

CONDOMINIUM PUBLIC REPORT

Prepared &
Issued by:

Developer: ARTHUR HARRY BROWNSTEIN
Address: P.O. BOX 730
4781 KAPA 'KA ROAD
HANAIEI, HAWAII 96714

Project Name(*): KAPA 'KA ROAD CONDOMINIUM
Address: KAPA 'KA ROAD
PRINCEVILLE, KAUAI, HAWAII

Registration No. 2346
(Partial Conversion)

Effective date: July 23, 2004
Expiration date: August 23, 2005

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: The developer may not as yet have created the condominium but has filed with the (yellow) Real Estate Commission minimal information sufficient for a Preliminary Public Report. A final Public Report will be issued by the developer when complete information is filed.
- FINAL: The developer has legally created a condominium and has filed complete information (white) with the Commission.
 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: December 31, 1990
 Supplementary Public Report dated:
- And Supersedes all prior public reports
 Must be read together with
 This report reactivates the _____ public report(s) which expired on

(*) Exactly as named in the Declaration

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

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

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

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

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.
 Changes made are as follows:

Revised Format:

The public report format currently in use by the Real Estate Commission ("Commission") is different from the format upon which the Final Public Report for this project was issued back in December 31, 1990. Although this Supplementary Public Report may be read with the earlier Final Public Report, if a prospective purchaser desires to compare the previous report to this Supplementary Public Report, the purchaser should be aware that the information contained on a specific page of this Supplementary Public Report may not coincide with the same page number in the Final Public Report. Therefore, it is suggested that the Table of Contents be referred to when making comparisons between reports. An attorney should be consulted for further assistance.

Major Changes:

The common element guest house area and improvements have been converted to a new Unit 3 as a result of increased density being granted to the Project by the County of Kauai. The portion of the project converted to Unit 3 is larger than the prior common element Guest House area. Also the actual guest house building has been relocated to Unit 2. Unit boundaries have been adjusted to accommodate the changes noted herein. In this process a portion of Unit 1 has been incorporated into Unit 3 and a portion of the prior common element roadway has been added to each of the three resulting units. As a result there are no shared common or limited common elements remaining which serve all of the Project; (although Units 2 and 3 share a limited common element driveway and utility area). The descriptions of Units 1 and 2 in Article II, Division of Property, have been amended, and the description of the new Unit 3 has been added, as set forth below. The guest house right has been assigned to Unit 2, subject to reassignment as provided in the Project Declaration. Additional residential density for the Project has been approved by the County of Kauai, each of the three units is entitled to have one farm dwelling and associated agricultural buildings, but not more than one dwelling. Units 2 and 3 are owned by the Developer, Arthur H. Brownstein.

THE FOREGOING CHANGES ARE MORE PARTICULARLY SET FORTH IN THE SECOND AMENDMENT TO THE DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR KAPA'KA ROAD CONDOMINIUM AND CONDOMINIUM MAP NO. 1344, FILED IN THE BUREAU OF CONVEYANCES, STATE OF HAWAII. Prospective purchasers should contact the County of Kauai or their own attorney as to the project's current legal status.

Disclosure Abstract Changes:

SEE THE AMENDED DISCLOSURE ABSTRACT ATTACHED TO THIS REPORT AS EXHIBIT G.

SPECIAL NOTICE:

THIS IS A CONDOMINIUM PROJECT, NOT A SUBDIVISION. THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE ALSO IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A 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 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 dotted lines on the Condominium Map (Exhibit A) are for illustration purposes only.

3. Facilities and improvements normally associated with County approved subdivisions may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads.

4. Read Exhibit J (Protective Covenants) and Exhibit I (Letter from County of Kauai) with care.

5. 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.

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

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General Information On Condominiums

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

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

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

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

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

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

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

Operation of the Condominium Project

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

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

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of power 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: ARTHUR HARRY BROWNSTEIN Phone: (808) 826-4093
Name*
P.O. Box 730
Business Address
HANALEI, HI 96714

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):
N/A

Real Estate Broker*: None selected. See page 20 Phone: _____
Name

Business Address

Escrow TITLE GUARANTY ESCROW SERVICES, INC. Phone: (808) 245 3381
4414 KUKUI GROVE STREET, SUITE 204
Business Address
LIHUE, HAWAII 96766

General Contractor*: N/A Phone: _____
Name

Business Address

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

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

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

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

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

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

The Declaration for this condominium is:

<input type="checkbox"/> Proposed		
<input checked="" type="checkbox"/> Recorded - Bureau of Conveyances:	Document No. <u>90-102191</u>	
	Book	Page
<input type="checkbox"/> Filed - Land Court:	Document No.	

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

First Amendment to the Declaration of Condominium Property Regime and Condominium File Plan dated September 14, 1990 and recorded as Document No. 90-147837 on September 24, 1990.

Second Amendment to the Declaration of Condominium Property Regime and Condominium for Kapa'Ka Road Condominium and Condominium Map No. 1344 dated March 5, 2002 and recorded as Document No. 2003-082647.

Third Amendment to the Declaration of Condominium Property Regime and Condominium for Kapa'Ka Road Condominium dated April 25, 2003 and recorded as Document No. 2003-082685.

Fourth Amendment to the Declaration of Condominium Property Regime and Condominium for Kapa'Ka Road Condominium dated March 3, 2004 and recorded as Document No. 2004-047732.

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

The Condominium Map for this condominium project is:

<input type="checkbox"/> Proposed	
<input checked="" type="checkbox"/> Recorded - Bureau of Conveyances Condo Map No. <u>1433</u>	
<input type="checkbox"/> Filed - Land Court Condo Map No.	

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

Amended Page 1 and 6 on September 14, 1990 per Document No. 90-147837

Amended Page 1 and 7, deleted Page 6 on March 5, 2002 per Document No. 2003-082647.

Amended Page 1 and added page 8 on April 25, 2003 per Document No. 2003-082685.

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

The Bylaws for this condominium are:

<input type="checkbox"/> Proposed		
<input checked="" type="checkbox"/> Recorded - Bureau of Conveyances:	Document No. <u>90-102192</u>	
	Book	Page
<input type="checkbox"/> Filed - Land Court:	Document No.	

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

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

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

*But see Exhibit "J", Declaration of Protective Covenants and Building Rules, which affects use of the units.

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	75%
Bylaws	65%	65%
House Rules	----	NONE

*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:

[] 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: 4781 KAPA'KA ROAD Tax Map Key: (TMK): (4) 5-3-008-002
PRINCEVILLE, KAUAI, HAWAII

[X] Address [X] TMK is expected to change because Each unit is entitled to its own street address and TMK#

Land Area: 7.5 [] square feet [X] acre(s) Zoning: Agriculture

5. Special Use Restrictions:

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

- Pets: See Bylaws Article V, Section 5.3(9)
- Number of Occupants: _____
- Other: _____
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>Identify</u>
<u>1</u>	<u>1</u>	<u>5/3.5</u>	<u>3,500</u>	<u>1,200</u>	<u>Deck</u>
<u>2</u>	<u>1</u>	<u>2/3**</u>	<u>3,088**</u>	<u>1454/785**</u>	<u>Deck/carport</u>
<u>2</u>	<u>1</u>	<u>1/1**</u>	<u>500**</u>	<u>0</u>	<u>(Guesthouse)</u>
<u>3</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>16</u>	<u>Shade Sturcture</u>

Total number of Apartments: 3

***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.

**Unit 1 is under development and is incomplete. It cannot be sold until completion of improvements which is anticipated in late 2004.

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

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

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of residential apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by Section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has N/A elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 3*

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each)	<u>Unit 1=2</u>	<u>1</u>	_____	_____	_____	_____	<u>3</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>3</u>		<u>0</u>		<u>0</u>		<u>3</u>

*There is ample room for parking of two or more vehicles on each unit's limited common element

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

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

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool Storage Area Recreation Area
- Laundry Area Tennis court Trash Chute/Enclosure(s)
- Other: _____

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

- There are no violations. Violations will not be cured.
- Violations and cost to cure are listed below. Violations will be cured by _____
(Date)

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

Unit 1 was new at time of Final Report.
Unit 2 was recently remodeled.
Unit 2 (guest house) was recently relocated and remodeled.
Unit 3 was completed in 2002.

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>	_____	_____
Structures	<u> X </u>	_____	_____
Lot	<u> X </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 Interests:

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

*described in Exhibit E.

as follows:

*Note: The common elements have been amended by the Second Amendment to the Declaration of Condominium Regime for Kapa'ka Road Condominium and Condominium Map No. 1344.

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

There are no limited common elements in this project.

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

*described in Exhibit E.

as follows:

*Note: The common elements have been amended by the Second Amendment to the Declaration of Condominium Regime for Kapa'ka Road Condominium and Condominium Map No. 1344.

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

described in Exhibit C.

as follows:

✻

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

Exhibit F describes the encumbrances against the title contained in the title report dated June 22, 2004 (updated July 1, 2004) and issued by TITLE GUARANTY OF HAWAII, INC.

Blanket Liens:

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

[] There are no blanket liens affecting title to the individual apartments.

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

F. **Construction Warranties:**

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

1. *Building and Other Improvements:*

NONE

2. *Appliances:*

NONE

G. **Status of Construction and Date of Completion or Estimated Completion Date:**

The original home on Unit 1 was completed in September 1990. New construction has not yet received final County of Kauai approval. See page 11, item 6.
Unit 2 was completed in 2003. Guest house to Unit 2 was relocated in 1999 and completed in 2003.
The Shade Structure on Unit 3 was constructed in 2002, less than one year old.

H. **Project Phases:**

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

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

IV. CONDOMINIUM MANAGEMENT

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

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

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

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

- B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

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

- C. **Utility Charges for Apartments:**

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

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

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract
Exhibit "B" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated February 28, 1990.
Exhibit D contains a summary of the pertinent provisions of the escrow agreement.
- Other Specimen Apartment Deed

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

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

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

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website access official copy of laws: www.capitol.hawaii.gov
Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs
Website to access rules: www.hawaii.gov/dcca/har

This Public Report is a part of Registration No. 2346 filed with the Real Estate Commission on November 7, 1990.

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:

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

As to all units, it is anticipated that the initial improvements on each unit will be replaced by or supplemented with a farm dwelling, as Unit 1 has done and Unit 2 is now finishing. The prospective purchaser shall have the right to build such farm dwelling at purchaser's expense. The purchaser shall also, in such event, file the "as built" certificate within thirty days of completion of the farm dwelling in conformance with Section 514A-12, Hawaii Revised Statutes, and record an amendment of the Declaration of Condominium Property Regime ("Declaration") to describe the farm dwelling. The County of Kauai Planning Department requires, 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, consistent with the Declaration and the By-laws ("condominium documents"). In most cases a farm dwelling 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.

Except as limited specifically by the condominium documents and subdivision restrictive covenants, all uses permitted in the agricultural and open zones are permitted. Uses in one zone are not the same as in the other, and the prospective purchaser should consult the appropriate county agency for information on uses and construction in the respective zones. There is only a very small section of Unit 3 in the Open Zone, virtually all is agricultural.

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.

2. Should developer later decide to use a real estate broker to sell his units, developer shall first inform the Real Estate Commission in writing as to who the broker is, submit a listing and amend Exhibit G herein.

- D. Except as noted in relation to ongoing improvements on Unit 2, the developer declares subject to the penalties set forth in Section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

ARTHUR HARRY BROWNSTEIN
Printed Name of Developer

By: 
Duly Authorized Signatory*

13 May 03
Date

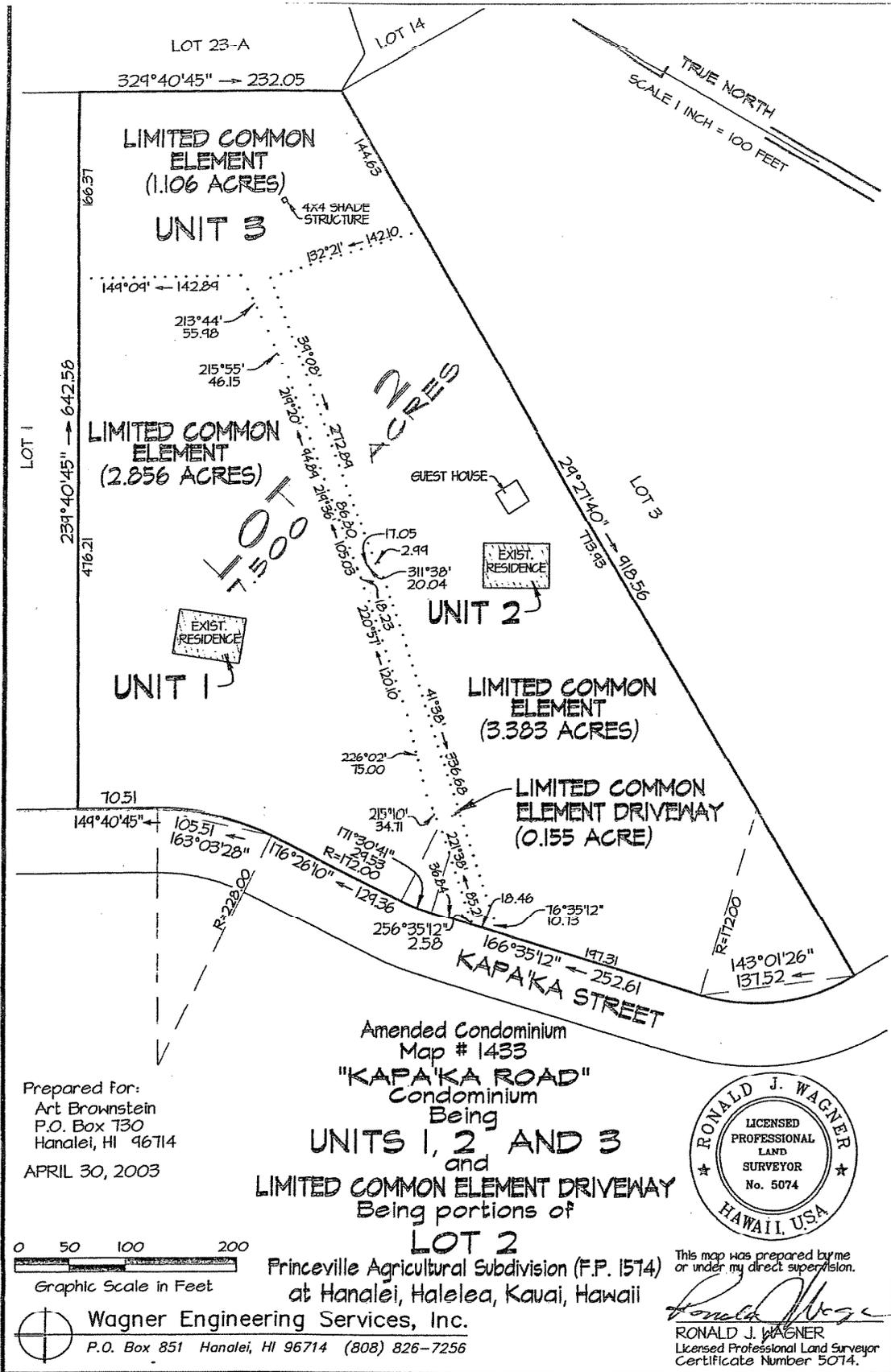
ARTHUR HARRY BROWNSTEIN
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, COUNTY OF KAUAI

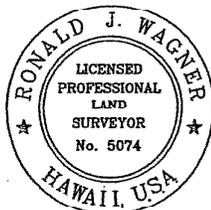
Planning Department, COUNTY OF KAUAI

***Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner, Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.**

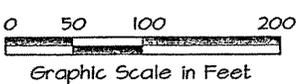


Prepared for:
 Art Brownstein
 P.O. Box 730
 Hanalei, HI 96714
 APRIL 30, 2003

Amended Condominium
 Map # 1433
 "KAPA'KA ROAD"
 Condominium
 Being
UNITS 1, 2 AND 3
 and
LIMITED COMMON ELEMENT DRIVEWAY
 Being portions of
LOT 2
 Princeville Agricultural Subdivision (F.P. 1514)
 at Hanalei, Halelea, Kawai, Hawaii



This map was prepared by me
 or under my direct supervision.
Ronald J. Wagner
 RONALD J. WAGNER
 Licensed Professional Land Surveyor
 Certificate Number 5074.



Wagner Engineering Services, Inc.
 P.O. Box 851 Hanalei, HI 96714 (808) 826-7256

EXHIBIT "B"

SUMMARY OF SALES CONTRACT

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

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

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

- (a) That Purchaser will receive a copy of the final public report for the project.
- (b) Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow agreement, and Purchaser is subject to all of the terms of the Escrow Agreement.
- (c) If there is a dual agency by a single broker, it will be disclosed in the contract.

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

EXHIBIT "C"

SCHEDULE OF APARTMENTS AND COMMON INTERESTS

Qty.	Unit No.	Area of Limited Common Element* (Acres)	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	% of Common Int.
1	1	2.856	5 3½	3,500	1,200	50%
1	2	3.383	2 3	3,088	132	26%
	2**		1 1	500 (shed and future guest house)	500	
1	3	1.106	0	0 shade structure	16	24%

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. Unit 1 retains its original 50% interest. Unit 2's 50% interest has been divided 26% to Unit 2 and 24% to Unit 3, reflecting a larger limited common interest for Unit 2.

The common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration of Condominium Property Regime, each unit owner may use the unit, alter or add to it in any manner deemed Law and the covenants of the condominium. 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.

**Unit 2 remains under development and may not be sold under this Public Report.

EXHIBIT "D"

SUMMARY OF PORTIONS OF ESCROW AGREEMENT KAPA 'KA

The Escrow Agreement ("Agreement") between TITLE GUARANTY ESCROW SERVICES, INC. (the "Escrow"), and Robert Julius Britt and Petrina M. Satori-Britt and Arthur Harry Brownstein (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

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

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

EXHIBIT "E"

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS OF KAPA 'KA CONDOMINIUM

Common Elements

The prior common element guest house area and roadway were eliminated in the Second Amendment to the Declaration.

Limited Common Elements

The areas shown on the Condominium Map as appurtenant to each unit. The Roadway is now a limited common element in favor of Units 2 and 3.

EXHIBIT "F"

**ENCUMBRANCES AGAINST TITLE
Units 2 and 3**

1. Any and all real property tax that may be due and owing.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION

DATED : November 25, 1977
RECORDED : Liber 12660 Page 690

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

INSTRUMENT : DEED

DATED : November 30, 1977
RECORDED : Liber 12660 Page 734

5. Free flowage of water in and to all streams and stream beds, if any, as set forth in DEED dated November 30, 1977, recorded in Liber 12660 at Page 734.
6. Reservation(s) as set forth in DEED dated November 30, 1977, recorded in Liber 12660 at Page 734, to-wit:

“Reserving, however, unto Consolidated Oil & Gas, Inc., its successors and assigns, the following:

1. Easement for electrical, telephone, communication, gas, sewer, water and drainage facilities over, under, across, along and through the roadway lots hereinabove described, together with the right to enter on the lot herein conveyed for the maintenance, repair and replacement of the facilities, together also with the right to grant to the State of Hawaii, County of Kauai, or any other appropriate governmental authority, or to any public utility corporation, Princeville Water Systems, Inc., or to any person, persons or corporation, easements for such purposes under such terms and conditions required by the grantee or grantees of such

easements.

2. Right to grant roadway easement over and across the roadway lot hereinabove described to the purchaser, purchasers, lessee, lessees, owner or owners of each of the lots within the agricultural subdivision of Parcel 3, Princeville at Hanalei, Hanalei, Hawaii, and to any purchaser, purchasers, lessee, lessees, owner or owners of lots hereinafter created within said Parcel 3.”

7. Waiver and Release dated June 27, 1989, recorded in Liber 23349 at Page 711, by ROBERT BRITT and ARTHUR BROWNSTEIN.

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

INSTRUMENT : DECLARATION OF CONDOMINIUM
PROPERTY REGIME FOR THE "KAPA'KA
ROAD" CONDOMINIUM PROJECT

DATED : June 15, 1990
RECORDED : Document No. 90-102191
MAPS : 1344 and any amendments thereto

Said Declaration was amended by instrument dated September 14, 1990, recorded as Document No. 90-147837, dated March 5, 2002, recorded as Document No. 2003-082647, dated April 25, 2003, recorded as Document No. 2003-082685, and dated March 3, 2004, recorded as Document No. 2004-047732.

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

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF
APARTMENT OWNERS

DATED : June 15, 1990
RECORDED : Document No. 90-102192

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

INSTRUMENT : DECLARATION

DATED : June 15, 1990

RECORDED : Document No. 90-114187

11. Waiver and Release dated February 3, 1993, recorded as Document No. 93-032801.
12. Waiver and Release dated June 15, 1994, recorded as Document No. 94-103724.
13. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: FARM DWELLING AGREEMENT

DATED : September 7, 1994

RECORDED : Document No. 94-176587

PARTIES : ARTHUR HARRY BROWNSTEIN, unmarried,
and COUNTY OF KAUAI

14. NOTICE OF DEDICATION

DATED : February 7, 2000

RECORDED : Document No. 2000-019224

BY : ARTHUR H. BROWNSTEIN

RE : dedication of land for agriculture purposes

PERIOD : 10 years effective January 1, 2000

15. MORTGAGE

LOAN/ACCOUNT NO. 0893005

MORTGAGOR : ARTHUR HARRY BROWNSTEIN

MORTGAGEE : BANK OF HAWAII, a Hawaii corporation

DATED : November 1, 2001

RECORDED : Document No. 2001-174533

AMOUNT : \$252,400.00 – covers the land described herein,
besides other land.

By SUBORDINATION AGREEMENT dated November 1, 2001, recorded as Document No. 2001-186140, said above Mortgage was subordinated to the lien of that certain Farm Dwelling Agreement recorded as Document No. 94-176587.

16. MORTGAGE

LOAN/ACCOUNT NO. 010186-3286592-3998

MORTGAGOR : ROBERT JULIUS BRITT and PETRINA M.
SATORI-BRITT, husband and wife

MORTGAGEE : BANK OF HAWAII, a Hawaii corporation

DATED : November 13, 2002

RECORDED : Document No. 2002-209134

AMOUNT : Revolving Line of Credit, sums not to exceed
\$500,000.00 - covers the land described herein,
besides other land

17. APARTMENT DEED dated March 6, 1991, recorded as Document No. 91-032845. Subject to terms and provisions thereof, including failure to comply with any conditions, covenants and reservations contained therein.

15. MORTGAGE

LOAN/ACCOUNT NO. 0893005

MORTGAGOR : ARTHUR HARRY BROWNSTEIN

MORTGAGEE : BANK OF HAWAII, a Hawaii corporation

DATED : November 1, 2001

RECORDED : Document No. 2001-174533

AMOUNT : \$252,400.00

EXHIBIT "G"

**AMENDED DISCLOSURE ABSTRACT FOR
KAPA'KA ROAD CONDOMINIUM**

Pursuant to Hawaii Revised States, Section 514(A)-61, the Developer of KAPA'KA ROAD makes the following disclosures:

1. The Developer of the project is ARTHUR HARRY BROWNSTEIN, P. O. Box 730 Hanalei, Hawaii 96714; his telephone number is (808) 826-4093.

2. Exhibit H to the Final Public Report has been deleted, due to no common element expense and the provision of insurance by each owner in the project.

3. There are no warranties against defects of material and workmanship in individual apartments, common elements or exclusive use areas, and the purchaser buys his/her unit in an "as is" condition.

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

5. No real estate broker has been selected. Should Developer later decide to sell his units, Developer shall first inform the Real Estate commission in writing as to who the broker is, submit a listing and amend Exhibit G herein.

6. The Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. **There are no depreciable common elements in the Project.** However, Unit 2 and Unit 3 will share a portion of the pre-existing driveway serving both units. It is estimated that the cost of the driveway will be approximately \$300 per year each for Unit 2 and Unit 3 to maintain the shared driveway.

7. The escrow company to be used for the Project will be Title Guaranty Escrow Services, Inc., 4414 Kukui Grove St., Suite 104, Lihue, HI 96766 and whose telephone number is 245-3381.

8. Only Unit 2 and Unit 3 may be sold under the current public report, as Unit 1 has not completed interim development. A further amendment to the Declaration and an amended disclosure abstract must be filed with and approved by the Real Estate Commission before Unit 1 may be sold.

Date: _____

14 July 04


ARTHUR HARRY BROWNSTEIN,
Developer

EXHIBIT "H"

**ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

Deleted. Except for the land, there are no common elements.

Maryanne W. Kusaka
Mayor

Wallace G. Rezentes, Sr.
Administrative Assistant



COUNTY OF KAUAI
PLANNING DEPARTMENT
Kapule Building
4444 Rice Street, Suite 478
Lihu'e, Hawai'i, 96766

1371
Dee M. Crowell
Planning Director

Sheilah N. Miyake
Deputy Planning Director
TELEPHONE: 808.241.6677
FAX: 808.241.6669

September 24, 2002

Mr. Ronald J. Wagner
Wagner Engineering Services, Inc.
PO Box 851
Hanalei, Hawai'i 96714

Subject: ZONING REFINEMENT ZR-2002-03 for ART BROWNSTEIN
Tax Map Key: (4) 5-3-08:02
Princeville, Kaua'i

We have reviewed your request for zoning refinement on the subject property which is 7.5 acres in size and is situated within the Agriculture (A) and Open (O) Districts.

Based on the information you have submitted, please be informed that the subject property which currently contains 0.6 acre of Open District (O) and 6.9 acres of Agriculture District has been refined such that the entire parcel is now situated within the Agriculture District (A). The changes are based on the refinement process where more precise data is submitted to the department for a determination. In your case, a drainage analysis for the subject parcel was submitted to the Department of Public Works for review and was subsequently approved. The study basically revealed that the flood limits are outside of the subject property. As a result, the permitted density of the subject property is now three (3) farm dwelling units.

However, please be aware that subdivision of the property is not possible due to the "one-time" subdivision limitation for parcels in the Agriculture District (A). The parcel is one of 23 lots of the Princeville Agricultural Subdivision that was approved in 1977. Should you have any questions regarding this matter, please contact Dale A. Cua of our staff at 808.241.6677.


DEE M. CROWELL
Planning Director

EXHIBIT "I"

AN EQUAL OPPORTUNITY EMPLOYER

9/27 fax to: Steve Lee,
Attorney

EXHIBIT "J"

DECLARATION OF PROTECTIVE COVENANTS AND BUILDING RULES
FOR KAPA'KA ROAD CONDOMINIUM

The purpose of these Protective Covenants is to protect all owners and occupants from annoyance and nuisance caused by improper conduct and improper use of the KAPA'KA ROAD CONDOMINIUM, hereinafter referred to as "Project," and to provide for the maximum enjoyment of the premises, with protection of all owners reasonable expectations. All owners and occupants, their agents, employees and invitees shall be bound by these Building Rules and by standards of reasonable conduct, whether covered by these Building Rules or not.

1. Definitions. As used herein:

a. "Area" refers to the limited common element set aside for the exclusive use of each Unit owner.

b. "Unit" refers to the entire condominium interest held by an owner.

2. Building Permits. Any owner desiring to construct a single family farm dwelling in a unit will have to comply with the Kauai County building and zoning codes, as the same may be changed from time to time. The present requirement is that each owner must demonstrate the ability to obtain sustenance or income from farming on the limited common element before the County will issue a Farm Dwelling Agreement. The County will likely inspect the area before issuing a building permit, to ascertain that farming activities are taking place on the unit seeking to build. Each owner will execute a power of attorney in favor of the developer or, thereafter, the president of the Association, for the purpose of securing building permits for all units, because a 75% ownership interest must approve of all filings for building permits. When an association of unit owners is created, the power of attorney will be replaced with a power of attorney in favor of the president of the association of unit owners.

3. Water and Utilities. The water, electricity and telephone are in the public roadway fronting the project. Each Unit Owner will be required to connect such utilities to his respective improvements at his own cost and expense. All utilities in the condominium Area shall be placed underground.

4. Cesspools. There are no sewer lines and no sanitary sewer system. Each Unit owner will be required to

have his own cesspool and septic system, to be located within his own limited common element Area.

5. Roadway. The roadway within the Project is unpaved. Each Unit owner will be responsible for clearing all vegetation and growth from his Area to the extent it enters the roadway element.

6. Farming. A Unit owner may farm his own area and/or plant any orchards and/or engage in any other farming activity not prohibited herein. He shall use materials and/or equipment that are maintained and kept in good working order and repair and will not allow any unused and/or junk material and/or vehicles to be stored and kept in the Area or in or on common elements.

7. Construction. In the construction of the farm dwelling and/or any other accessory building, the Unit owner shall not use second-hand materials, quonset huts and/or any other materials that would create a nuisance on the Unit owner's property, or be so to the owners of other Units in the condominium project. Similarly, without unanimous consent of all unit owners, no unit owner may construct any structures that substantially depart from the type of architecture present on the other units (this shall include the colors of such structures); nothing herein stated shall be deemed to preclude construction of what has become known as "plantation style, "hawaiian style," or "ranch style" residences, as those terms are commonly used in architectural circles on Kauai. All finishes on the exteriors of structures, other than the initial farm sheds, shall be of natural colors, complimentary to earth tones.

8. Pets and Farm Animals/Noise in General. Notwithstanding that this is an agricultural condominium, the following animals shall be precluded from possession by owners or occupants of the Project: bulls, pit bull or pit bull mixed dogs, more than one pig, roosters, more than three dogs of any permitted variety, peafowl, and any animals (including those permitted above) that create such levels of noise or noxious odors that two or more unit owners make written objection to the association of unit owners. In the latter case, offending owner(s) shall have 30 days in which to remedy the problem or to dispose of the offending animals.

Additionally, with the exception of seasonal harvesting activities and preparation of ground for crops, no unit owner shall create such levels of noise or dust that the peaceable use of other units is materially affected. The written complaint of two or more unit owners shall be prima facie evidence of material adverse conditions.

9. Common Area Land. The Association shall determine and control the use of the Common Area lands, including but not limited to use for any farming, raising of animals, landscaping, maintenance and/or any other use which may be decided upon by the Association from time to time.

10. Noxious Activities. No unit owner or agent of a unit owner shall have the right or ability to spray noxious chemicals or pesticides within 100 feet of any unit boundary, and no aerial spraying of any kind shall be allowed. For the purposes of this paragraph, "noxious" shall be deemed to mean any chemical that presents a physical danger to humans, domestic pets and farm animals.

11. Common Element Expenses and Enforcement. The Association shall provide for such Common Area expenses necessary or desirable to maintain and keep the Project in acceptable condition. The Association shall have the power to enforce these Rules, including the assessment of the

common expenses and the filing of a lien against any Unit owner failing to observe these Building Rules.

12. Repeal or Modification. These may be repealed or modified by Developer at any time prior to issuance of the Final Report by the State of Hawaii, Real Estate Commission. Thereafter they may be modified by an affirmative vote of the holders of 80% of the common interests in the Project.

END OF EXHIBIT "J"