



REAL ESTATE COMMISSION  
 STATE OF HAWAII  
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
 PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
 1010 Richards Street  
 P. O. Box 3469  
 Honolulu, Hawaii 96801

CONDOMINIUM PUBLIC REPORT

on

KIMOLANA ESTATES  
 Kahili Makai Street  
 Kilauea, Kauai, Hawaii

Registration No. 1984

Issued: January 31, 1989  
 Expires: March 1, 1990

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of January 11, 19 89 and is issued by the Commission for informational purposes only. It represents neither approval nor disapproval of the project. Buyers are encouraged to read this report carefully.

Type of Report:

- PRELIMINARY: The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued when complete information is filed.  
 (yellow)
- FINAL: The developer has legally created a condominium and has filed complete information with the Commission.  
 (white)  
 Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_
- SUPPLEMENTARY: Updates information contained in the  
 (pink)  
 Prelim. Public Report dated \_\_\_\_\_  
 Final Public Report dated \_\_\_\_\_  
 Supp. Public Report dated \_\_\_\_\_
- And  Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_  
 This report reactivates the \_\_\_\_\_  
 public report(s) which expired on \_\_\_\_\_

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required  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.

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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 Hawaii's "Horizontal Property Act" (Chapter 514A, Hawaii Revised Statutes) must be followed.

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 they 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 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.

Some condominium projects are leasehold. This means that the land or the land, 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 owner/tenant) 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. The 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.

### 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 a vote of the owners. Some of these actions may significantly impact the quality of life for all 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 vitally important to all apartment owners that the transition from developer to owner control be accomplished in an orderly manner and in a spirit of cooperation.

SUMMARY OF THE CONDOMINIUM PROJECT  
(cite to appropriate pages  
in text of report)

Interest to be Conveyed to Buyer:

A fee simple interest in an individual apartment and an undivided interest in the common elements of the project.

Type of Project:

- 1.  New Building(s)  Conversion  
 Both New Building(s) and Conversion
- 2.  Residential  Commercial  
 Mixed Residential and Commercial  
 Other Agricultural and Residential
- 3.  High Rise (5 stories or more)  Low Rise
- 4.  Single or  Multiple Buildings
- 5. Apartment Description

Apt. Type	Qty	BR/Bath	Net Living Area*	Storage Shed
<u>1</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>64</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 5

\*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.

6. Parking:

	<u>Number of Stalls</u>
Assigned Stalls (Individual Units)	_____
Guest Stalls	_____
Unassigned Stalls	_____
Extra Stalls Available for Purchase	_____
Other: <u>each unit has ample parking area for parking within its limited common element, but shall have at least one stall area at all times, with room for two parking stalls</u>	
Total Parking Stalls	

7. Recreational amenities: NONE

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: JAMES WETHERILL Phone: 826-1415  
Name (Business)  
P.O. Box 729  
Business Address  
Kilauea, Hawaii 96754

Names of officers or general partners of developers who are corporations or partnerships:  
NONE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Sales Agent: Bali Hai Realty Phone: 826-7244  
Name (Business)  
5-5016 Kuhio Highway, Hanalei, Hi. 96714  
Business Address  
attn: Al Paterson

Escrow: Title Guaranty Escrow Services Phone: 245-3381  
Name (Business)  
4290 Rice Street, P.O. Box 1837  
Business Address  
Lihue, Hawaii 96766

Managing Agent: Developer (provided certain legal Phone: 826-1415  
Name (Business)  
requirements are complied with)  
Business Address  
\_\_\_\_\_

Attorney for Developer: Steven R. Lee  
Name  
2959 Umi Street  
Business Address  
Lihue, Hawaii 96766

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 Horizontal Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners.

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

The Declaration for this condominium is:

- Proposed  
 Recorded — Bureau of Conveyances — Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed — Land Court — Document Number \_\_\_\_\_

Amendment date(s) and recording/filing information:

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

The Condominium Map for this condominium project is:

- Proposed  
 Recorded — Bureau of Conveyance Condo Map No. \_\_\_\_\_  
 Filed — Land Court Condo Map No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

- C. Bylaws of the Association of Apartment Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the way in which meetings will be conducted, and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

- Proposed  
 Recorded — Bureau of Conveyances — Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed — Land Court — Document Number \_\_\_\_\_

Amendment date(s) and recording/filing information:

NONE

D. House Rules. The Board of Directors may adopt house rules to govern the use and operation of the common elements and individual apartments. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais, keeping of pets, and occupancy limits. 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 apartment owners who must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	<u>75%</u>
Bylaws	65%	<u>75%</u>
House Rules	—	<u>N/A</u>

The percentages for individual condominium projects may be more than the minimum set by law.

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

NONE

The Condominium Statute (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to 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.



III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the underlying land will be in fee simple.
- Leasehold or Subleasehold: Individual apartments and the underlying land will be leasehold.

The leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (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 explanations.

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.

- Individual Apartments in Fee Simple, Underlying Land in Leasehold or Subleasehold:

The 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; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

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

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:

For Subleaseholds:

- Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is  
 Cancelled                     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 cancelled or foreclosed.

3. Underlying Land:

Address: Kahili Makai Street Tax Map Key: (4) 5-2-21-4  
Kilauea, Hawaii 96754 (TMK)

Address  TMK is expected to change because each unit not yet assigned  
an address.

Land Area: 24.51  square feet  acre(s) Zoning: Agriculture

Fee Owner: JAMES WETHERILL  
name  
P.O. Box 729  
address  
Kilauea, Hawaii 96754

Sublessor: \_\_\_\_\_  
name  
\_\_\_\_\_  
address  
\_\_\_\_\_

C. Buildings and Other Improvements:

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

2. Buildings: 5 Floors Per Building: 1  
 Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

- Concrete  Hollow Tile  Wood  
 Other \_\_\_\_\_

4. Permitted Uses:

	<u>No. of Apts.</u>		<u>No. of Apts.</u>
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Industrial	_____
<input checked="" type="checkbox"/> Residential	<u>5 (possible)</u>	<input checked="" type="checkbox"/> Agricultural	<u>5 (now)</u>
<input type="checkbox"/> Timeshare/Hotel	_____	<input type="checkbox"/> Recreational	_____
<input checked="" type="checkbox"/> Other: <u>SEE ATTACHED pg. 10a</u>	_____		_____

The farm structures and the units shall be occupied and used for agriculture, and/or any other uses now existing or hereunder permitted under the Kauai County Zoning Ordinances plus any matters of record, and as allowed under the Declaration Bylaws and the Declaration of Protective Covenants for Kimolana Estates Agricultural Condominium, attached to the Bylaws. (Also see proposed Protective Covenants, Exhibit D).

An agricultural residence may not be constructed unless the Unit Owner demonstrates to the County of Kauai his ability to derive income and/or agricultural products from his property. Agricultural use shall have been established prior to any subsequent building permit approval. Such use shall be verified by the Kauai County Planning Department.

5. Special Use Restrictions:

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

- Pets: Certain animals are not allowed, See Declaration of Protective Covenants (Exhibit D)
- Number of Occupants: \_\_\_\_\_
- Other: An owner must engage in agriculture actively to be permitted to construct a residence.
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Total Apartments 5

Elevators 0 Stairways 0 Trash Chutes 0

<u>Apt. Type</u>	<u>Qty</u>	<u>BR/Bath</u>	<u>Net Living Area*</u>	<u>Lanai/Patio</u>
<u>1</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>64</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

\*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 floor area may have been used.

Boundaries of Each Apartment:

See Exhibit B. Within the requirements of the zoning ordinances and Building Rules, each unit owner may place improvements where desired, and subsequently relocate improvements, provided such improvements comply with the building and zoning requirements of the County of Kauai.

Permitted Alterations to Apartments:

As allowed by Kauai Zoning Ordinance and said Protective Covenants (Exhibit D). Upon each permanent improvement, an amendment to the Declaration of Condominium Property Regime and File Plan (See Exhibit A for proposed file plan) by the Association of Unit Owners will be required to disclose actual improvements as a matter of public record.

7. Parking Stalls:

Total Parking Stalls: At least one parking stall area will be required in each unit's limited common element, which shall service at least two vehicles.

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	covered	open	covered	open	covered	open	
Assigned (for individual units)	_____	_____	_____	_____	_____	_____	_____
Guest Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra Available for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	_____		_____		_____		_____

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

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

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool
- Recreation Area
- Tennis Court
- Other: \_\_\_\_\_
- Storage Area
- Laundry Area
- Trash Chute

9. Present Condition of Improvements

(For conversions of residential apartments in existence for five years):

a. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

NONE

b. Compliance with Building Code and Municipal Regulations; Cost to Cure Violations

NONE

10. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

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

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

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

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

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

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

Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project intended to be used by all apartment owners. They are owned jointly by all apartment owners.

Exhibit  E  describes the common elements.

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.

[X ] The limited common elements and the apartments which may use them are:

[X ] described in Exhibit  E , and depicted in Exhibit B. Such map shall establish the limited common elements as depicted by the broken lines. These are not to be construed as lots in a legal subdivision.

[ ] as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is often used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium. It may also be used for other purposes, including voting on matters requiring action by apartment owners.

[ X ] Exhibit  C  describes the common interests for each apartment.

[ ] as follows:

Each Unit in this project will pay equal shares for roadway and common element maintenance; however, undivided interests have been based on a combination of size, price and burden to be borne by each parcel. Voting is according to common interests. See Exhibit C and the Declaration and Protective Covenants (Ex. D)

E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property.

Exhibit F describes the encumbrances against the title contained in the title report dated September 28, 1988. The Developer represents there have been no changes.

Blanket Liens:

A blanket lien is a mortgage on a condominium project that secures a construction loan. It is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

- [ ] There are no blanket liens affecting title to the individual apartments.  
[ X ] There are blanket liens which may affect title to the individual apartments.

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest If Developer Defaults</u>
Mortgage	If foreclosed, buyer's deposit will be refunded according to Sales Contract.

F. 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 managing agent to assist the Association in managing the condominium project.

Initial Managing Agent: When the developer or the developer's affiliate is the initial 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 managing agent for this condominium is:

- [ ] not affiliated with the Developer.  
[ X ] the Developer or the Developer's affiliate.  
[ ] other \_\_\_\_\_



G. 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, your apartment may be liened and 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 to each apartment.

Exhibit   G   contains a schedule of maintenance fees and maintenance fee disbursements.

H. 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:

- |  |   |
|--|---|
| <input type="checkbox"/> Electricity   | <input type="checkbox"/> Television Cable |
| <input type="checkbox"/> Gas   | <input type="checkbox"/> Water & Sewer    |
| <input type="checkbox"/> Other <u>                    NONE                    </u> |   |

I. 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

Status of Construction and Estimated Completion Date:

Infrastructure is complete. Sheds will be completed by March 31, 1989.

Project Phases:

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

Summary of Developer's Present Plans for Future Development:

Nothing specific. See par. 21 of Proposed Declaration of Condominium Property Regime which says Declarant may add abutting parcels to this project provided the addition bears its fair share of expenses.

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 H contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated October 13, 1988

Exhibit I contains a summary of the pertinent provisions of the escrow agreement.

Other Reservation Agreement.

#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

##### Prospective Purchaser:

This is a condominium project, not a subdivision. Units purchased are not subdivided lots. You will be required to comply with zoning codes to be allowed to construct a residence on your limited common element.

To determine whether your expectations can be realized, you should carefully review this Report, especially Exhibit D (Declaration of Protective Covenants). Among other things, it states what you may and may not do with the property, what is required of you, and what is and is not available. You should also conduct your own investigations and ascertain the validity of information provided. Please remember that issuance of this Report does not mean the Real Estate Commission has approved the project.

The County of Kauai Planning Department has advised that, in order to process the necessary permits for the construction of a farm dwelling, and the processing of a farm dwelling agreement, authorization from at least 75% of the legal and equitable ownership of the entire property shall be required, consistent with the Declaration of Condominium Property Regime, the Bylaws and the Building Rules.

Except as limited specifically by the Declaration of Condominium Property Regime, the Bylaws and the Building Rules, all uses permitted in the Agricultural Zone are permitted. Such uses include, but are not limited to growing crops, raising animals, residence, diversified agriculture, forestry, orchards and nurseries and wildlife management. See Kauai County Comprehensive Zoning Ordinance, Article 8.7.

The Developer has discussed this project with staff at the Kauai County Planning Department and there appears to be no major obstacles.

A copy of the Planning Department's letter to the Commission dated November 14, 1988 is attached as Exhibit J. Since it was received by the Commission after the Developer's submittal for this Preliminary Public Report, the Developer has been asked to consider its contents and incorporate appropriate changes in its request for a Final Public Report.

A buyer should understand that all development and use of the properties shall comply with all 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 properties later than others may find that insufficient utility capacities may thwart their expectations.

Buyer's Right to Cancel Sales Contract:

A. Rights Under the Condominium Statute:

Preliminary Report: Sales made by the Developer 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, Supplementary Report to a Final Report: Sales made by the Developer are binding if:

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

1. There is a material change in the condominium which directly, substantially, and adversely affects (a) the use or value of the buyer's apartment or its limited common elements; or (b) the amenities available for buyer's use; and
2. 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.

B. Rights Under the Sales Contract:

Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the condominium. These include but are not limited to the:

1. Condominium Public Reports issued by the Hawaii Real Estate Commission.
2. Declaration of Horizontal Property Regime and Condominium Map.
3. Bylaws of the Association of Apartment Owners.
4. House Rules.
5. Escrow Agreement.
6. Hawaii's Condominium Law (Chapter 514A, HRS, as amended; Hawaii Administrative Rules, Chapter 16-107, adopted by the Real Estate Commission).
7. Other \_\_\_\_\_

If these documents are not in final form, the buyer should ask to see the most recent draft.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS and Hawaii Administrative Rules Chapter 16-107) are available at the Department of Commerce and Consumer Affairs.

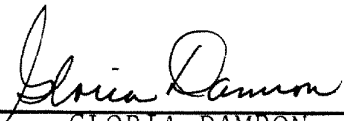
This Public Report is a part of Registration No. 1984 filed with the Real Estate Commission on October 18, 1988.

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

yellow paper stock                       white paper stock                       pink paper stock

**Expiration Date of Reports.** Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the date of issuance unless a Supplementary Public Report is issued or unless the Commission issues an order extending the effective period for the report.

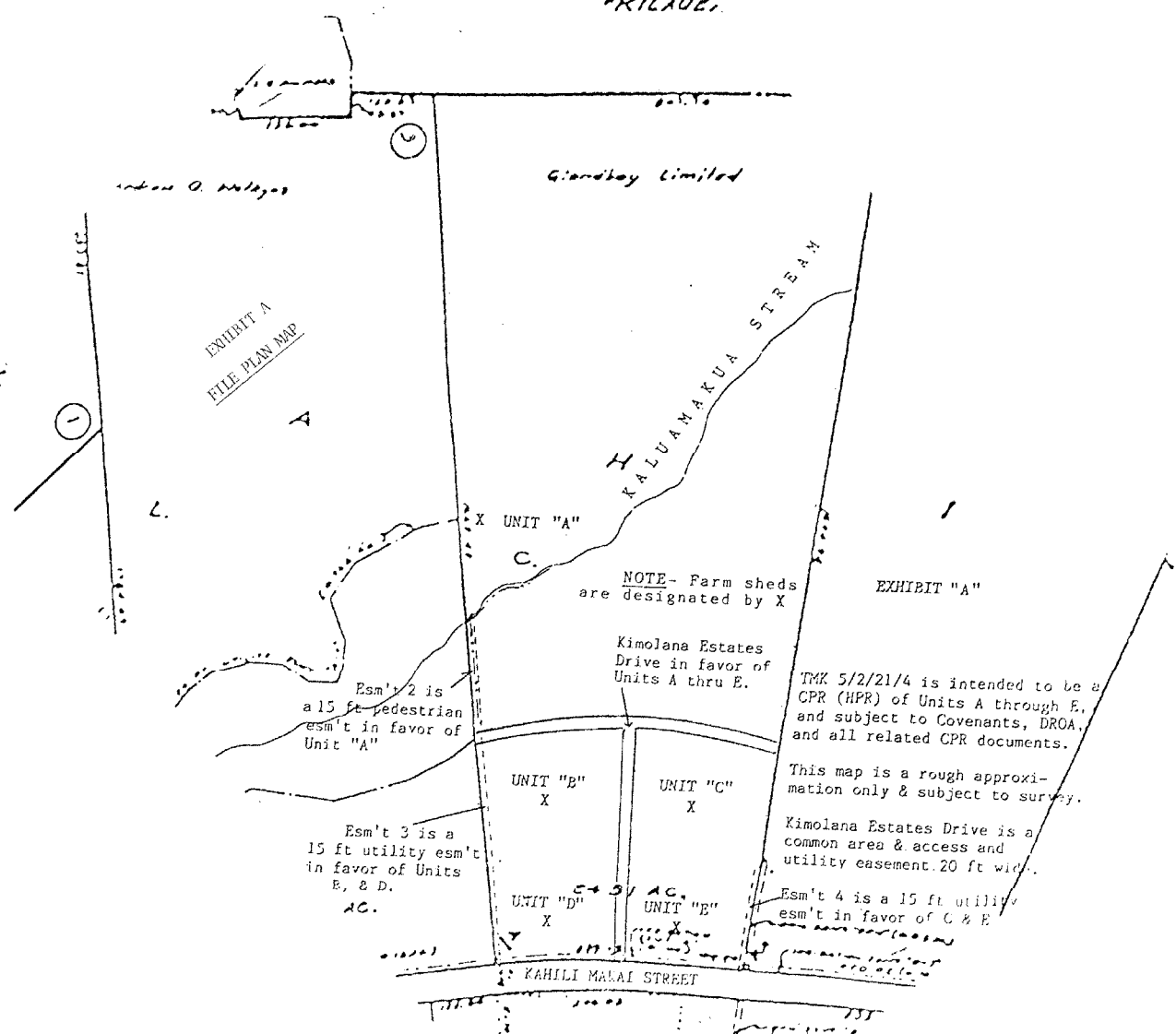
Supplementary Public Reports expire on the expiration date given on the front of the report.

  
\_\_\_\_\_  
GLORIA DAMRON, Chairman  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

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

O.R.  
"KILAUEI."



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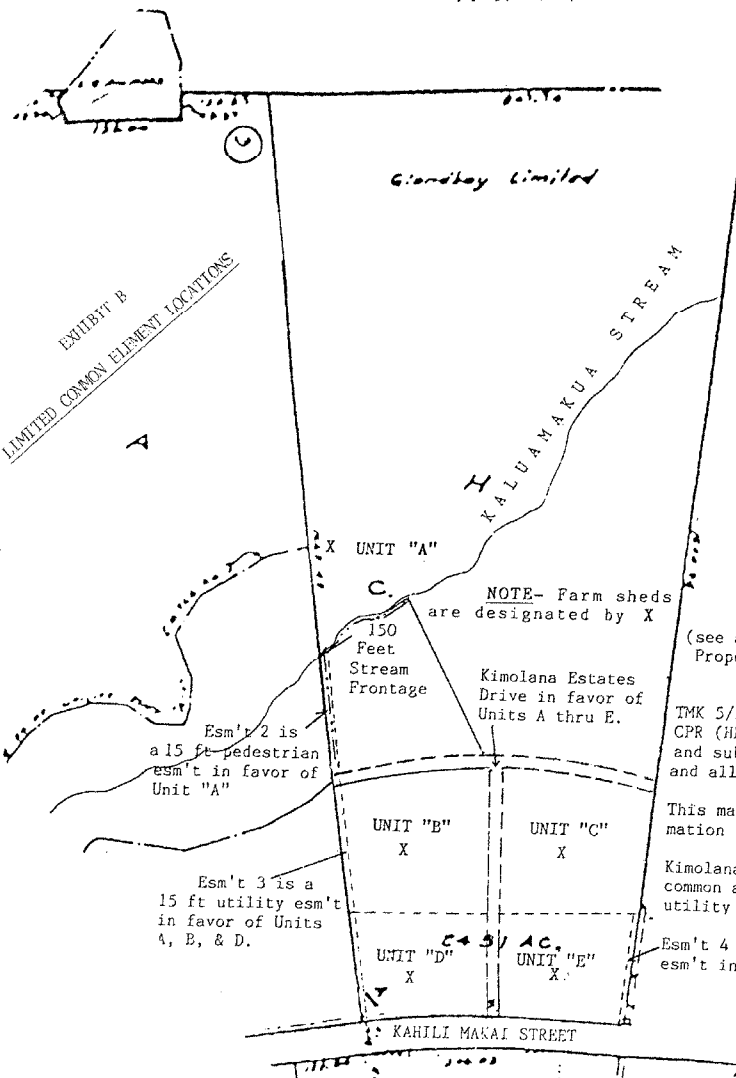


EXHIBIT B  
LIMITED COMMON ELEMENT LOCATIONS

UNIT "A"

UNIT "B"

UNIT "C"

UNIT "D"

UNIT "E"

NOTE- Farm sheds are designated by X

Kimolana Estates Drive in favor of Units A thru E.

Esm't 2 is a 15 ft pedestrian esm't in favor of Unit "A"

Esm't 3 is a 15 ft utility esm't in favor of Units A, B, & D.

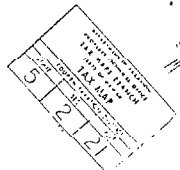
EXHIBIT "B"  
(see attached "Selection of Individual Property" for descriptions of Units)

TMK 5/2/21/4 is intended to be a CPR (HPR) of Units A through E, and subject to Covenants, DROA, and all related CPR documents.

This map is a rough approximation only & subject to survey.

Kimolana Estates Drive is a common area & access and utility easement. 20 ft wide.

Esm't 4 is a 15 ft utility esm't in favor of C & E



True North

SELECTION OF INDIVIDUAL PROPERTY

(Addendum to Exhibit "B")  
TMK 4/5/2/21/4

NOTE: Exact areas of Units A through C are subject to survey according to the following descriptions. Units D & E will be surveyed to arrive at 1.0 acre each. Kimolana Estates Drive will be a common element 20 feet wide in favor of Units A through E for access and utilities, & will join Kahili Makai St. to the existing cross-roadbed junction via the approximate center of the parcel.

UNIT A will contain the balance of the parcel that is not included in Units B through E.

UNIT B will be bordered by Unit D to the southeast, the portion of parcel 4 boundary to the southwest from that corner of Unit D to the center of Kaluamakua Stream, Kimolana Estates Drive to the northeast, Kimolana Estates Drive crossroad to the northwest, and from the point on Unit B where the road junction occurs to a point in the middle of Kaluamakua Stream that will result in 150 feet of stream boundary as roughly shown on the map. (Excluding the Kimolana Estates Drive Common Area)

UNIT C will be bordered by Unit E to the southeast, parcel 4 boundary to the northeast, Kimolana Estates Drive to the southwest, and Kimolana Estates Drive crossroad to the northwest.

UNIT D will be 1.0 acre in the southeast corner of parcel 4, bordered by approx. 220 feet along Kahili Makai St to the southeast, Kimolana Estates Drive border to the northeast, Unit B to the northwest, and the parcel 4 boundary to the southwest, as shown on the map.

UNIT E will be 1.0 acre in the northeast corner of parcel 4, bordered by approx. 220 feet along Kahili Makai St to the southeast, Kimolana Estates Drive border to the southwest, Unit C to the northwest, and the parcel 4 boundary to the northeast, as shown on the map.



EXHIBIT C

Schedule of Apartments and Common Interests

<u>Qty.</u>	<u>Apt. No.</u>	<u>Area of Limited Element</u>	<u>No. of BR/BATH</u>	<u>Appx Net Living Area (Sq. Ft.)</u>	<u>Appx Lanai/Farm/Shed Area (Sq. Ft.)</u>	<u>% Int.</u>
1	A	18.0AC	0	- 0 -	64	30
1	B	2.5AC	0	- 0 -	64	20
1	C	1.5AC	0	- 0 -	64	20
1	D	1.0AC	0	- 0 -	64	15
1	E	1.0AC	0	- 0 -	64	15

END OF EXHIBIT C

Note: Each Unit in this project will pay equal shares for roadway and common element maintenance; however, undivided interests have been based on a combination of size, price and burden to be borne by each parcel. Voting is according to common interests. See Exhibit C and the Declaration and Protective Covenants (Exhibit D).

EXHIBIT D

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL ( ) PICKUP ( )

---

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS  
KIMOLANA ESTATES CONDOMINIUM  
TMK 4/5/2/21/4

1. Each building or other structure shall be constructed, erected and maintained according to the covenants herein, and in accordance with the plans and specifications approved by the County of Kauai.

2. Dwelling cost and quality. No primary residence shall be permitted on any homesite at a building cost or value of less than FIFTY DOLLARS (\$50.00) per square foot, not to include the cost of landscaping, fences, other permissible structures or the cost of the homesite. Each home shall have at least 1600 square feet of liveable space, excluding garages, porches, decks and lanais. It is the intent and purpose of the covenants to assure that all dwellings shall be of quality workmanship and materials, substantially the same or better than that which can be produced at the date these covenants are recorded at the

stated minimum cost. Plans for all residential structures must be submitted to Declarant James Wetherill in advance.

No less than a completed 650 square foot portion of any planned residential structure of at least 1600 square feet (of liveable interior space) may be occupied by any unit owner or designee.

3. No building shall be located on any homesite nearer than 30 feet to any boundary, with the exception of Unit A.

4. Standard exterior architectural restrictions:

a. All vertical exterior surfaces shall be made of natural material.

b. The roofs of structures constructed on any homesite shall be covered with materials of earth tones (including blue), and limited to wood shake, tile, composition shingle or non-reflective architecturally designed metal (not to include standard, conventional corrugated metal). Roofs shall not exceed a maximum pitch of 12:12 or 45 degrees.

c. Each outbuilding on any homesite must be of quality workmanship and materials, and conform inconspicuously with the primary residence of that homesite.

d. Laundry facilities and any service or utility area, including any area for hanging clothes, must be reasonably inconspicuous and shielded from public view. Any storage areas shall be non-offensive and reasonably inconspicuous.

e. A building height restriction of twenty-five feet, measured from the highest natural grade at any point on the perimeter of the foundation of the structure to the highest point of construction. Out buildings and barns may not exceed 16 feet in height without the consent of neighbors to whom such buildings will be visible from their separate cotenancy areas or future subdivided lots.

f. The owner of each structure constructed on the homesites shall maintain the structure in good repair at all times and shall cause all external surfaces to be maintained as to prevent

g. Each homesite owner shall cause the land to remain in a non-offensive state at all times.

h. No noxious or offensive activity shall be carried on upon any homesite, nor shall anything be done thereon which may be or may become an annoyance to the neighborhood.

i. No existing tree with a trunk diameter in excess of 12" shall be removed or cut (except for a reasonable amount of pruning) along the rim of Units B and C, or along the sides of Kimolana Drive. No clear-cutting of other vegetation may occur at any such locations (to the end that existing privacy and existing mountain and ocean viewplanes will be maintained), without the approval of 65% of the undivided interests plus the approval of every Unit Owner affected by the removal or cutting in question.

5. No homesite shall be used as a dumping ground for rubbish, trash, garbage or other waste. Such materials shall be disposed of in a clean, sanitary manner.

6. The following animals, livestock and activities shall not be permitted or allowed to be kept by

any owner or tenant on the property without the consent of all Unit Owners whom can see, hear or smell the effects of possession of such animals.

(a) Pigs, hogs, or peafowl;

(b) More than two dogs which are owned and kept as pets;

(c) Any dogs or cats kept for commercial breeding or kennel purposes;

(d) More than three horses;

(e) Sheep or cattle;

(f) Roosters or commercial chicken-raising.

7. Temporary structures. Except for temporary construction (for not more than six months), no temporary buildings, tents or trailers shall be erected, altered, placed or permitted to remain on any homesite. Temporary construction structures or trailers shall remain upon the homesite only during a reasonable period of construction of permanent improvements thereon and must be removed within thirty (30) days after completion of such construction.

8. All homesite dwellers shall maintain the respective areas of each unit in a clean and sanitary condition.

9. All homesites shall be maintained to meet State of Hawaii Health Department requirements.

10. With the exception of along the boundaries of Units D and E along Kahili Makai Street and along the southwest boundary of Unit D which serves as the boundary between Lots 3 and 4 of Kahili Makai Subdivision the owners of Units B through E shall not construct or plant any continuous fence, or vegetation or other structure over eight feet high without the prior consent of at least a 75% interest majority. With the exception of the initial principal residence on any unit, no owner shall construct any structure or improvement over sixteen feet high which will block or obstruct the views of any other owner, without first securing the approval of each owner with views which might be affected.

11. All unit owners will cooperate in maintaining the existing agricultural zoning, so as to maintain Kauai County agricultural property tax rates. Each unit will be responsible for all real property taxes assessed on structures placed on their respective units. To the extent the County of Kauai does not tax the structures separately,

the parties will fairly allocate real property taxes. Failing agreement on those property taxes, the matter shall be resolved by appraisal by an appraiser selected by the parties by agreement. Failing agreement on the appraiser, the appraiser shall be selected under the arbitration rules hereinafter provided.

12. The pedestrian easement designated as easement 2 on the Condominium map is exclusively for the benefit of unit A (its owners, invitees and permittees), and may not be otherwise utilized by other unit owners. To the extent it becomes possible to extend Kimolana Estates Drive from the property to the Kilauea River, all unit owners will agree to dedicate the portion of Kimolana Drive passing through the property to the use of all parcels of the Kahili Makai Subdivision through which the easement to the Kilauea River passes as reciprocal consideration of the granting of the easement through other parcels in the subdivision. James Wetherill (or his designated assigns who own an interest in Lot 3) will be allowed to pass over Kimolana Drive pursuant to this paragraph without granting a reciprocal right, inasmuch as passage through Lot 3 is not required to reach the Kilauea River.

13. James G. Wetherill or his designee has and shall retain a right of first refusal to purchase any unit in the project upon resale by the owner of such unit (except



to a spouse or child of the immediate family of the unit owner, or to a corporation of which the Unit Owner or successor-in-interest holds a majority interest). Such rights shall be exercisable (by written notice) no less than 30 days after receipt of written notice of the pending sale, together with the full disclosure of all terms and conditions of the proposed sale. Closing shall be no less than 30 days after exercise of the right to purchase, or the date specified in the third party offer, whichever is later, and shall be on the terms of the third-party offer. The failure of any unit owner to conclude sale of a unit after the owner of Unit A declines to purchase shall cause the right of first refusal to be reinstated. The right shall further be reinstated for any further conveyance of the unit which occurs during the 10-year period immediately following recordation of these protective covenants.

14. So long as each limited common element is at least 1 acre in area, unit boundaries as described in Exhibit B to the Declaration of Condominium Property Regime may be amended by parties whose boundaries are affected thereby upon written agreement, and without consent of other unit owners. However, the cost of such amendment shall be borne by the parties seeking the boundary adjustment, including the recordation of an amendment to the Condominium Property Regime and Exhibits attributable thereto and attached thereto.

15. Utilities. Each unit owner shall be responsible for bringing water, power, telephone and television cable service to their individual units from the point designated and the condominium map as utility access. All utilities shall be underground. The individual unit owners shall provide their own private meters to permit fair allocation of utility expense among them. If it becomes impossible to install separate meters, then the unit owners will undertake such action as necessary to determine a fair allocation of utility expense. Unit E will be entitled to utilize the existing water meter on the property. If any further units are not allowed to install separate water meters, all units will thereupon be connected to the same meter and reasonable steps will be taken for additional private metering to determine the fairness of allocation of expense. All lines for such water usage shall be placed within the utility easement(s) or of the project.

16. Kahili Makai Street access. Access to Kahili Makai Street from each unit shall be only over Kimolana Estates Drive. Specifically, neither Unit D nor Unit E shall be permitted to place a driveway on Kahili Makai Street without the approval of 75% of the undivided interests.

17. Architectural Control. In the event any dispute arises as to the conformance of any proposed plans with these Protective Covenants, the question shall be resolved by a vote the holders of majority interests in three of the five units in the Project. All plans and elevations for construction upon the property shall be presented to each unit owner prior to the commencement of construction and minimum of 10 calendar days shall be given for review and approval of same.

18. All sheds, barns and other agricultural out buildings shall be constructed only when they serve a bona fide purpose consistent with zoning and these protective covenants.

19. The foregoing covenants and conditions shall continue in force and effect for at least twenty years of their initial term, and thereafter until such time as the subject property is reclassified to a state land use district classification other than the "Agricultural" district classification or for fifty-five (55) years from the date these covenants and conditions are recorded, whichever is later. However, after 25 years, all restrictions are removed with a 70% vote, so long as any unit adversely affected is among those voting affirmatively- or such units rights are maintained in revised Protective Covenants.

Unit A shall have sole right to construct a guest house and/or second dwelling as permitted by Kauai County Comprehensive Zoning Ordinance. To the extent additional structures may be permitted by law, and a sufficient majority of the unit owners so votes, the right to construct any additional residential improvements shall be determined by random allocation. However, as to Units B, C, D & E, under no circumstances shall an "Ohana-type" or any other additional residential dwelling be allowed without the consent of a numerical majority of all unit ownership interests.

20. In the event of any violation or threatened violation of this Declaration, or in the event there shall arise any claim, dispute or other matter in question concerning this Declaration, its application or interpretation (herein referred to as a "dispute"), such violation, threatened violation or dispute shall be decided by arbitration according to the following terms and conditions:

(a) Regarding a violation or threatened violation of this Declaration, any of the Declarants, or their respective successors and assigns, shall first notify the party in violation or threatening violation, in writing, of the nature thereof and shall demand the cessation or

removal of the violation or threatened violation. If the party receiving the notice fails or refuses to cease or remove the violation or threatened violation within thirty (30) days after his receipt of the written notice, or fails or refuses within that period to take reasonable action or give acceptable assurances that the violation will cease or be removed as soon as possible, then the party making the demand shall, within thirty (30) days thereafter give notice of demand for arbitration in writing to the other party, subject to the general terms contained in sub-paragraphs (c) and (d) below. If the arbitrator determines that a violation or threatened violation exists and that reasonable action or acceptable assurances to cease or remove the same were not taken within the 30-day period mentioned above, the costs of arbitration, including all arbitrator's fees and reasonable attorney's fees incurred by the complaining party(ies), shall be assessed against the party found to be in violation, and the arbitrator shall be authorized to order the cessation or removal of the violation, to enjoin further or threatened violations and/or to award damages if appropriate to the circumstances.

(b) Regarding any dispute not covered by sub-paragraph (a) above, notice of demand for arbitration shall be given in writing by any of the Declarants, or their respective successors and assigns, to the other party(ies) to the dispute within a reasonable time after the dispute

has arisen, but in no event after institution of legal or equitable proceedings based upon the dispute would be barred by the applicable statute of limitations.

(c) All matters referable to arbitration hereunder shall be arbitrated by a single arbitrator. The parties to the arbitration shall initially attempt to agree on an arbitrator who is acceptable to all concerned parties. If the parties are unable to agree on an arbitrator, the matter shall be referred to the American Arbitration Association in Honolulu, Hawaii and decided according to its rules and procedures then in effect. Any party to the arbitration may file a written notice of the demand for arbitration with the American Arbitration Association.

(d) This agreement to arbitrate, and any arbitrator's decision or award, shall be specifically enforceable under the prevailing arbitration laws of the State of Hawaii. Except as is otherwise stated in subparagraph (a) above, (i) costs and fees, incurred to arbitrate (exclusive of attorney's fees and costs) shall be divided equally between the parties to the arbitration unless otherwise ordered by the arbitrator, and (ii) each party shall be solely responsible for his own attorney's fees and costs unless otherwise ordered by the arbitrator.

IN WITNESS WHEREOF, the Declarants have executed  
this Declaration on the \_\_\_\_ day of \_\_\_\_\_, 1988.

\_\_\_\_\_  
JAMES GEORGE WETHERILL

STATE OF HAWAII                    )  
  ) ss.:  
COUNTY OF KAUAI                 )

On this the \_\_\_\_ day of \_\_\_\_\_, 1988,  
before me, the undersigned Notary Public, personally  
appeared JAMES C. WETHERILL, to me personally known, who,  
being by me duly sworn, did say that he executed the  
foregoing instrument as his own free act and deed.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

EXHIBIT E

Common Elements and  
Limited Common Elements of Project

The common elements of the Project are:

- (a) Said land in fee simple;
- (b) The access and utility easement, known as Kimolana Estates Drive.

Certain parts of the common elements, herein called the "limited common elements," are 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:

- (a) The area of the agricultural unit specified in Exhibit C.
- (b) Easement 2 is a pedestrian easement in favor of Unit A.
- (c) Easement 3 is a 15 ft. utility easement in favor of Units A, B, and D.
- (d) Easement 4 is a 15 ft. utility easement in favor of Units C & E.

END OF EXHIBIT E



EXHIBIT F

ENCUMBRANCES AGAINST TITLE

1. Flood setback line as shown on Final Subdivision Map.
2. Any rights that may exist by reason of the fact that Kilawa Stream passes through a portion of the land herein described,
3. Easement "D-6" (10 feet wide), containing an area of 0.11 acres, as shown on Final Subdivision Map.
4. The terms and provisions of that certain Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance dated February 18, 1982, made by and between Beta Pacific, Inc., a Hawaii Corporation, "Subdivider" and The County of Kauai Planning Department, "Commission", recorded in the Bureau of Conveyances of the State of Hawaii in Book 16378 Page 307, to which reference is hereby made.
5. Restrictions, covenants and conditions as contained in:

**DECLARATION OF RIGHTS OF USE**

Dated: April 6, 1982  
Book: 16378  
Page: 358  
to which reference is hereby made

6. Reservations as contained in:

Dated: May 25, 1982  
Book: 16378  
Page: to which reference is hereby made

7. **RIGHT-OF-ENTRY**

In Favor of: Citizens Utilities Company, a Delaware Corporation, duly authorized to do business in the State of Hawaii, and Hawaiian Telephone Company, a Hawaii Corporation (now known as GTE Hawaiian Telephone Company Incorporated)

Dated: April 27, 1982  
Book: 17511  
Page: 488  
Purpose: Easement for utility purposes over, under, across and through the land herein described (also affects other property)

END OF EXHIBIT F

EXHIBIT   G  

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months =	<u>Yearly Total</u>
All	\$100.00	\$1200.00

[ ] Revised on \_\_\_\_\_

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

Estimate of Maintenance Fee Disbursements:

Monthly x 12 months = Yearly Total

Utilities and Services

Air Conditioning

Electricity

[ X ] common elements only

0

0

[ ] common elements  
and apartments

Gas

0

0

Refuse Collection

0

0

Telephone Only

0

0

Water and Sewer (if common  
metering)

140

1680

Maintenance, Repairs and Supplies

Building

0

Grounds/Roadway

50

600

Management

Data Processing

Management Fee

0

0

Payroll and Payroll Taxes

Office Expenses

10

120

Legal & Audit

100

1200

Insurance

125

1500

Reserves

50

600

Taxes and Government Assessments

Audit Fees

Other

Bookkeeping Service

25

300

TOTAL

500

6000

I/~~we~~, James G. Wetherill, as Developer, ~~as managing agent~~  
for the condominium project, hereby certify that the above estimates of initial maintenance  
fee assessments and maintenance fee disbursements were prepared in accordance with generally  
accepted accounting principles.

  
Date: Oct. 11, 1988

EXHIBIT H

SUMMARY OF SALES CONTRACT

The specimen Kimolana Estates Purchase Agreement, (the "contract") contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. The method of payment of the purchase price to the escrow agent, subject to other terms.

2. The purchase price does not include the closing costs, prorations and additional costs provided in other sections of the contract.

3. If at the time of execution of the contract, a final public report has not been issued, the contract is merely a reservation agreement and it may be cancelled at any time by either the Buyer or Seller.

4. The terms and conditions of the sale which include, among other provisions, the following:

(a) Buyer has received the Declaration of Horizontal Property Regime, By-laws of the Association of Apartment Owners, form of Apartment Deed, and Escrow Agreement and acknowledges that he has had adequate opportunity to read those documents and to examine the project plans and accepts them with such changes and modifications as the project architect may deem necessary.

(b) Buyer agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow Agreement.

(c) Risk of loss to the apartment and percentage interest in the common elements will be borne by Seller until the date of closing as defined in the contract. Buyer will not be entitled to possession of the apartment until the date of closing.

(d) Seller has reserved the right to make certain modifications to the Declaration, By-laws, Apartment Deed and other documents as may be required by law, a title insurance company, any institution, mortgagee or governmental agency.

(e) Until the Apartment Deed conveying title is delivered to Buyer, the Seller may exercise all of the

powers of the Association and of the Buyer as a member thereof.

(f) After issuance of the Final Public Report and Buyer's waiver of its right to cancel under Hawaii Revised Statutes Section 514A-62, Buyer shall have the right to rescind the contract only if there is a material change in the project which directly, substantially and adversely affects the use or value of Buyer's apartment or appurtenant limited common elements or those amenities of the project available for the Buyer's use subject to waiver by the Buyer pursuant to the terms set forth in the contract and Hawaii Revised Statutes Section 514A-63.

(g) Time is of the essence of the obligations of Buyer under the contract.

(h) Neither Seller nor any of its representatives has made any representations as to the rental income to be derived from the unit.

(i) Developer makes only those warranties regarding construction and appliances which are set forth in the contract.

(j) The contract shall not be construed as a present transfer of any interest in the property but it is an agreement to transfer in the future.

\* \* \* \* \*

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

END OF EXHIBIT H

EXHIBIT I

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between Title Guaranty and Escrow Services, Inc. (the "Escrow") and James G. Wetherill (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 contracts 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.

3. Escrow will release from the Trust Fund and disburse Buyer's funds at closing. No disbursements will be made from Buyer's fund until: (a) the Real Estate Commission has issued a Final Public Report on the project and forty-eight (48) hours have elapsed since Buyer's receipt of a copy of the Final Public Report; (b) Buyer has waived its right to cancel the sales contract; and (c) Seller has notified Escrow that all other requirements of Sections 514A-39 and 514A-63, Hawaii Revised Statutes, have been met. Where sales contracts are entered into Escrow will disburse funds upon presentation by Seller of Buyer's signed receipt for the Final Public Report and with notification by Seller that all of the requirements of Sections 514A-39 and 514A-63, Hawaii Revised Statutes, have been met. Escrow will call for payments by the Buyer upon receipt of notice from Seller that any payments are due under any sales contract.

4. Escrow will return deposited sums to the Buyer without interest if Seller gives Escrow written notice to return the funds to Buyer, or with respect to a Buyer whose funds were obtained before the issuance of a Final Public Report, Escrow receives from the Buyer a written request to cancel the sales contract or after issuance of the Final Public Report and Buyer's waiver of his right to cancel the sales contract in accordance with Section 514A-62, Hawaii Revised Statutes, there shall be any material change in the project which directly, substantially and adversely affects the use or value of the Buyer's apartment or appurtenant common elements or those amenities of the project available for Buyer's use, of a nature entitling the Buyer to cancel his sales contract pursuant to Section 514A-

63, Hawaii Revised Statutes. These funds shall be returned to Buyer less Escrow's cancellation fee, if any, any mortgagee's cancellation fee and all other costs incurred in connection with the Escrow, but in the aggregate shall not exceed \$250.00.

5. Escrow will arrange for and supervise the signing of all documents which are to be signed subsequent to an contemplated by the sales contract.

6. As Escrow's compensation for its performance under this Agreement, Escrow will receive \$300.00 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 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, HE MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

END OF EXHIBIT I

TŌNY T. KUNIMURA  
MAYOR



TOM H. SHIGEMOTO  
Planning Director

ROLAND D. SAGUM, III  
Deputy Planning Director

Telephone (808)245-3919

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4280 RICE STREET  
LIHUE, KAUAI, HAWAII 96766

November 14, 1988

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
P.O. Box 3469  
Honolulu, HI 96801

SUBJECT: Comments on Kimolana Estates, Reg. No. 1984  
TMK: 5-2-21: 4

Thank you for allowing us this opportunity to comment.

After reviewing the Notice of Intention, Questionnaire form, and draft of the Public Report for Kimolana Estates, Reg. No. 1984, TMK: 5-2-21: 4, we have the following comments to offer:

- a. The amount of limited common elements corresponds to the allowable unit density.
- b. In relation to item no. 6 in the Summary of the Condominium Project (page 5), parking, we feel that each limited common element should have at least two (2) parking stalls; requirements of the Comprehensive Zoning Ordinance stipulate two (2) parking stalls per dwelling unit.
- c. In Exhibit D, Declaration of Protective Covenants, page 3, item 4. e., a building height restriction of "thirty (30) feet measured from the highest natural grade at any point on the perimeter of the foundation of the structure to the highest point of construction" is provided for.

EXHIBIT J



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This is in conflict with the County of Kauai's North Shore Development Plan, and should be revised accordingly. The North Shore Development Plan reads, in part:


"Heights. Except as provided under Ordinance No. 416 (Flood Hazard Areas) Section 15-1.5(c)(4), height limits shall be established in the Comprehensive Zoning Ordinance; provided, however, that no structure shall be higher than twenty-five feet unless a greater height is authorized by the Planning Commission pursuant to a use permit after review (and recommendation) by the North Shore Improvement Advisory Committee."

- d. In Exhibit D, Declaration of Protective Covenants, page 6, item 10., Units B through E are restricted from constructing, among other things, "any continuous fence...or other structure over eight feet high without prior consent of at least a 75% interest majority." Departmental policy has been that any fence over six (6) feet must either observe setback requirements for residential structures or obtain the consent of the landowner of the abutting lot.
- e. There should be a disclaimer provision written into this and all ensuing condominium reports stating that approval of the report should not be misconstrued to mean that all County Codes and Ordinances have been complied with. Subsequent development and use shall comply to all applicable County Codes and Ordinances. It should also be made clear that the Horizontal Property Regime (HPR) does not necessarily mean that all County requirements pertaining to subdivision of lands have been met. Therefore such facilities/improvements that are normally associated with County-approved subdivisions such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emerging traffic, drainage facilities, etc. may not necessarily be provided for. Further, such services as County street maintenance and trash collection will not be available for interior road/driveways.

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- f. Also of concern are the declaration of protective covenants, wherein certain types of agricultural activities are restricted. While this is a private matter, it appears to detract from the stated purpose of agriculture-zoned lands.

Should you have any questions, please contact Peter Nakamura of my staff at 245-3919.

  
TOM H. SHIGEMOTO  
Planning Director