

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

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

FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT ON

LAWAI BEACH RESORT
RR#1 Lawai Road
Koloa, Kauai, Hawaii

REGISTRATION NO. 1459

IMPORTANT — Read This Report Before Buying

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

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

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project until

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

Issued: August 24, 1982
Expires: September 24, 1983

SPECIAL ATTENTION

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

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION FILED SEPTEMBER 18, 1981, AND INFORMATION SUBSEQUENTLY FILED AS OF August 23, 1982. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. Since the issuance of the Commission's Preliminary Public Report dated October 2, 1981 on LAWAI BEACH RESORT, Registration No. 1459, and the Commission's Supplementary Public Report dated February 23, 1982, the Developer has forwarded additional information reflecting the fact that material changes have been made in the documents and plans for the project.
2. THIS PUBLIC REPORT SHALL ALLOW THE DEVELOPER TO ENTER INTO SALES CONTRACTS ONLY WITH RESPECT TO APARTMENTS IN THE FIRST INCREMENT OF LAWAI BEACH RESORT. The first increment consists of the 4-story building (Building "C"), fifty (50) apartments and seventy-five (75) parking stalls described in the Commission's Preliminary Public Report dated October 2, 1981. Construction of the first increment has been completed and upon completion of construction of the second increment (Building "A"), the project will contain one hundred ten (110) apartments and one hundred fifty (150) parking stalls. Construction of the second increment is presently underway. The Developer has amended the Declaration and Condominium Map to add the third increment of the project (Building "B") containing forty (40) apartments and sixty-two (62) parking stalls. Construction of the third increment is not as yet underway, and plans for it are subject to change.
3. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of a condominium project and issuance of this Final Public Report.

The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners and a copy of the approved floor plans) have been recorded in the Bureau of Conveyances of the State of Hawaii in Liber 16049 at Page 189. The First and Second Amendment to the Declaration of Horizontal Property Regime were recorded as aforesaid in Liber 16506 at Pages 714 and 720, respectively. The approved floor plans have been designated Condominium File Plan No. 835.

4. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A of the Hawaii Revised Statutes, and the Rules and Regulations of the Hawaii Real Estate Commission which relate to Horizontal Property Regimes.
5. This Final Public Report automatically expires thirteen (13) months after date of issuance, August 24, 1982, unless a Supplementary Public Report is issued, or the Commission, upon review of the registration, issues an order extending the effective period of this report.
6. This Final Public Report is made a part of the registration of LAWAI BEACH RESORT. The Developer shall be responsible for placing this Final Public Report (white paper stock), the Supplementary Public Report (pink paper stock), the Preliminary Public Report (yellow paper stock), and the Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed receipt therefor.

Except for the information under the topical headings which follow, the information in the Preliminary Public Report dated October 2, 1981, as amended by the Supplementary Public Report dated February 23, 1982, has not materially changed.

ATTORNEY REPRESENTING DEVELOPER: Co-counsel for the developer is Carlsmith & Dwyer (Attention: Charles E. Pear, Jr. or Mitchell A. Imanaka), 1800 Pioneer Plaza, 900 Fort Street, Honolulu, Hawaii 96813. Telephone: (808) 524-8000.

DESCRIPTION: The Declaration of Horizontal Property Regime, as amended, and plans submitted by the Developer now indicate a fee simple condominium project consisting of one hundred fifty (150) apartments contained in three (3) buildings, without basements, constructed principally of concrete and concrete block.

The location and description of the various apartments of the project are as set forth in the Exhibit "A" attached to this Final Public Report.

The apartments have immediate access to an access corridor leading to two (2) stairways and an elevator, each of which leads to the grounds of the project.

The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, doors and door frames, windows and window frames, the deck air space (if any), the inner decorated or finished surfaces of all walls, floors and ceilings, and all fixtures originally installed therein.

NOTE: The Declaration, as amended, provides that the Developer reserves certain rights to carry on sale activities, withdraw from the Declaration certain portions of the lands of the project, add additional apartments, buildings and common elements, adjust common interests appurtenant to apartments of the project, amend the Declaration or any deed or record any correction deed to accomplish the foregoing, grant easements to others to use certain portions of the common elements (including parking areas) and other reservations, all as set forth in Exhibit "B" attached hereto and made a part hereof.

This Final Public Report is concerned only with the apartments contained in the first increment (Building C and related improvements). Information and disclosures concerning the apartments in the second and third increments (Buildings A and B and their related improvements) will be covered in separate Real Estate Commission registrations. Information on those increments is included in this Final Public Report solely to advise purchasers of the developer's present plans for the second and third increments. To the extent the developer's plans change, the second and third increments may also change, so purchasers should not rely on the description of the second and third increments as being firmly fixed or determined.

COMMON ELEMENTS: The information under this topical heading in the Preliminary and Supplementary Public Report has been amended to include the additional parking stalls, the swimming pool and sundeck to be built in the third increment. Accordingly, this section has been amended to read as follows:

"One free hold estate is hereby designated in all remaining portions of the project, herein called the "common elements", including specifically but not limited to:

- (a) Said land in fee simple;
- (b) All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter, party and load-bearing walls, roofs, entries, stairways, elevators, walkways, entrances and exits of said buildings;
- (c) All yards, grounds and landscaping;
- (d) All parking areas, including the two hundred twelve (212) parking stalls;
- (e) The swimming pool and sun deck;
- (f) All pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;
- (g) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use."

NOTE: In the event the third increment is not constructed, it is likely that the additional parking stalls in the third increment, the swimming pool and the sundeck may not be built.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The information under the topical heading "Purposes of Building and Restrictions as to Use" contained in the Preliminary Public Report dated October 2, 1981, as amended by the Commission's Supplementary Public Report dated February 23, 1982, has not materially been changed. The developer has advised the Commission that pursuant to the provisions of the Declaration, the developer has taken steps to create a time share program in the Lawai Beach Resort condominium. The time share program was registered with the Department of Commerce and Consumer Affairs of the State of Hawaii as Registration No. TD(N)-60 and the file is available for inspection thereat.

ENCUMBRANCES AGAINST TITLE: A Preliminary Report dated July 26, 1982 prepared by Title Guaranty of Hawaii, Inc., provides that the following are encumbrances against title to the property:

1. Any and all Real Property Taxes that may be due and owing; reference is made to the office of the Director of Finance, County of Kauai, Hawaii.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Easement "S-1" (0.297 acre) as shown on Tax Map.
4. Reservation unto McBryde Sugar Company, Limited, of all water rights.
5. Grant in favor of Kauai Securities, Limited, a Hawaii corporation, dated November 27, 1974, recorded in Liber 10301 at Page 170; granting an easement for sewer purposes in favor of Lot 5-B.
6. Relocation of Easements for Roadway and Parking dated January 17, 1978, recorded in Liber 12696 at Page 737, in favor of the Board of Directors of the Association of Apartment Owners of Prince Kuhio Condominium Project.
7. Excepting and reserving therefrom unto Grantor, its successors and assigns, all water rights appurtenant to the real property and easements for ditches, flumes, siphons, pipelines, tunnels, roads, power lines, pump lines, pumps and for all other existing facilities and future requirements, and rights to develop and transport water, including the right to grant any such easement and/or rights to other parties, together with the right to enter upon said premises for the purpose of maintaining same, as excepted and reserved in Deed from McBryde Sugar Company, Limited, a Hawaii corporation, dated March 30, 1979, recorded in Liber 13800 at Page 173.
8. Mortgage in favor of Kauai Savings and Loan Association dated August 29, 1964, recorded in Liber 4829 at Page 86.
9. Additional Charge Mortgage to the Mortgage set forth as Encumbrance No. 8 in favor of Kauai Savings and Loan Association dated July 15, 1965, recorded in Liber 5088 at Page 515.
10. Additional Charge Mortgage to the Mortgage set forth as Encumbrance No. 8 in favor of Kauai Savings and Loan Association dated April 5, 1967, recorded in Liber 5629 at Page 337.
11. The above Mortgage and Additional Charge Mortgages were assigned to American Savings and Loan Association, a Utah corporation, by assignment dated December 29, 1971 (effective as of December 30, 1971), recorded in Liber 8055 at Page 1.
12. Right-of-Entry in favor of Citizens Utilities Company and Hawaiian Telephone Company, dated July 20, 1981, recorded in Liber 15806 at Page 367; granting a right-of-entry and easement over and across that certain property situate, lying and being at Koloa (Makai-Lawai Beach), County of Kauai, State of Hawaii, more particularly described as L.C. Aw. 3409; Lot 8, Tax Map Key 2-6-05-4.
13. The restrictions on use and other restrictions and all other of the covenants, agreements, obligations, conditions, reservations, easements and other provisions set forth in Declaration of Horizontal Property Regime dated December 17, 1981, recorded in Liber 16049 at Page 189, and the By-Laws attached thereto. (Project covered by Condominium Map No. 835.) [Said Declaration was twice amended by instruments recorded in Liber 16506 at Page 714 and 16506 at Page 720, respectively.]

14. Lawai Beach Resort Time Sharing Program - Time Share Declaration dated December 17, 1981, recorded in Liber 16049 at Page 418.

15. Unrecorded Agreement for Joint Use of Sewage Treatment Facility dated May 17, 1980, by and between Metropolitan Mortgage & Securities Co., Inc. and the Association of Apartment Owners of the Prince Kuhio Condominium Project, attached to Declaration of Horizontal Property Regime recorded in Liber 16049 at Page 189.

PURCHASE MONEY HANDLING: The information under the topical heading "Purchase Money Handling" contained in the Preliminary Public Report dated October 2, 1982, as amended by the Commission's Supplementary Public Report dated February 23, 1982, has not materially changed. However, those provisions do not apply to the sale of time share interests by the developer of the time share program. Buyers of time share interests should consult the Disclosure Statement of the Lawai Beach Resort Time Share Plan. A copy of the same will be given to each time share buyer at the time of his purchase.

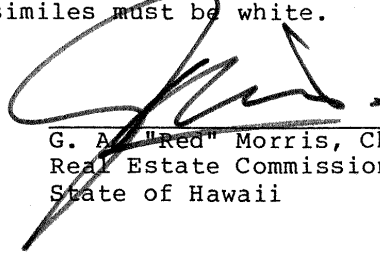
NOTE: Buyers should be aware that no apartment owner, including the Developer, shall become obligated for the payment of his proportionate share of common expenses allocated to his apartment until such time as a temporary or final certificate of occupancy relating to his apartment is issued by the appropriate county agency. Prior to the issuance of a certificate of occupancy for apartments created by and subject to the Declaration, as amended, the common expenses shall be charged to and divided among the owners of apartments for which a certificate of occupancy has issued in proportion to the ratio that the common interest appurtenant to their respective apartments bears to the sum of the common interests of all of the apartments for which a certificate of occupancy has been issued. In other words, the share of common expenses allocated to each apartment for which a certificate of occupancy has been issued shall be equal to the product resulting when the total common expenses for the project is multiplied by the apartment's appurtenant common interest divided by the total of the common interests for all apartments in the project for which a certificate of occupancy has issued.

STATUS OF THE PROJECT: The developer has advised the Commission that construction of the first increment of the project (Building C) has been completed, as evidenced by the Certificate of Occupancy issued by the County of Kauai dated June 3, 1982, a copy of which has been filed with the Commission. The developer has also advised the Commission that construction of the second increment (Building A) has commenced and is expected to be completed about May, 1983. Construction of the third increment has not begun.

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The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the Notice of Intention submitted on September 18, 1981, and information subsequently filed as of July 30, 1982.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of Registration No. 1459 filed with the Commission on September 18, 1981. This Report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be white.



G. A. "Red" Morris, Chairman
Real Estate Commission
State of Hawaii

DISTRIBUTION:

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

Registration No. 1459

August 24, 1982

EXHIBIT "A"

A. Building C consists of a 4-story building, without a basement, and containing fifty (50) apartments:

1. Apartment Nos. 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 and 113 are located on the first floor of Building C.

2. Apartment Nos. 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213 are located on the second floor of Building C.

3. Apartment Nos. 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312 and 313 are located on the third floor of Building C.

4. Apartment Nos. 402, 403, 404, 405, 406, 407, 408, 409, 410, 411 and 412 are located on the fourth floor of Building C.

5. The apartments of Building C are constructed according to several different floor plans. A description of each of the floor plans, designating the layout, the number of rooms and the approximate area thereof, is as follows:

(a) Type "A": Three (3) apartments, being Apartment Nos. 101, 201 and 301, are built according to this floor plan, consisting of six (6) rooms, including two (2) bedrooms, two (2) bathrooms, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1056 square feet, plus a deck area of approximately 345 square feet, and shall have an appurtenant common interest of .7531 percent.

(b) Type "B" (First Floor): Nine (9) apartments, being Apartment Nos. 102, 103, 104, 105, 106, 107, 110, 111 and 112 are built according to this floor plan (or its mirror image), consisting of four (4) rooms, including a bedroom, a bathroom, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 683 square feet, plus a deck area of approximately 123 square feet, and shall have an appurtenant common interest of .4871 percent.

(c) Type "B" (Second, Third and Fourth Floors): Twenty-seven (27) apartments, being Apartment Nos. 202, 203, 204, 205, 206, 207, 210, 211, 212, 302, 303, 304, 305, 306, 307, 310, 311, 312, 402, 403, 404, 405, 406, 407, 410, 411 and 412, are built according to this floor plan (or its mirror image), consisting of four (4) rooms, including a bedroom, a bathroom, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 747 square feet, plus a deck area of approximately 123 square feet, and shall have an appurtenant common interest of .5328 percent.

(d) Type "C" (First Floor): Apartment No. 108 consists of five (5) rooms, including two (2) bedrooms, a bathroom, a kitchen, a living area and a deck. This apartment contains a net living area of approximately 961 square feet, plus a deck area of approximately 219 square feet, and shall have an appurtenant common interest of .6853 percent.

(e) Type "C" (Second, Third and Fourth Floors): Three (3) apartments, being Apartment Nos. 208, 308 and 408, are built according to this floor plan, consisting of five (5) rooms, including two (2) bedrooms, a bathroom, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1049 square feet, plus a deck area of approximately 219 square feet, and shall have an appurtenant common interest of .7481 percent.

(f) Type "D" (First Floor): Apartment No. 109 consists of five (5) rooms, including two (2) bedrooms, a bathroom, a kitchen, a living area and a deck. This apartment contains a net living area of approximately 917 square feet, plus a deck area of approximately 123 square feet, and shall have an appurtenant common interest of .6539 percent.

(g) Type "D" (Second, Third and Fourth Floors): Three (3) apartments, being Apartment Nos. 209, 309 and 409 are built according to this floor plan, consisting of five (5) rooms, including two (2) bedrooms, a bathroom, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1005 square feet, plus a deck area of approximately 123 square feet, and shall have an appurtenant common interest of .7167 percent.

(h) Type "E": Two (2) apartments, being Apartment Nos. 113 and 213 are built according to this floor plan, consisting of six (6) rooms, including two (2) bedrooms, two (2) bathrooms, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1103 square feet, plus a deck area of approximately 372 square feet, and shall have an appurtenant common interest of .7867 percent.

(i) Type "F": Apartment No. 313 consists of six (6) rooms, including two (2) bedrooms, two (2) bathrooms, a kitchen, a living area and a deck. This apartment contains a net living area of approximately 1103 square feet, plus a deck area of approximately 447 square feet, and shall have an appurtenant common interest of .7866 percent.

NOTE: The net living area of each apartment is measured from the interior surface of the apartment perimeter and party walls and includes all of the walls and partitions within its perimeter and party walls, whether load bearing or non-load bearing.

B. Building A consists of a 4-story building, without a basement, and containing sixty (60) apartments.

1. Apartment Nos. 101, 103, 105, 107, 109, 111 and 113 to be located in the left wing of the first floor of Building A.

2. Apartment Nos. 102, 104, 106, 108, 110, 112 and 114 to be located in the right wing of the first floor of Building A.

3. Apartment Nos. 201, 203, 205, 207, 209, 211, 213 and 215 to be located in the left wing of the second floor of Building A.

4. Apartment Nos. 202, 204, 206, 208, 210, 212, 214 and 216 to be located in the right wing of the second floor of Building A.

5. Apartment Nos. 301, 303, 305, 307, 309, 311, 313 and 315 to be located in the left wing of the third floor of Building A.

6. Apartment Nos. 302, 304, 306, 308, 310, 312, 314 and 316 to be located in the right wing of the third floor of Building A.

7. Apartment Nos. 401, 403, 405, 407, 409, 411 and 413 to be located in the left wing of the fourth floor of Building A.

8. Apartment Nos. 402, 404, 406, 408, 410, 412 and 414 to be located in the right wing of the fourth floor of Building A.

9. The apartments of Building A are constructed according to several different floor plans. A description of each of the floor plans, designating the layout, the number of rooms and the approximate area thereof, is as follows:

(a) Type "A". Thirty-eight (38) apartments, being Apartment Nos. 101, 103, 107, 109, 102, 104, 108, 110, 201, 203, 205, 209, 211, 202, 204, 206, 210, 212, 301, 303, 305, 309, 311, 302, 304, 306, 310, 312, 401, 403, 405, 409, 411, 402, 404, 406, 410 and 412 are built according to this floor plan (or its mirror image), consisting of four (4) rooms, including a bedroom, a bathroom, a kitchen, a living room and a deck. Each of these apartments contain a net living area of approximately 823 square feet, plus a deck area of approximately 100 square feet, and shall have an appurtenant common interest of .5870 percent.

(b) Type "B". Twenty-two (22) apartments, being Apartment Nos. 105, 111, 113, 106, 112, 114, 207, 213, 215, 208, 214, 216, 307, 313, 315, 308, 314, 316,

407, 413, 408 and 414 are built according to this floor plan (or its mirror image), consisting of six (6) rooms, including two (2) bedrooms, two (2) bathrooms, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1217 square feet, plus a deck area of approximately 148 square feet, and shall have an appurtenant common interest of .8680 percent.

NOTE: The net living area of each apartment is measured from the interior surface of the apartment perimeter and party walls and includes all of the walls and partitions within its perimeter and party walls, whether load bearing or non-load bearing.

C. Building B consists of a 4-story building, without a basement, and containing forty (40) apartments:

1. Apartment Nos. 101, 102, 103, 104, 105, 106, 107, 108 and 110 are located in the first floor of Building B.

2. Apartment Nos. 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 and 212 are located on the second floor of Building B.

3. Apartment Nos. 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 312 are located on the third floor of Building B.

4. Apartment Nos. 401, 402, 403, 404, 405, 406, 407, 408 and 410 are located on the fourth floor of Building B.

5. The apartments of Building B are constructed according to several different floor plans. A description of each of the floor plans designating the layout, the number of rooms and the approximate area thereof, is as follows:

(a) Type "A": Twenty-four (24) apartments, being Apartment Nos. 103, 104, 106, 201, 203, 205, 202, 204, 206, 208, 301, 303, 305, 302, 304, 306, 308, 401, 403, 405, 402, 404, 406 and 408, are built according to this floor plan (or its mirror image), consisting of five (5) rooms, including 1 bedroom suite, 1 bathroom, a kitchen, a living/dining area and lanai. Each of these apartments contains a net living area of approximately 864 square feet, plus a lanai area of approximately 133 square feet, and shall have an appurtenant common interest of .6161 percent.

(b) Type "B": Fourteen (14) apartments, being Apartment Nos. 105, 107, 108, 110, 207, 209, 210, 212, 307, 309, 310, 312, 407 and 410, are built according to this floor plan (or its mirror image), consisting of eight (8) rooms, including 2 bedroom suites, 2 bathrooms, a kitchen, a living room, a dining area and a lanai. Each of these apartments contains a net living area of approximately 1,272 square feet, plus a lanai area of approximately 198 square feet, and shall have an appurtenant common interest of .9071 percent.

(c) Type "Paraplegic": Two (2) apartments, being Apartment Nos. 101 and 102, are built according to this floor plan (or its mirror image), consisting of seven (7) rooms, including 2 bedroom suites, 2 bathrooms, a kitchen, a living/dining area and lanai. Each of these apartments contains a net living area of approximately 1,395 square feet, plus a lanai area of approximately 133 square feet, and shall have an appurtenant common interest of .9949 percent.

NOTE: The net living area of each apartment is measured from the interior surface of the apartment perimeter and party walls and includes all of the walls and partitions within its perimeter and party walls, whether load bearing or non-load bearing.

EXHIBIT "B"

A. Sales Activity. The Fee Owner shall have the right to conduct extensive sales activities on the project, including the use of model apartments, sales and management offices, and extensive sales displays and activities until the earlier to occur of (a) forty-eight (48) months from the date of the recording in the Bureau of Conveyances of the State of Hawaii of the first apartment deed or (b) the closing of the sale of the last unsold apartment in the project (including any additional apartments added to the project, as hereinafter set forth). In the event that the Fee Owner is unable to sell all of the apartments within the forty-eight (48) month period, the Fee Owner shall have the right to conduct sales activities on the project until the closing of the sale of the last unsold apartment in the project provided that such sales activities are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession, and aesthetic enjoyment of the project by the other apartment owners. In the event that the Fee Owner's mortgage lender or any successor to or assignee of the Fee Owner's mortgage lender shall acquire any portion of the project in the course of any foreclosure or other legal proceeding or by a deed in lieu of foreclosure, such mortgage lender, its successors and assigns shall have the right to conduct such extensive sales activities on the property until at least ninety-five percent (95%) of all of the apartments have been sold and closed, notwithstanding the foregoing.

B. Completion Work. The Fee Owner, its agents, employees, contractors, licensees, successors, and assigns shall have an easement over and upon the project as may be reasonably necessary for the completion of improvements to and correction of defects in the project. Such easement shall terminate twenty-four (24) months after the later of (i) the date of the recording in the Bureau of Conveyances of the State of Hawaii of the first apartment deed, or (ii) "substantial completion" (as the term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the improvement to be completed or corrected (including any additional improvements added to the project, as hereinafter set forth).

C. Addition of Apartments. Any provision of this Declaration to the contrary notwithstanding, the Fee Owner, at its sole option, may from time to time amend the project and this Declaration, at any time up to but not later than December 31, 1990, to create up to an additional fifty (50) apartments together with such servicing and supporting common elements which Fee Owner determines in its sole discretion are beneficial to the project, as partially shown on said Condominium File Plan. The Fee Owner shall have the further right, upon any such addition or in the event of any change in the plans for Building B, to adjust the common interests appurtenant to existing apartments of the project, consistent with the provisions of paragraph C.3. below, by amendment of this Declaration and any deed or deeds and/or by the recordation of any correction deed deemed necessary by Fee Owner in its sole discretion. The project currently consists of only one

hundred fifty (150) apartments as described above and in said Exhibit "B"; said apartments are located in Buildings A, B and C, as shown on said Condominium File Plan, as amended. Building B has not yet been built and is subject to change, relocation and modification by the Fee Owner in its sole discretion, and Fee Owner shall have the right to amend this Declaration to reflect any such change, relocation or modification. All of the provisions below (in this section concerning the addition of apartments) with respect to the creation of said additional fifty (50) apartments shall apply as well to the construction of the second increment (Building A) and third increment (Building B) of the project.

1. Prior to commencement of any such construction, Fee Owner shall secure a performance and payment bond naming as co-obligees collectively the owners of all existing apartments as their interest may appear through the Association of Apartment Owners, in a penal sum of not less than fifty percent (50%) of the costs of the construction of the additional apartments with a corporate surety authorized to do business in Hawaii, guaranteeing performance of such construction free and clear of all mechanics' and materialmen's liens.

2. In connection with, and to the extent necessary or appropriate for the construction and marketing of the additional apartments and common elements as aforesaid, Fee Owner shall have the right to remove, amend or add common elements; to remove, amend or add parking spaces; to enter upon the project premises with employees, agents and contractors for all purposes rea-

sonably necessary for or useful to constructing and completing said additional apartments and common elements according to plans and specifications or amended plans and specifications approved by the officer of the County of Kauai having jurisdiction over the issuance of building permits; to market said apartments, erect "for sale" signs, hold open houses and carry on other sales activities; to connect the additional apartments and common elements to the utilities of the project; to file amendments to this Declaration for purposes of certifying condominium file plans filed or being filed as reflecting the improvements shown therein to be "as built". Fee Owner shall have no liability to the Association or any apartment owner of the project for the creation of dust, noise, vibrations or other nuisances arising out of or in connection with any work incidental or connected with the construction, completion, and sale of said additional apartments and common elements.

3. Upon an amendment of this Declaration to add the above described apartments, each of the apartments of the project as then constituted shall have appurtenant thereto an undivided percentage interest in the common elements of the project computed as follows: the net living area (square footage) of each apartment shall be divided by the total net living areas (square footage) of all apartments of the then constituted project, and the decimal figures shall be converted to percentages and rounded to four decimal places; the Fee Owner shall have the power to adjust the last two decimal places of

the percentage interests of the apartments in its sole discretion such that the total percentage interests of all apartments shall equal one hundred percent (100.0000%).

4. Such additional apartments and common elements shall be located on the lands of the project, or part thereof, as determined by the Fee Owner in its sole discretion, with reference, however, to the advice of a registered architect or professional engineer. The Fee Owner shall for all purposes be deemed the "apartment owner" as to such additional apartments.

5. The Board of Directors of the project immediately prior to an addition of the above mentioned apartments shall continue to govern the project in accordance with the provisions of this Declaration and the By-Laws.

6. Each and every party acquiring an interest in the property, by such acquisition, consents to the provisions contained in this paragraph C., and consents specifically, but without limitation, to the addition of apartments to the project, the removal, amendment or addition of common elements, including parking spaces, the adjustment of the undivided percentage interest appurtenant to each apartment of the project, consistent with paragraph C.3. of this Exhibit "D", the amendment or amendments of this Declaration and/or the Condominium File Plan and the recording thereof at the Bureau of Conveyances of the State of Hawaii to effect any of the foregoing, and to the amendment or amendments of deeds and the recording thereof, or the recording of correction deeds, at the Bureau of Conveyances of the State of Hawaii to effect any adjustment

of common interest. Each and every party acquiring an interest in the property, by such acquisition, agrees to execute such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Fee Owner and its assigns his attorney-in-fact with full power of substitution to execute such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of such party or parties.

7. If any one or more of the provisions of this paragraph shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of this paragraph and shall in no way affect the enforceability of any other provision hereof.

D. Right to Withdraw Certain Property.

1. Any provision of this Declaration to the contrary notwithstanding, the Fee Owner, at its sole discretion, may from time to time amend the project and this Declaration, at any time up to but not later than December 31, 1990, to subdivide and withdraw all or any portion of the lands of the project from the Declaration and the project, and the provisions of Chapter 514A of the Hawaii Revised Statutes, provided that: (1) in no event shall the Fee Owner subdivide and withdraw the area surrounding Building C as outlined in red on the said Condominium File Plan, as amended; and (2) in the event that any of the apartments in Building A are sold and closed, the Fee Owner shall not subdivide and withdraw the

area surrounding said Building A as outlined in red on the said Condominium File Plan, as amended; and (3) in the event that any of the apartments in Building B are sold and closed, the Fee Owner shall not subdivide and withdraw the area surrounding said Building B as outlined in red on the said Condominium File Plan, as amended.

2. In connection with the removal of such parcel or parcels of land from the project, the Fee Owner shall have the right to grant, from time to time but not later than December 31, 1990, to the owners from time to time of such withdrawn land, the right to use all of the common elements of the project not located within Building C (and Building A, if applicable), including without limitation all yards, grounds, parking areas, telephone, electrical, water and sewer lines and facilities. The owners of the withdrawn land granted such right shall have the right to use such common elements to the same extent and subject to the same limitations as are imposed upon owners of apartments in the project. During the period any such owners of the withdrawn land have such right they shall maintain comprehensive general liability insurance covering the use of such common elements by them, which insurance shall name all apartment owners of the project as additional insureds, with minimum limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) for injury to one or more persons in any one accident or occurrence and/or for property damage, and from time to time deposit promptly with the Secretary of the Association of this project current certificates of such insurance.

3. Each and every party acquiring an interest in the property, by such acquisition, consents to the provisions contained in this paragraph C. and consents specifically, but without limitation, to any such subdivision and withdrawal from the property and/or the granting of easements and/or rights of ways as provided in paragraph D.2. and to the amendment or amendments of this Declaration and the recording thereof and/or the recording of grants of easement at the Bureau of Conveyances of the State of Hawaii to effect the same; agrees to execute such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Fee Owner and its assigns his attorney-in-fact with full power of substitution to execute such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of such party or parties.