

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer JAMES GEORGE WETHERILL  
Address P. O. Box 729, Kilauea, Hawaii 96754

Project Name(\*): KIMOLANA II  
Address: 4420 Kahili Makai Street, Kilauea, Hawaii

Registration No. 3185

Effective date: March 9, 1995

Expiration date: April 9, 1996

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

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

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

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

Type of Report:

       PRELIMINARY:     The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.  
(yellow)

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

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

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

\_\_\_\_\_  
(\* ) Exactly as named in the Declaration

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

Required and attached to this report       Not Required - disclosures covered in this report.

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

\* \* \* \* \*

\* **SPECIAL NOTICE:** \* \* \* \* \*

\* THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF DWELLING UNITS, OR \*  
 \* OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, \*  
 \* UNLESS THE PURCHASER IS PURCHASING AN EXISTING DWELLING, THERE IS NO \*  
 \* ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A DWELLING UNIT \*  
 \* ON THE PROPERTY. THERE ALSO IS NO ASSURANCE THAT THE PURCHASER WILL \*  
 \* BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO \*  
 \* RESIDENTIAL USE. THE PURCHASER SHOULD CONSULT WITH THE APPROPRIATE \*  
 \* COUNTY AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A \*  
 \* DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, UPON THE PROPERTY. \*  
 \* \* \* \* \*

\* 1. This Public Report does not constitute an approval of the \*  
 \* project by the Real Estate Commission, or any other government \*  
 \* agency, nor that all County Codes, Ordinances and subdivision \*  
 \* requirements have been complied with. \* \* \* \* \*

\* 2. This project does not involve the sale of individual subdivided \*  
 \* lots. The land area beneath and immediately adjacent to each \*  
 \* unit as shown on the Condominium Map is designated as a limited \*  
 \* common element for that unit and does not represent a legally \*  
 \* subdivided lot. The dotted lines on the Condominium Map merely \*  
 \* represent the location of the limited common element assigned to \*  
 \* each unit. \* \* \* \* \*

\* 3. Facilities and improvements normally associated with County \*  
 \* approved subdivisions, such as fire protection devices, County \*  
 \* street lighting, electricity, upgraded water facilities, \*  
 \* improved access for owner and emergency traffic, drainage \*  
 \* facilities, etc., may not necessarily be provided for and \*  
 \* services such as County street maintenance and trash collection \*  
 \* will not be available for interior roads and driveways. \* \* \* \* \*

\* THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE \*  
 \* DOCUMENTS FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING. \*  
 \* \* \* \* \*

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## General Information On Condominiums

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

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

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

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

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

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

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

## Operation of the Condominium Project

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: JAMES GEORGE WETHERILL Phone: (808) 828-1313  
Name (Business)  
P. O. Box 729  
Business Address  
Kilauea, Hawaii 96754

Names of officers or general partners of developers who are corporations or partnerships:

N/A

Real Estate Broker: SHELL DEVELOPMENT CORP.-LAWAI Phone: (808) 742-7211  
Name (Business)  
5022 Lawai Beach Road  
Business Address  
Koloa, Hawaii 96756

Escrow: SECURITY TITLE CORPORATION Phone: (808) 521-9511  
Name (Business)  
12th Floor, Pacific Tower  
1001 Bishop Street  
Business Address  
Honolulu, Hawaii 96813

General Contractor: B Z BUILDING, INC. Phone: (808) 245-2729  
Name (Business)  
P. O. Box 946  
Business Address  
Kalaheo, Hawaii 96741

Condominium Managing Agent: Self-managed through its Association of Apartment Owners. Phone: \_\_\_\_\_  
Name (Business)  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Attorney for Developer: STEVEN R. LEE, ESQ. Phone: (808) 246-1101  
Name (Business)  
4473 Pahe'e Street, Suite L  
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 Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The Declaration for this condominium is:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 94-110396  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 2055  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

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

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 94-110397  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The House Rules for this condominium are:

Proposed                       Adopted             Developer does not plan to adopt House Rules

E. Changes to Condominium Documents

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

1. Apartment Owners: Minimum percentage of common interest which must vote for or give written consent to changes:

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

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

2. Developer:

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

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules: the right to change the condominium documents to reflect the merger of the second phase, or Unit E, into the project.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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

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

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

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:             Monthly                             Quarterly  
     Semi-Annually                     Annually

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

For Subleaseholds:

Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:  
 Canceled       Foreclosed

As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

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

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

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

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:             Monthly                             Quarterly  
     Semi-Annually                     Annually

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



[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

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

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

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

**B. Underlying Land:**

Address: 4420 Kahili Makai Street Tax Map Key: (4) 5-2-21:3  
Kilauea, Hawaii (TMK)

[X] Address [X] TMK is expected to change because each unit is entitled to receive its own designations.

Land Area: 25.34 [ ] square feet [ X ] acre(s) Zoning: Agricultural/  
Open

-- Lessor --

(Fee Owner): HAWAIIAN TRUST COMPANY, LTD.  
Name  
P. O. Box 3170  
Address  
Honolulu, Hawaii 96802-3170

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

C. Buildings and Other Improvements:

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

2. Number of Buildings: 4 Floors Per Building Units A,B&D - 1 story  
Unit C - 2 stories

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

3. Principal Construction Material:

Concrete             Hollow Tile                     Wood

Other \_\_\_\_\_

4. Permitted Uses by Zoning:

	No. of Apts.	Use Permitted By Zoning	No. of Apts.	Use Determined By Zoning
<input checked="" type="checkbox"/> Residential	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Ohana	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	___	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Industrial	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	___	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Agricultural	<u>3</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	___	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Recreational	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	___	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other: _____	___	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Yes                     No

5. Special Use Restrictions:

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

Pigs, hogs, more than three dogs which are owned and kept as pets,  
 Pets: dogs kept for commercial breeding or kennel purposes, goats, sheep and commercial chicken raising are prohibited.  
 Number of Occupants: \_\_\_\_\_

Special use restrictions are contained in the Declaration of  
 Other: Covenants and Conditions and the Co-Owner's Use Agreement,  
 summaries of which are attached hereto as Exhibits J and K.  
 There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0                      Stairways: 0                      Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Other Areas (sf)</u>
<u>A</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>55 - gazebo</u>
<u>B</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>144 - shed</u>
<u>C</u>	<u>1</u>	<u>3/3</u>	<u>2,130</u>	<u>484 - garage</u>
<u>D</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>1,142 - decks/lanai</u>
				<u>1,008 - barn</u>

Total Apartments: 4

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

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

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

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

7. Parking Stalls:

Total Parking Stalls: 2

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for each unit)	<u>2</u>	<u>- Unit C</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>2</u>
Guest	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>0</u>
Unassigned	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>0</u>
Extra for Purchase	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>0</u>
Other:	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>0</u>
Total Covered & Open	<u>2</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>

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

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

8. Recreational and Other Common Facilities:

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

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

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

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

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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

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

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

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

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

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

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

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

described in Exhibit   E  .

as follows:

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

[ ] There are no limited common elements in this project.

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

[X] described in Exhibit E.

[X] as follows: The portion of the land set aside for the use of each owner of a unit, as set forth in Exhibit A, subject to the roadway and utility easement, if any. NOTE: Land areas referenced herein are not legally subdivided lots.

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

[X] described in Exhibit C.

[ ] as follows:

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

Exhibit F describes the encumbrances against the title contained in the title report dated 7-1-94 and issued by FIRST AMERICAN TITLE INSURANCE COMPANY.

Blanket Liens:

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	If foreclosed, Buyer's deposit may be refunded and the sales contract between Seller and Buyer will be cancelled.

F. Construction Warranties:

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

1. Building and Other Improvements: None.
  
  
  
  
  
  
  
  
  
  
2. Appliances: None.

G. Status of Construction and Estimated Completion Date:

The residence on Unit C was completed in August of 1993. The gazebo on Unit A and the barn on Unit D were completed in October of 1994. It is estimated that the construction of the structure on Unit B will be completed by December 31, 1994.

H. Project Phases:

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

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

The developer has reserved the right, but is not obligated, to add a second phase, or Unit E, to this project at such time as Unit E is brought into compliance with all applicable codes and ordinances.



IV. CONDOMINIUM MANAGEMENT

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

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

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

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

B. Estimate of Initial Maintenance Fees:

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, 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.

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

C. Utility Charges for Apartments:

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

- None  Electricity  Gas  Water
- Sewer  Television Cable  Other \_\_\_\_\_

## V. MISCELLANEOUS

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

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

[X] Notice to Owner Occupants

[X] Specimen Sales Contract  
Exhibit B contains a summary of the pertinent provisions of the sales contract.

[X] Escrow Agreement dated June 27, 1994  
Exhibit D contains a summary of the pertinent provisions of the escrow agreement.

[X] Other Specimen Apartment Deed, Specimen Owner-Occupant Reservation Agreement and Specimen Owner-Occupant Affidavit

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

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

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

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

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime.
  - C) Bylaws of the Association of Apartment Owners.
  - D) House Rules.
  - E) Condominium Map.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other Declaration of Covenants and Restrictions; Co-Owner's Use Agreement dated December 21, 1987.

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

This Public Report is a part of Registration No. 3185 filed with the Real Estate Commission on 9-29-94.

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

yellow paper stock                       white paper stock                       pink paper stock

**C. Additional Information Not Covered Above**

This is a condominium project, not a subdivision. Units purchased are not subdivided lots. If a residence is not already built, 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 the contents of this Report, especially Exhibits J and K, summaries of the recorded restrictive covenants and co-owner's use agreement for the lot upon which this project is located. Among other things, the restrictive covenants govern building type and cost, land use, insurance requirements, animals and maintenance. You should also conduct your own investigations and ascertain the validity of information provided. Please remember that issuance of an effective date for 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 project shall be required, consistent with the Declaration of Condominium Property Regime and the Bylaws ("condominium documents"). Except as limited specifically by the condominium documents, 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. for detailed information. In relation to specifically permitted uses of buildings and other improvements, structures shall only be occupied or used for agriculture, associated residential uses, and/or other uses permitted under the Kauai County Zoning Ordinances and the condominium documents. An agricultural residence may not be constructed unless a unit owner demonstrates to the County his ability to derive income from his property, established and verified prior to any building permit approval.

A buyer should understand that all development and use of the property shall be in compliance with County Codes and Ordinances, that owners in this condominium project will not necessarily receive the same County benefits as owners of approved subdivided lots, and that owners who develop their limited common element later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations. Also, zoning and land use restrictions are subject to change and a purchaser should maintain awareness of such conditions.

The developer has submitted a nonsurety performance bond for \$25,000.00, which is one hundred percent of the developer's verified estimate of the cost of construction of Units A, B and D, which are estimated to be completed by December 31, 1994. A copy of the bond was included in the filing submitted to the Real Estate Commission. Before signing a sales contract, a prospective purchaser may review the bond and the entire filing submitted by the Developer.

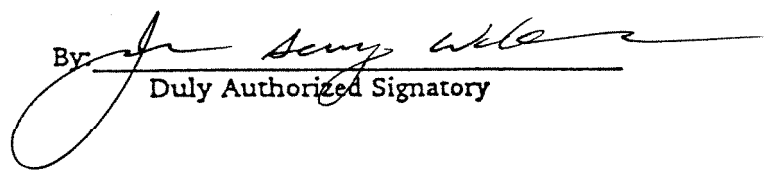
All funds received from a purchaser of Unit A, B or D shall be placed in an escrow account. The purchaser's funds in escrow shall not be disbursed to pay for construction costs or other expenses of the development until both the completion of the apartment to be conveyed and the closing of the sale. If closing is to occur prior to the expiration of the applicable mechanics' lien period, then the developer shall be required to provide the purchaser with an owner's title insurance policy with a mechanics' lien endorsement protecting the purchaser against all future mechanics' and materialmen's liens and provide the Commission with a release by the general contractor of the contractor's lien rights.

The prospective purchaser should be aware that there is a pending lawsuit in the Circuit Court of the Fifth Circuit, State of Hawaii, between the developer, James G. Wetherill and his wife, and Milton O'Brien and Mary Katherine O'Brien. It is filed under case number S.P. No. 94-0020, and is an appeal by the O'Briens from an arbitration award against the O'Briens and in favor of the Wetherills for certain money damages which were awarded to the Wetherills. The case does not involve title to the land, nor does it involve the record owner, Hawaiian Trust. Similarly, it does not involve any claims in relation to this condominium project. The prospective purchaser may wish to consult the public records of the Fifth Circuit Court for further information in relation to this matter.

2. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

JAMES GEORGE WETHERILL

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

By:   
\_\_\_\_\_  
Duly Authorized Signatory

6/27/94  
Date

JAMES GEORGE WETHERILL, Developer

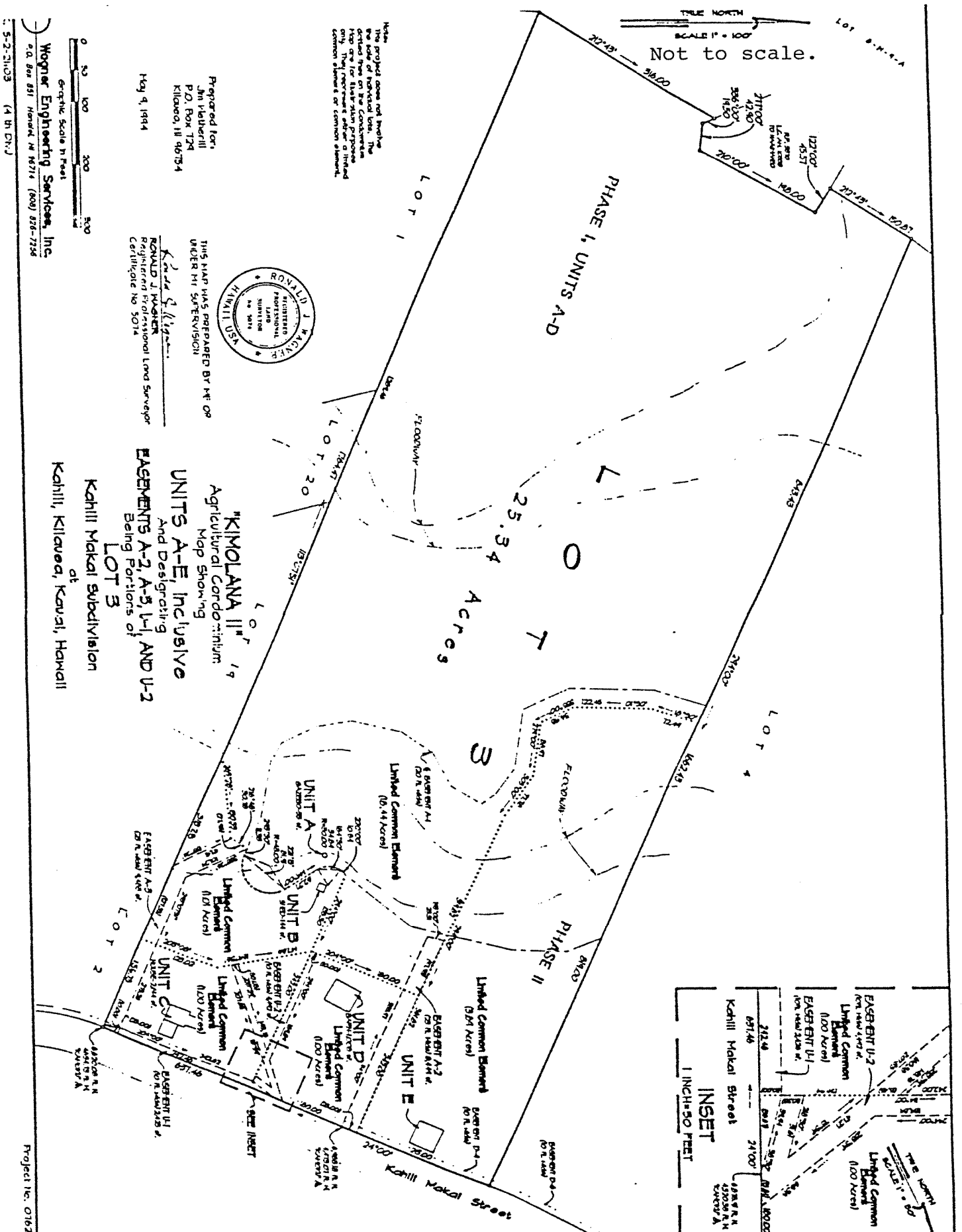
\_\_\_\_\_  
print name & title of person signing above

Distribution:

- Department of Finance, COUNTY OF KAUAI
- Planning Department, COUNTY OF KAUAI
- Federal Housing Administration

EXHIBIT A

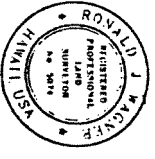
CONDOMINIUM MAP AND LIMITED COMMON ELEMENT LOCATIONS



TRUE NORTH  
SCALE 1" = 100'  
Not to scale.

Note:  
This project does not include the land of the State of Hawaii. The map is for information purposes only. They represent either a limited common element or common element.

Prepared for:  
Jim Hetherill  
P.O. Box 724  
Kilauea, HI 96754  
May 9, 1994



THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION  
RONALD J. WAGNER  
Registered Professional Land Surveyor  
Certificate No. 5014

"KIMOLANA II" 19  
Agricultural Condominium  
Map Showing  
Units A-E, Inclusive  
And Designating  
Easements A-2, A-3, A-4, AND A-5  
Being Portions of  
LOT 3

Kahili Makai Subdivision  
at  
Kahili, Kilauea, Kauai, Hawaii

Wagner Engineering Services, Inc.  
110, Box 881, Hanalei, HI 96714 (808) 826-7256  
S-2-21103 (4 in DWG)

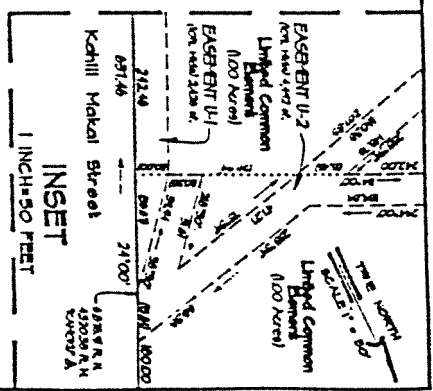


EXHIBIT B

SUMMARY OF SALES CONTRACT

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

1. The method of payment of the purchase price to the escrow agent, subject to other terms.
2. The closing date for the purchase.
3. Whether at the time of execution of the contract, a final public report has been issued.
4. The terms and conditions of the sale which include, among other provisions, the following:
  - (a) That Purchaser will receive a copy of the final public report for the project.
  - (b) Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow Agreement.
  - (c) Seller has a right to extend the closing date by 31 days or by 31 days after the public report is issued, whichever is later.
  - (d) After issuance of the Final Public Report and Buyer's waiver of its right to cancel under Hawaii Revised Statutes Section 514A-62, Purchaser shall not have the right to rescind the contract.
  - (e) Purchaser has received a copy of the Escrow Agreement for the Project.
  - (f) If Purchaser defaults, Seller may cancel the contract or bring legal action against Purchaser to force sale, obtain money damages, or retain Purchaser's deposit money held in escrow.
  - (g) The unit the Purchaser is purchasing will be shown on a condominium map prior to closing and will have the right to cancel if it is different from that shown on the Exhibit A.
  - (h) That a deed conveying clear title will be given at closing, subject to certain obligations.
  - (i) The Purchaser agrees to give future easements if reasonably required for the project.
  - (j) The Purchaser will accept the Unit "AS-IS", including, but not limited to, Purchaser assumes all risks regarding any potential hazardous materials on the condo property or property adjoining or in the vicinity, including liability for suits by third parties. Seller is, however, unaware of any such materials, chemicals or conditions on the property.
  - (k) The payment of commissions, if any, is set out in the contract.
  - (l) Time is of the essence of the obligations of Purchaser under the contract.

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

END OF EXHIBIT B



EXHIBIT C

SCHEDULE OF APARTMENTS AND COMMON INTERESTS

Qty.	Unit No.	Area of Limited Common Element* (Acres)	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	% of Common Int.
1	A	18.44	0/0	0	55-gazebo	67%
1	B	1.01	0/0	0	144-shed	11%
1	C	1.00	3/3	2130	484-garage 1142-deck/lanai	11%
1	D	1.00	0/0	0	1008-barn	11%

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

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

END OF EXHIBIT C

## EXHIBIT D

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between FIRST HAWAII TITLE CORPORATION (the "Escrow"), and HAWAIIAN TRUST COMPANY, LIMITED (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.

2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.

3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected within seven days of signing the sales contract to cancel and receive all funds paid, without deduction; or (b) the Real Estate Commission has not issued a Final Public Report on the project or the requirements of the sales contract have not been met; or (c) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met.

4. Escrow will return deposited sums to the Buyer without interest if Seller and Buyer give Escrow written notice to return the funds to Buyer, if there is a right to cancellation and refund of monies under the sales contract or otherwise. If there is a cancellation under the seven-day right, no fees will be charged Buyer. Thereafter, in the event of a cancellation as a matter of agreement or right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, and all other costs incurred in connection with the Escrow, not less than \$25.00.

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

6. As Escrow's compensation for its performance under this Agreement, Escrow will receive its schedule rate for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon schedule rate.

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

END OF EXHIBIT D

EXHIBIT E

COMMON ELEMENTS OF THE PROJECT

The common elements of the project are:

- (a) The land in fee simple;
- (b) The common utility easement;

(c) All commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone;

(d) Any and all other elements and facilities in common use or necessary to the Project.

LIMITED COMMON ELEMENTS OF THE PROJECT

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

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
A	18.44 acres
B	1.01 acres
C	1.00 acres
D	1.00 acres

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

END OF EXHIBIT E

EXHIBIT F

ENCUMBRANCES AGAINST TITLE

1. Real Property Taxes. Check with the County of Kauai, Department of Finance, Real Property Tax Division, for detailed information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Flood setback lines, as per survey of Cesar C. Portugal, Registered Professional Land Surveyor, dated March 26, 1982.
4. AGREEMENT TO INCORPORATE AGRICULTURAL RESTRICTIONS INTO INSTRUMENTS OF CONVEYANCE dated February 18, 1982, recorded in Book 16378 Page 307 by and between BETA PACIFIC, INC., a Hawaii corporation, "Subdivider", and the COUNTY OF KAUAI PLANNING DEPARTMENT, "Commission".
5. Easement D-4 (10 feet wide), situate along the Southwesterly (front) boundary of Lot 3, being more particularly described as per survey of Cesar C. Portugal, Registered Professional Land Surveyor, dated March 26, 1982, and as more fully described in Warranty Deed dated September 26, 1983, and recorded October 4, 1983 in Book 17362 Page 393.
6. Utility Easement "T-2", area 36 square feet, granted in favor of CITIZENS UTILITIES COMPANY, a Delaware corporation, being more particularly described in Warranty Deed recorded in Book 17362 Page 393.
7. Grant in favor of GLANDBAY LIMITED, a Hong Kong corporation, dated October 8, 1972, recorded in Book 16917 Page 763; granting a perpetual non-exclusive easement twenty (20) feet wide for pedestrian, roadway and utility purposes, over and across Easement "A-1" (20 feet wide), being more particularly described as per survey of Cesar C. Portugal, Registered Professional Land Surveyor, dated July 8, 1982, as more fully described in Warranty Deed recorded in Book 17362 Page 393.
8. Grant in favor of ROGER TANIGUCHI and VERALYN TANIGUCHI, husband and wife, LARRY C. MCKNIGHT and TERRY A. MCKNIGHT, husband and wife, W. A. SYMINGTON and JANICE F. SYMINGTON, husband and wife, T. JACK BENNINGTON, husband of Rita Bennington, MARTHA A. BENNINGTON, unmarried, and A. LARRY WHARTON and JAN L. WHARTON, husband and wife, dated September 14, 1982, recorded in Book 16917 Page 772, granting a perpetual, exclusive roadway, utility and pedestrian easement thirty (30) feet wide over, under and across a portion of said Lot 3. Consent thereto by the Trustees Under the Will and of the Estate of Mary N. Lucas.

9. Co-Owner's Use Agreement dated December 21, 1987, recorded on December 21, 1987 in Book 21463 Page 84, by and between JAMES GEORGE WETHERILL and LANA R. WETHERILL, husband and wife.
10. Declaration of Covenants and Restrictions dated December 21, 1987, recorded on December 24, 1987 in Book 21463 Page 117.
11. PURCHASE MONEY MORTGAGE
- Mortgagor : JAMES GEORGE WETHERILL and LANA R. WETHERILL,  
husband and wife
- Mortgagee : ANDREW G. WOTKYNS, unmarried
- Dated : October 9, 1987  
Recorded : October 28, 1987 in Book 21229 Page 522  
Consideration : \$300,000.00
- a) PARTIAL RELEASE OF AND ADDENDUM TO MORTGAGE
- Dated : June 24, 1992  
Recorded : July 7, 1992 as Document No. 92-107811
- b) EXTENSION OF AND ADDENDUM TO MORTGAGE
- Dated : April 14, 1993  
Recorded : April 27, 1993 as Document No. 93-066172
- c) ADDENDUM TO MORTGAGE
- Dated : December 7, 1993  
Recorded : December 16, 1993 as Document No. 93-208999
12. The terms and provisions of Land Trust No. 89531 with HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii corporation, as Trustee, initial beneficiaries: JAMES GEORGE WETHERILL and LANA R. WETHERILL, husband and wife, as Tenants by the Entirety, as to an undivided 100% interest.
13. Condominium Map No. 2055 filed on June 30, 1994.
14. The covenants, agreements, obligations, conditions and other provisions as set forth in Declaration of Condominium Property Regime entitled "KIMOLANA II", dated June 16, 1994, recorded as Document No. 94-110396, and the Bylaws recorded as Document No. 94-110397, to which reference is hereby made.

END OF EXHIBIT F

EXHIBIT G

DISCLOSURE ABSTRACT FOR  
KIMOLANA II CONDOMINIUM

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

1. The Developer of the project is JAMES GEORGE WETHERILL, P. O. Box 729, Kilauea, Hawaii, 96754.

2. See Exhibit H for the projected annual maintenance fees. The Developer hereby certifies that the estimations have been based on generally accepted accounting principles.

3. No warranty will apply to any individual agricultural units. There are pre-existing structures on the property and no warranty will be made regarding the agricultural buildings.

4. If any condominium unit is converted to residential use, no such units will be used for both hotel and residential use; these are condominium units in which residential use is permitted, but hotel use is not.

5. There will be no commercial use except those activities permitted by the Kauai County Comprehensive Zoning Ordinance.

6. Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed for the above-referenced project. There are four units, each of which sustains a structure and each of which will burden the common elements. However, because the size of the limited common element of Unit A is much larger than the other units (86% of the total, compared to 5% for each of the others), it has the largest common interest. To balance fairness, Unit A has received 67% of the common interest and voting interests, and the other units, B, C and D, have 11% each. This way no one unit can make changes in the Declaration of Condominium Property Regime.

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

Dated: 10/31/94

RECEIPT

The undersigned has received a copy of the foregoing disclosure abstract with Exhibit H this \_\_\_ day of \_\_\_\_\_, 19\_\_.

Purchaser(s)  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT     H    

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>	
A	\$128.64	\$1,543.68
B	\$ 21.12	\$ 253.44
C	\$ 21.12	\$ 253.44
D	\$ 21.12	\$ 253.44
	Total \$192.00	Total \$2,304.00

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

Estimate of Maintenance Fee Disbursements:

Monthly x 12 months = Yearly Total

Utilities and Services

- Air Conditioning
- Electricity
  - common elements only
  - common elements and apartments
- Elevator
- Gas
- Refuse Collection
- Telephone
- Water and Sewer

Maintenance, Repairs and Supplies

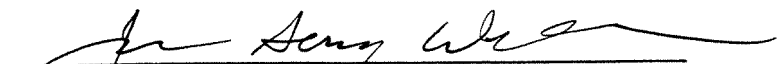
- Building
- Grounds

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance	\$167.00	\$2,004.00
Reserves(*)		
Taxes and Government Assessments		
Audit Fees		
Other - Association Office Expenses	\$ 25.00	\$ 300.00
TOTAL	\$192.00	\$2,304.00

I, JAMES GEORGE WETHERILL, developer of the condominium project KIMOLANA II, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
 \_\_\_\_\_  
 JAMES GEORGE WETHERILL  
 Dated: July 8, 1994

(\*) Mandatory reserves in effect January 1, 1993



## EXHIBIT I

### SUMMARY OF DECLARATION OF COVENANTS AND RESTRICTIONS

This project is affected by a Declaration of Covenants and Restrictions (hereinafter called the "Declaration" or "restrictive covenants" or "covenants"), dated December 21, 1987, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21463 at Page 117. This is a summary of the covenants and restrictions. It is not meant to completely recite the actual provisions of the covenants, nor to cover every issue in which a purchaser might have interest. Prospective purchasers are urged to obtain a full copy of the covenants from the project developer prior to entering into an agreement to purchase a unit in this project.

1. Buildings are to be constructed in accordance with the covenants and plans and specifications approved by the County of Kauai.
2. There is a \$50.00 per square foot minimum building cost for residences.
3. No building shall be located on any homesite nearer than 20 feet to any boundary.
4. There are restrictions on: types of building materials, roofing color, pitch and composition, laundry and storage areas, building height and the cutting of trees and other vegetation. Outbuildings must be of quality workmanship and all structures must be maintained in good repair at all times.
5. Dumping is prohibited.
6. Pigs, hogs, more than three dogs which are owned and kept as pets, dogs kept for commercial breeding or kennel purposes, goats, sheep and commercial chicken raising are prohibited.
7. There is a restriction against temporary structures.
8. Owners must maintain the stream valley areas in a clean and sanitary condition.
9. Homesites must meet State of Hawaii Health Department standards.
10. There are restrictions on hedge heights and the blocking of view planes.
11. The restrictive covenants will remain in effect until the land is reclassified to something other than Agricultural or until the year 2042, whichever is later.
12. Any violation of the Declaration of Covenants and Restrictions and disputes over its application or interpretation shall be decided by arbitration.

END OF EXHIBIT I

## EXHIBIT J

### SUMMARY OF CO-OWNER'S USE AGREEMENT

This project is affected by a Co-Owner's Use Agreement (hereinafter called the "use agreement" or "agreement") dated December 21, 1987, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21463 at Page 084. This is a summary of the use agreement. It is not meant to completely recite the actual provisions of the agreement, nor to cover every issue in which a purchaser might have interest. Prospective purchasers are urged to obtain a full copy of the use agreement from the project developer prior to entering into an agreement to purchase a unit in this project.

1. The property is designated for use as five homesites.
2. Owners may make such use of their homesite as permitted under state law and county ordinances, except that:
  - a. No party shall allow conditions constituting a public nuisance or danger to exist.
  - b. Each party shall bear the cost of their own improvements.
  - c. If any common expense is increased as a result of a party's improvements, the responsible party shall bear the increased expense.
  - d. Each party is responsible for installing their own utilities and all utility lines are to be placed underground.
  - e. No party shall commit any act or omission whereby the property becomes subject to foreclosure.
  - f. Each party is to insure their own improvements against fire and other casualty.
  - g. Each party is to maintain comprehensive public liability insurance.
  - h. No party is allowed to construct more than one dwelling.
  - i. All owners are to cooperate in keeping the stream area in a clean and sanitary condition.
  - j. The restrictive covenants governing the property shall apply to all owners.
  - k. Hedges are restricted to 8' in height; vegetation and structures shall not block view planes.
  - l. Formal boundaries may be established.
  - m. Parties may adjust or amend their common boundaries.

n. The property is subject to easements for pedestrian, roadway and utility purposes in favor of a neighboring lot and the owners of Lot 3. The Agreement includes provisions for maintaining these easements.

o. There are contingencies for future easements.

p. There are restrictions as to the location of certain driveways.

3. Each party to the agreement indemnifies the other parties against actions arising from the use or occupancy of the property.

4. No party shall have the authority to obligate any other party for any expense or liability and common expenses are to be pro rated between the owners. The Wetherills shall act as agents for all of the owners and are responsible for obtaining and maintaining common insurance, paying real property taxes and insurance premiums, collecting each party's respective share of common expenses and keeping books and records of the expenses.

5. The agreement contains provisions for a change in state law or county ordinances which would allow more or less than five dwellings can be constructed on the property.

6. The agreement also contains provisions for formal subdivision of the property.

7. The agreement provides for any party selling their interest in the property to first offer it to the other parties.

8. If a party fails to pay funds as required under the agreement, the party will be in default. The agreement contains provisions for the curing of defaults by the non-defaulting parties.

9. The agreement shall terminate upon either the granting of final subdivision approval by the County or by written agreement of the parties.

10. Violation of the agreement and disputes over its application and interpretation shall be decided by arbitration.

11. The agreement provides for the responsibilities and obligations of the Wetherills for the underlying mortgage on the property.

END OF EXHIBIT J