agreement becomes binding and effective) have been met and written notice thereof has been provided to the seller.

Among other provisions, the specimen Reservation and Sales Agreement provides that:

(1) Reservation and Sales Agreements executed prior to the issuance of a Final Public Report for the project shall constitute a "reservation" and not a "binding contract" for the purchase of an apartment. Accordingly, the reservation may be cancelled and terminated at any time at the option of either party (and purchaser shall receive a refund) until such time as the purchaser and seller execute a confirmation letter agreeing to render the Reservation and Sales Agreement a binding contract. Therefore, the purchaser should be aware that the execution of a Reservation and Sales Agreement prior to the issuance of a Final Public Report does not necessarily mean that the purchaser will be able to purchase the apartment reserved for the price stated or on the other terms stated in the Reservation and Sales Agreement, or on any terms at all.

(2) The seller makes no warranties, express or implied, with respect to the apartments, the project, or consumer products or other things installed therein, including warranties of merchantability, habitability, workmanlike construction, or fitness for a particular purpose. The seller does, however, agree to attempt to pass through to the

purchaser the benefit of the general contractor's warranties, if any, and also the unexpired term, if any, of any assignable manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances in the apartment.

(3) The seller may cancel the Reservation and Sales Agreement and hold the purchaser in default if any material discrepancies are discovered between the financial information furnished by the purchaser and the purchaser's actual financial status. Seller may also cancel if the purchaser's application or eligibility for a mortgage loan is rejected or not given unqualified approval within sixty (60) days after application. If purchaser proposes to pay the purchase price in cash and seller, in its sole discretion, after reviewing the written evidence submitted to it by purchaser, determines that seller is not satisfied as to purchaser's ability to make such cash payments, then seller may cancel the Reservation and Sales Agreement. Seller may also cancel the Reservation and Sales Agreement if the purchaser should die.

(4) The seller's mortgage loan (interim, renewals and extensions, used for acquiring the land, constructing the project, and associated costs) shall be and remain at all times a lien or charge on the project, including the individual apartments prior to and superior to any and all other liens or charges on the project, and purchasers intentionally waive, relinquish and subordinate the priority or superiority of any lien or other legal or equitable interest they may have under the Reservation and Sales Agreement in favor of the lien or charge on the project of the security interest of the lender. The purchasers also consent to the assignment for security of seller's interest in the Reservation and Sales Agreement and purchasers' escrow deposits to lender. The purchasers also irrevocably appoint the Managing Agent to receive and accept service of process on behalf of the purchasers.

(5) The seller makes no representations with respect to the possibility or probability of rental or other income from the apartment or other economical benefits to be derived from the rental of the apartment, including but not limited to, any representations to the effect that seller or the Managing Agent of the project or a third party will provide services relating to the rental or sale of the apartment nor representations as to possible advantages from the rental of the apartment under federal or state tax laws. If purchaser wishes to rent the apartment to third persons, purchaser must make his own arrangements. Purchaser further agrees and acknowledges that in the event that the offer to sell and the purchase of the apartment or the activities of purchaser with respect to the apartment are determined to be or alleged to give rise to any violation of any federal or state securities laws or regulations, and seller may in addition pursue any other remedies and purchaser shall pay the seller's cost and attorneys' fees in connection therewith. In the event that the purchaser or anyone claiming by or through him or his apartment alleges that the offer to sell or the purchase of the apartment gives rise to any violation of federal or state disclosure laws or regulations, the purchaser covenants not to sue for any remedy other than to sue for a refund of the purchase price and actual closing costs plus interest at 8% per annum from the date of closing to the date of repayment. The purchaser agrees

to absorb any additional charges incurred with respect to the apartment as the reasonable use value of the apartment. The terms of this paragraph will survive the closing, occupancy, and delivery of the apartment deed to the purchaser.

(6) The purchaser will pay all closing costs, including but not limited to, the escrow fee, conveyance taxes, all acknowledgment fees, all appraisal fees, all recording costs, charges for purchaser's credit report, costs for drafting of the mortgage and notes, and any assignment thereof, and costs to any title insurance. All applicable mortgage costs shall be paid by purchaser, and purchaser shall pay the nonrefundable start-up fee for commencement of the operations of the project by the Managing Agent and the Association of Apartment Owners. Real property taxes, maintenance costs and other prorations shall be made, and risk of loss shall transfer from seller to purchaser on the scheduled Closing Date as defined in the specimen Reservation Sales Agreement. Purchaser shall execute all documents necessary for closing and deposit with escrow all funds other than proceeds of purchaser's first mortgage loan within ten (10) days after receiving written notice to pre-close. Pre-closing may commence at any time after the effective date of the Reservation and Sales Agreement.

(7) In the event development and construction of the Project is delayed due to governmental restrictions or regulations enacted after the date of the Reservation and Sales Agreement, or by occurrence of a contingency, the non-occurrence of which was a basic assumption upon which the contract was made, and seller determines that increases in development and construction costs because of such delay require increases in sales prices to maintain financial feasibility of the project, then and in any such event, and provided the sale of the property has not finally closed and the apartment deed has not been recorded, seller may increase the total purchase price hereinabove stated only to the extent necessitated by said increases in development and construction costs and seller shall notify purchaser in writing of any such increase in the total purchase price. After receipt of such notice, purchaser shall have fifteen (15) days within which to affirm or terminate said Reservation and Sales Agreement. If, within said fifteen day period, purchaser does not notify seller in writing that purchaser elects to terminate said Agreement, purchaser shall be deemed to have affirmed said Agreement at the increased purchase price. If purchaser elects to terminate said Agreement, seller shall cause Escrow to refund to purchaser all deposits made pursuant hereto, without interest and less any escrow cancellation fee, and seller may then offer said apartment to other prospective purchasers. Nothing in this paragraph shall be deemed to terminate, modify or qualify the obligations of the seller to complete construction within the period prescribed in Section E.3 of the Reservation and Sales Agreement if purchaser timely affirms said Agreement at the increased purchase price.

It is incumbent upon purchasers and prospective purchasers that they read with care the specimen Reservation and Sales Agreement and the executed Escrow Agreement. The Escrow Agreement establishes how the proceeds from the sale of the condominium apartments are placed in trust, as well as the retention and disbursement of funds.

MANAGEMENT AND OPERATION: The proposed By-Laws provide that the operation of the project shall be conducted for the Association of Apartment Owners by a responsible corporate Managing Agent. The Managing Agent shall be appointed by the Association, in accordance with the By-Laws, except that the Managing Agent for the initial period following the date of the organization of the Association of Apartment Owners may be appointed by the Developer without necessity of confirmation by the Association. The initial Managing Agent has not yet been finally selected.

RIGHTS RESERVED TO DEVELOPER WITH RESPECT TO THE CONSTRUCTION AND CONSOLIDATION AND/OR MERGER OF ANY SUBSEQUENT INCREMENT:

Developer, its contractors and subcontractors, and their respective employees and agents, shall have the right and an easement in favor of Declarant and its assigns is hereby granted at any time, and from time to time prior to December 31, 1990, to enter upon and use the common elements of the property and do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing any subsequent increment, connecting the same to the utility installations of the property, or selling the apartments contained within said subsequent increments, upon and subject to the following terms and conditions:

(1) Any subsequent increment, if constructed, shall be constructed in accordance with plans and specifications prepared by a licensed architect; provided, however, that such plans and specifications shall not require the alteration or demolition of any existing apartments of the first increment;

(2) Developer shall have the right to add, delete, relocate, realign, reserve and grant all easements and rights-of-way and to otherwise make alterations in and use the common elements for such development and construction, and to designate limited common elements over, under and on the common elements necessary or desirable with respect to the construction or use of any subsequent increment, including but not limited to easements and rights-of-way for utilities, cesspools, sanitary and storm sewers, sewage treatment plants, refuse disposal, driveways, parking areas and roadways; provided, that such easements and rights-of-way and limited common elements shall not be located on or within any existing apartment building on the property and, upon completion, shall not unreasonably and materially impair the use of any existing apartment.

(3) Every apartment owner and all holders of liens affecting any of the apartments in the property and each and every other party acquiring an interest in the property or any part thereof, by acquiring such apartment lien, or other interest, consents to and agrees that he/it shall, if required by law or by Developer, join in, consent to and execute all instruments and documents necessary or desirable to effect the granting of easements and/or rights-of-ways and/or the designation of limited common elements provided for hereinabove.

(4) The Developer, its contractors and subcontractors and their respective employees and agents, shall not cause any interruption other than a temporary interruption in the service

of utilities to the property and shall use reasonable efforts, without additional cost to the Developer and consistent with maintaining the progress of the design, development, construction, completion and sale, to minimize interference with the apartment owners' use and enjoyment of the property.

And at any time or times prior to December 31, 1990, Developer reserves the right at any time and from time to time without being required to obtain the joinder or consent of any apartment owner, lien holder or other person, to consolidate or merge the first increment and any subsequent increment or any portion thereof as though they had been developed as a single project. THE METHODS AND CONSEQUENCES OF ANY SUCH MERGER OR CONSOLIDATION ARE MORE PARTICULARLY SET FORTH IN THE DECLARATION, AND IT IS INCUMBENT ON PROSPECTIVE PURCHASERS TO READ WITH CARE ALL SUCH PROVISIONS RELATING TO ANY SUCH MERGER OR CONSOLIDATION.

Developer reserves the right to modify the present plan of incremental development by varying the mix and/or number of apartments in any succeeding increment; by modifying, deleting and/or adding apartment types; by modifying, deleting and/or adding types of common elements. The Developer further expressly reserves the right to consolidate or merge the first increment and any subsequent increment notwithstanding the lease, sale or conveyance of any or all of the apartments in any of the increments being consolidated or merged, and Developer may, without being required to obtain the consent or joinder of any apartment owner, lien holder or other persons, execute and file amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges reserved to the Developer. Any such action shall be deemed taken by Developer as the true and lawful attorney-in-fact of the respective apartment owners.

Each and every party acquiring an interest in the property, by such acquisition, consents to all such consolidations and/or mergers of increments, and to the recording of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints the Developer his attorney-in-fact to execute such documents and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and shall not be affected by disability of any such party. Each and every person also acknowledges, accepts and agrees that construction and sales activity for succeeding increments may continue on the property submitted to the Declaration, as well as adjacent property, after he has taken occupancy in the property, that such activity or activities may result in noise, dust or other annoyances to him, and waives any rights, claims or actions he may have or acquire against Developer, its contractors, subcontractors and their respective agents and employees, as a result of such activity or activities.

DEVELOPER'S OPTION TO SUBDIVIDE AND WITHDRAW AREAS AND TO GRANT EASEMENTS AND/OR RIGHTS OF WAYS: The Developer may, but the Developer is under no obligation to withdraw from the property any portion or all of those areas designated in Exhibit "B" to

the Declaration as possible withdrawal areas. Notwithstanding anything to the contrary in the Declaration, Developer shall, from time to time and at any time up to but not later than December 31, 1990 in the case of Withdrawal Areas I and III and, in the case of Withdrawal Area II, up to but not later than December 31, 2000, have the right at its option, to require alteration of the property by subdividing and withdrawing from the property and the horizontal property regime all or any portion of the common element areas designated in said Exhibit "B" as "Possible Withdrawal Areas", on the following terms and conditions:

(1) Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any apartment owner, lien holder or other person, execute and record an amendment to the Declaration and the Condominium Map: (a) to subdivide and withdraw any areas chosen for withdrawal; and (b) when applicable or necessary, to add, delete, relocate, realign, reserve and grant all easements and rights of ways over, under and on the common elements necessary or desirable, including but not limited to, easements and/or rights of ways for utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways, provided that such easements and/or rights of ways shall not be located on or within any existing structure on said property and shall not be exercised as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the property by the apartment owners.

(2) Every apartment owner and all holders of liens affecting any of the apartments in the project shall, if required by law or by Developer, join in, consent to, and execute all instruments and documents necessary or desirable to effect the subdivision and withdrawals provided for herein.

(3) The withdrawal of an area shall become effective upon the recording in the Bureau of Conveyances of the State of Hawaii of (a) an amendment to the Declaration provided for in sub-paragraph (1) above, (b) an exhibit setting forth a description of the land withdrawn from the property, (c) a memorandum of withdrawal, and (d) a deed of the areas withdrawn from the Developer as Grantor.

(4) The granting of easements and/or rights of ways provided for herein shall become effective upon the recording in the Bureau of Conveyances of the State of Hawaii of (a) an amendment to the Declaration as provided for in sub-paragraph (1) above, and (b) an exhibit setting forth a description of the addition, deletion, relocation, realignment, grant or reservation of easement and/or rights of ways.

Each and every party acquiring an interest in the property, by such acquisition, consents to such subdivisions and withdrawals from the property and to the amendment or amendments of the Declaration and the recording thereof in the Bureau of Conveyances of the State of Hawaii to effect the same; agrees to execute such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute such documents and instruments and to do such things on his behalf, which grant of

such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties.

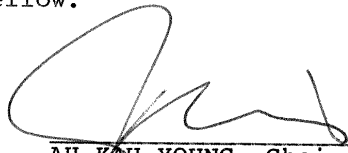
The "possible withdrawal areas" designated in said Exhibit "B" to the Declaration are part of the common elements of the property. Purchasers and prospective purchasers should be cognizant of the fact that the administrative expense of the condominium project includes expenses pertaining to the care and maintenance of the "possible withdrawal areas".

LAND TRUST. In the event title to any apartment and its appurtenant common interest is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay all common expenses and all other charges, costs and expenses assessed against such apartment or the owner thereof pursuant to this Declaration, the By-Laws, the Rules and Regulations (House Rules) or the Horizontal Property Act. No claim for payment of common expenses or other charges, costs or expenses shall be made against any such trustee personally and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or assessment, but the amount thereof shall constitute a lien on the apartment as provided in this Declaration, the By-Laws, and the Horizontal Property Act, notwithstanding any transfer of beneficial interest under such trust.

STATUS OF THE PROJECT: The Developer advises that construction of the project will commence on or about April 1981, and completion is scheduled for about April 1982.

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The purchaser or respective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the Notice of Intention submitted on February 14, 1980, and information subsequently filed as of February 28, 1980.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of Registration No. 1245 filed with the Commission's Public Report. The paper stock used in making facsimiles must be yellow.

  
\_\_\_\_\_. (for)  
AH KAU YOUNG, Chairman  
Real Estate Commission  
State of Hawaii



**DISTRIBUTION:**

Department of Taxation  
Bureau of Conveyances  
Planning Department  
County of Kauai  
Federal Housing Administration  
Escrow Agent

Registration No. 1245

March 4, 1980

Exhibit A

Common Interests Appurtenant to Apartments  
in the Third Increment  
After the First, Second and Third Increments are Completed

<u>UNIT TYPE</u>	<u>APARTMENT NUMBER</u>	<u>GROSS AREA</u>	<u>PERCENTAGE COMMON INTEREST</u>
A (1st floor)	1301, 1311, 1401, 1411, 1501, 1511, 1601, 1611, 1701, 1711, 2301, 2307	1,225	.37241
B (2nd floor)	1302, 1312, 1402, 1412, 1502, 1512, 1602, 1612, 1702, 1712, 2302, 2308	1,253	.38093
C (1st floor)	1303, 1305, 1307, 1309, 1403, 1405, 1407, 1409, 1503, 1505, 1507, 1509, 1603, 1605, 1607, 1609, 1703, 1705, 1707, 1709, 1803, 1805, 1903, 1905	1,163	.35356
D (2nd floor)	1304, 1310, 1404, 1410, 1504, 1510, 1604, 1610, 1704, 1710, 1804, 1806, 1904, 1906	1,149	.3493
E (2nd floor)	1306, 1308, 1406, 1408, 1506, 1508, 1606, 1608, 1706, 1708	1,202	.36541
F (1st floor)	2303, 2305	1,397	.42469
G (2nd floor)	2304, 2306	1,383	.42044
H (1st floor)	1801, 1807, 1901, 1907	1,397	.42470
I (2nd floor)	1802, 1808, 1902, 1908	1,383	.42044