

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: MICHA MOTTALE
Address: PO Box 16197, San Diego, California 92116
Project Name(\*): NIKU FARMS CONDOMINIUM
Address: East Waiakalua, Hanalei, Kauai, Hawaii
Registration No. 2763 Effective date: March 14, 2008
Expiration date: April 14, 2009

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: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] SUPPLEMENTARY: (pink) This report updates information contained in the:
[X] Preliminary Public Report dated:
[X] Final Public Report dated: May 20, 1994
[X] Supplementary Public Report dated:
And [X] Supersedes all prior public reports
[X] Must be read together with
[X] 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-30 286/986/189/1190/892/0197/1098/0104/0107

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

[ X ] 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.

[ X ] Changes made are as follows:

1. Residences have been constructed on the limited common elements of Units A, B and D.
2. Units A, B and D have been previously sold.
3. Koa Properties (Neal Norman, principal broker) has been chosen as the broker for the sale of Unit C.
4. The rights to the guest house have been assigned to Unit A.
5. Title Guaranty Escrow Services, Inc. is now the escrow company instead of Hawaii Escrow & Title and a new Escrow Agreement is submitted herewith. (See Exhibit D).
6. The address for the attorney for the Developer has been updated.

PURSUANT TO SECTION 514A-36, HRS, THE REAL ESTATE COMMISSION'S (COMMISSION'S) ISSUANCE OF AN EFFECTIVE DATE FOR A DEVELOPER'S PUBLIC REPORT SHALL NOT BE CONSTRUED TO CONSTITUTE THE COMMISSION'S APPROVAL OR DISAPPROVAL OF A CONDOMINIUM PROJECT, OR THE COMMISSION'S REPRESENTATION THAT ALL MATERIAL FACTS CONCERNING THE CONDOMINIUM PROJECT HAVE BEEN FULLY OR ADEQUATELY DISCLOSED. THUS, THE CHANGES NOTED HERE ARE BEING PROVIDED BY THE DEVELOPER FOR INFORMATIONAL PURPOSES ONLY. PURSUANT TO SECTION 514A-41, HRS, THE DEVELOPER HAS THE RESPONSIBILITY TO UPDATE THE INFORMATION CONTAINED IN THE DEVELOPER'S PUBLIC REPORT TO AVOID HAVING THE DEVELOPER'S PUBLIC REPORT MISLEAD PURCHASERS IN ANY MATERIAL RESPECT.

APPROXIMATELY NINE YEARS HAVE LAPSED SINCE THE EXPIRATION DATE OF THE LAST EXTENSION OF THE DEVELOPER'S FINAL PUBLIC REPORT. PURSUANT TO SECTION 16-107-19, HAWAII ADMINISTRATIVE RULES, SALES CONTRACTS EXECUTED DURING THE PERIOD THAT THE PUBLIC REPORT WAS NOT IN EFFECT MAY BE RESCINDED AT THE OPTION OF THE PURCHASER AND ALL MONIES REFUNDED TO PURCHASER. PURCHASER'S RIGHT TO RESCIND UNDER THIS RULE SHALL BE VOID THIRTY (30) CALENDAR DAYS AFTER RECEIPT OF WRITTEN NOTIFICATION OF THESE RIGHTS FROM THE DEVELOPER OR HIS AGENT.

The public report format currently in use by the Real Estate Commission ("Commission") is different from that on which the Final Public Report for this project was issued. Although this Supplementary Report supersedes the earlier Final Public Report, if a prospective purchaser desires to compare the previous report to the Supplementary, information contained on a specific page of the Supplementary Report may not necessarily coincide to 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.

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: MICHA MOTTALE Phone: (619) 218-4812
Name\* (Business)
PO Box 16197
Business Address
San Diego, California 92116

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\*: KOA PROPERTIES LAND & HOMES, LLC Phone: (808) 828-6644
Name (Business)
2484 Keneke Street
Business Address
Kilauea, Hawaii 96754

Escrow: OLD REPUBLIC TITLE & ESCROW OF HAWAII, LTD, Phone: (808) 566-0100
Name (Business)
733 Bishop Street, Suite 2700
Business Address
Honolulu, Hawaii 96813

General Contractor\*: N/A Phone: (Business)
Name
Business Address

Condominium Managing Agent\*: Self-managed by Association of Apartment Owners Phone:
Name
Business Address

Attorney for Developer: STEVEN R. LEE Phone: (808) 246-1101
Name (Business)
4334 Rice Street, Suite 204C
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.	92-176294
			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 Declaration of Condominium Property Regime of Niku Farms recorded March 22, 1993 as Document No. 93-045188; Second Amendment to Declaration of Condominium Property Regime of Niku Farms and Condominium Map No. 1763 recorded August 1, 2006 as Document No. 2006-139970; Third Amendment to Declaration of Condominium Property Regime of Niku Farms and Condominium Map No. 1763 recorded November 14, 2007 as Document No. 2007-199307.

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.	1763
<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]:

Second Amendment to Declaration of Condominium Property Regime of Niku Farms and Condominium Map No. 1763 recorded August 1, 2006 as Document No. 2006-139970; Third Amendment to Declaration of Condominium Property Regime of Niku Farms and Condominium Map No. 1763 recorded November 14, 2007 as Document No. 2007-199307.

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.	92-176295
			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

Recorded as Document No. 92-176296

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	-----	65%

\*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: East Waiakalua Tax Map Key: (TMK): (4) 5-1-005: 037  
Hanalei, Kauai, Hawaii

[ ] Address [ ] TMK is expected to change because \_\_\_\_\_

Land Area: 10.495 [ ] square feet [ X ] acre(s) Zoning: Agricultural

Fee Owner: See Page 10(a)  
Name \_\_\_\_\_

Lessor: N/A  
Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
\_\_\_\_\_

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 4 Floors Per Building: 1 Unit A; 2 Unit B; 1 Unit C; 1 Unit D  
 Exhibit C contains further explanations.

3. **Principal Construction Material:**

Concrete  Hollow Tile  Wood

Other: \_\_\_\_\_

4. **Uses Permitted by Zoning:**

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

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

Yes  No

**FEE OWNERS**

**Unit A:**

Robert L. Mohle, Jr. and Amie R. Young-Mohle, Trustees

**Unit B:**

Roy E. Smolenski and Janice M. Smolenski

**Unit C:**

Micha Mottale, ummarried  
Machid Mottale, unmarried  
Morris Mehrad Mottale, unmarried  
c/o Micha Mottale

**Unit D:**

Joseph Allen Fish and Angela Jane Fish, husband and wife

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: \_\_\_\_\_

[ ] Number of Occupants: \_\_\_\_\_

[ X ] Other: Refer to recorded Declaration of Protective Covenants and House Rules of Niku Farms and Summary of Protective Covenants for Kilauea Farms Subdivision (Exhibit J)

[ ] 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>Bed/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>Identify</u>
<u>A</u>	<u>1</u>	<u>1 / 1</u>	<u>509</u>	<u>282</u>	<u>deck</u>
				<u>35</u>	<u>porch</u>
		<u>0 / ½</u>		<u>676</u>	<u>garage</u>
<u>B</u>	<u>1</u>	<u>2 / 2 ½</u>	<u>1,920</u>		<u>residence</u>
		<u>1</u>		<u>1,928</u>	<u>garage</u>
<u>C</u>	<u>1</u>	<u>0 / 0</u>	<u>0</u>	<u>48</u>	<u>storage shed</u>
<u>D</u>	<u>1</u>	<u>3 / 2</u>	<u>1,344</u>	<u>48</u>	<u>storage shed</u>

Total number of Apartments: 4

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

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

Boundaries of Each Apartment: Per 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 not elected to provide the information in a published announcement or advertisement.



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:

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:

3. Common Interests: Each apartment will have an undivided fractional interest 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 December 5, 2007  
and issued by Old Republic Title & Escrow of Hawaii

**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.

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.

Type of Lien

Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance

**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:**

Unit A was completed in 1998. The residence on Unit B was completed in 2002 and the garage was completed in 2003. The residence located on Unit D was completed in 2003.

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):



## 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 December 26, 2007  
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 \_\_\_\_\_

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 to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)  
Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)  
Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 2763 filed with the Real Estate Commission on December 16, 1992

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:**

- D. 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.

MICHA MOTTALE  
 \_\_\_\_\_  
 Printed Name of Developer

By:  \_\_\_\_\_ 12/24/07  
 MICHA MOTTALE by Mahchid Mottale POA Date  
 FOR MICHA MOTTALE

MAHCHID MOTTALE, Attorney in Fact for Micha  
 Mottale, Developer  
 \_\_\_\_\_  
 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.**



## EXHIBIT "B"

### SUMMARY OF SALES CONTRACT

This Project utilizes a Condominium Addendum to Sales Contract (the "Addendum") to be used in conjunction with a standard DROA 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 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 a contract.
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. That the Purchaser will be deemed to have had an opportunity to read the Final Public Report(s) within forty-eight (48) hours after receiving them, unless specifically indicated otherwise. Both Seller and Purchaser have the right to cancel the Contract at any time prior to the date when the Contract becomes effective. Seller and Purchaser also have the right to cancel the Contract at any other time explicitly stated by the Act.
  - c. 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.
  - d. If there is a dual agency by a single broker, it will be disclosed in the contract.
  - e. If the Purchaser shall default:
    - i. The contract may, at the Seller's option, be terminated by written notice to the Purchaser; and
    - ii. Any sums paid by the Purchaser shall belong to the Seller as liquidated damages (up to a maximum of 20% of the total purchaser price); and
    - iii. The Seller may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorney's fees, incurred by reason of default by the Purchaser shall be borne by the Purchaser.

Further, if the Purchaser shall default in making any payment when due, a late charge of one percent (1%) per month shall accrue from the due date until such payment, together with such late charge, is paid, or at any time prior to the time that such payment and late charge is paid in full, the Seller may, at its option, terminate this contract as provided above.

- f. If the Seller shall default:

In the event of default by the Developer, the Purchaser may cancel the contract, may bring an action for damages for breach of contract or seek specific performance under the contract and hold the Developer responsible for costs incurred (see paragraph C-29 of the Standard Form Deposit Receipt and Offer and Acceptance). Further, the Purchaser may

resort to mediation and arbitration in the even of a dispute over the contract or a claimed default, as does the Developer.

**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.

**END OF EXHIBIT "B"**

**EXHIBIT "C"**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS**

Qty.	Unit No.	Area of Limited Common Element*	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	Percentage of Common Int.
1	A	2.265 acres	1/1 0 1/2	509	282 deck 676 garage 35 porch	25%
1	B	3.271 acres	2/2 1/2	1,920	1,928 garage	25%
1	C	2.245 acres	0/0		48 storage shed	25%
1	D	2.714 acres	3/2	1,344	48 storage shed	25%

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. Units A, B, C and D will each burden the common elements equally. Therefore, the assessment of undivided interest both for common expense and for voting is 25% for each unit.

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 desirable, so long as it is permitted by law and the Declaration of Protective Covenants and House Rules, if any. If adjoining unit owners desire to alter and/or transfer portions of their respective units, they can do so by the filing of an amendment to the Condominium Map and the Declaration of Condominium Property Regime bearing their respective signatures.

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

## EXHIBIT "D"

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT NIKU FARMS

The Escrow Agreement ("Agreement") between OLD REPUBLIC TITLE & ESCROW OF HAWAII, LTD. (the "Escrow") and MICHA MOTTALE (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

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.

1. 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.

2. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected to cancel the contract as provided by HRS Section 514-A: 62 or 63 and receive all funds paid, with an Escrow cancellation fee of \$25.00 to \$250.00; or (b) the Real Estate Commission has not issued an effective date for a Final Public Report on the project or the Seller's 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, in which case there shall be no escrow cancellation fee. Provisions of Hawaii's Owner-Occupant law to not apply to this project.

3. Escrow will return deposited sums to the Buyer without interest if Seller and Buyer give Escrow written notice to return the funds to Buyer or if there is a right to cancellation and refund of monies under the sales contract or otherwise. 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, which will be not less than \$25.00 nor more than \$250.00. If Buyer defaults for more than ten days in performing the purchase contract, Buyer will forfeit all deposits as liquidated damages.

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

5. As Escrow's compensation for its performance under this Agreement, Escrow will receive its scheduled 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 scheduled rate and assessed to the Buyer.

NOTE: Section 514A-63, Hawaii Revised Statutes, provides rescission rights to a purchaser under a binding contract if there is a material change in the Project which directly, substantially and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project for such purchaser's use.

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

**END OF EXHIBIT "D"**

**EXHIBIT "E"**

**COMMON ELEMENTS OF THE PROJECT**

The common elements of the project are:

- (a) the land in fee simple;
- (c) all commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; and
- (d) any and all other future elements and facilities in common use or necessary to the Project.

**LIMITED COMMON ELEMENTS OF THE PROJECT**

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

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
A	2.265
B	3.271
C	2.245
D	2.714

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

**EXHIBIT "F"**

**Encumbrances Against Title**

The following encumbrances apply to all Units:

1. Real Property Taxes, if any, that may be due and owing. Check with the County of Kauai Department of Finance for further information.
  
2. Title to mineral and metallic mines reserved to the state of Hawaii
  
3. EASMENT 10 (area 566 square feet, more or less)  
For: Drainage Purposes  
As shown on File Plan No. 1646
  
4. Agreement for : Use of land for agriculture purposes  
  
Executed by : The STATE OF HAWAII  
  
and between : C. BREWER COMPANY, LIMITED  
  
On the terms and conditions contained therein,  
  
DATED : MARCH 16, 1977  
RECORDED : In the Bureau of Conveyances, State of Hawaii, in Book  
12100, Page 330
  
5. AGREEMENT  
By and : STATE OF HAWAII  
Between : C. BREWER PROPERTIES, INC., a Hawaii Corporation  
  
On the terms, covenants and conditions contained therein,  
  
DATED: : June 30, 1980  
RECORDED : in the Bureau of Conveyances, State of Hawaii, in Book  
15060, Page 397
  
6. Covenants, conditions and Restrictions, but omitting any covenants or restrictions if any, based on race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.  
  
Entitled : DECLARATION OF PROTECTIVE CONVENANTS,  
CONDITIONS AND RESTRICTION FOR KILAUEA  
FARMS  
  
DATED : February 23, 1981  
RECORDED : February 24, 1981 In the Bureau of Conveyances,  
State of Hawaii, in Book 15368, Page 13

Covenants, conditions and Restrictions, but omitting any covenants or restrictions if any, based on race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, section 3607 of the

Unites States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : NOTICE OF RELEASE OF RIGHTS OF DECLARANT UNDER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR KILAUEA FARMS  
Executed by : C. BREWER PROPERTIES, INC. a Hawaii corporation, formerly known as HAWAIIAN INVESTMENT CO., INC., a Hawaii corporation, "Grantor" and KILAEA FARMS COMMUNITY ASSOCIATION, a Hawaii nonprofit corporation, "Grantee"  
Dated : April 26, 1988  
Recorded : February 24, 1981 In the Bureau of Conveyances, State of Hawaii, in Book 15368, Page 13

- 7. Covenants, conditions and restrictions, reservations, agreements, obligations, easements and other provisions set forth in DEED dated march 23, 1981, recorded March 24, 1981 in the Bureau of Conveyances, State of Hawaii, in Book 15434, Page 757, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent such covenants, conditions or restrictions violate 42 USC 3604 or Section 515-6, HRS.
- 8. Condominium Map No. 1763, filed in the Bureau of Conveyances, State of Hawaii.
- 9. Matters in an instrument that, amongst other things, contain or provide for easements, assessments, liens and their subordination; provisions relating to partition, restrictions on severability of component interest, covenants, conditions and restrictions, provision that no violation thereof and no enforcement of any lien provided for therein shall defeat or render invalid the lien of a mortgage or deed of trust made in good faith and for value, but omitting status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or 9b) relates to handicap but does not discriminate against handicapped persons.

Entitled : Declaration of Condominium Property Regime  
Recorded : October 29, 1992 in the Bureau of Conveyances, State of Hawaii, as document No. 92-176294

Said Declaration was amended by the following instruments:

DATED:	RECORDED	DOCUMENT NO.
March 2, 1993	March 22, 1993	93-045188
February 24, 2006	August 1, 2006	2006-139970
November 1, 2007	November 14, 2007	2007-199307

Liens and charges for upkeep and maintenance as provided in the above mentioned Covenants, Conditions and restrictions, if any, where no notice thereof appears of record.

10. By-Laws of the Association of Apartment Owners of NIKU FARMS CONDOMINIMUM recorded October 29, 1992 in the Bureau of conveyances, State of Hawaii, as document No. 92-176295.

11. Covenants, Conditions and Restrictions, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42 Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : DECLARATION OF PROTECTIVE COVENANTS AND HOUSE RULES FOR NIKU FARMS  
Recorded : October 29, 1992 in the Bureau of Conveyances, State of Hawaii, as Document No. 92-176296

12. Elevation Agreement

Executed By : JANICE M. SMOLENSKI, ROY E. SMOLENSKI, JAY Z SCOROTOW, MICHA MOTALLE, MANCHID MOTALLE and MORRIS MEHRDAD MOTALLE

And Between : DEPARTMENT OF WATER, COUNTY OF KAUAI

On the terms, covenants and conditions contained therein,

Dated : May 24, 2000  
Recorded : June 5, 2000 in the Bureau of Conveyances, State of Hawaii as Document No. 2000-077231.

13. Covenants, Conditions and Restrictions, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42 Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

**END OF EXHIBIT "F"**

**EXHIBIT "G"**

**AMENDED DISCLOSURE ABSTRACT**

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

1. The Developer of the project is Micha Mottale, PO Box 16197, San Diego, California 92116.
2. There are no maintenance fees for this Project. There are no depreciable common elements and therefore the Developer has deleted the maintenance fees. Each unit owner is responsible for his/her taxes and Kilauea Farms Association dues.
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 permitted agricultural and residential purposes only. No apartments shall be used for hotel or timeshare purposes. There will be no commercial use except those activities permitted by county ordinance.
5. Unit C is currently listed for sale. It is the only remaining unsold unit in the Project. The Developer has chosen Kahala Properties (RB-17579, 4211 Waiialae Avenue, Suite H8, Honolulu, Hawaii 96816, telephone (808) 735-7500, and Koa Properties Land & Homes, Inc. (RB-18049), 2484 Keneke Street, Kilauea, Hawaii 96754, telephone (808) 829-6644, as the real estate brokers for the sale of Unit C.
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.
7. The Developer advises that the amendment to the project declaration reflects construction on a unit that was sold under a prior public report. The Developer's unit has no improvements other than the original agricultural structure.
8. The Developer discloses Common Interest has been divided equally for Units A through D at 25% reflecting the burden on common elements by the four units.



MICHA MOTTALE, Developer  
By Mahchid Mottale, Attorney in Fact  
for Micha Mottale

1/4/2008  
Date

---

**RECEIPT**

The undersigned has received a copy of the foregoing Amended Disclosure Abstract this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Purchaser(s):

\_\_\_\_\_

EXHIBIT "H"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u>	x	12 months	=	<u>Yearly Total</u>
<u>A</u>	_____				_____
<u>B</u>	_____				_____
<u>C</u>	_____				_____
<u>D</u>	_____				_____

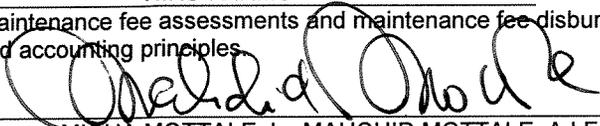
THERE ARE NO MAINTENANCE FEES FOR THIS PROJECT

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

**Estimate of Maintenance Fee Disbursements:**

	<u>Monthly Fee</u>	x	12 months	=	<u>Yearly Total</u>
<b>Utilities and Services</b>					
Air Conditioning	_____				_____
Electricity	_____				_____
[ ] common elements only					
[ ] common elements and apartments					
Elevator	_____				_____
Gas	_____				_____
[ ] common elements only					
[ ] common elements and apartments					
Refuse Collection	_____				_____
Telephone	_____				_____
Water and Sewer	_____				_____
<b>Maintenance, Repairs and Supplies</b>					
Building	_____				_____
Grounds	_____				_____
<b>Management</b>					
Management Fee	_____				_____
Payroll and Payroll Taxes	_____				_____
Office Expenses	_____				_____
<b>Insurance</b>					
_____	_____				_____
<b>Reserves(*)</b>					
_____	_____				_____
<b>Taxes and Government Assessments</b>					
_____	_____				_____
<b>Audit Fees</b>					
_____	_____				_____
<b>Other</b>					
_____	_____				_____
<b>TOTAL</b>	=====				=====

I, MICHA MOTTALE, the Developer for the NIKU FARMS condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
MICHA MOTTALE, by MAHCHID MOTTALE, A.I.F. POA MICHA MOTTALE

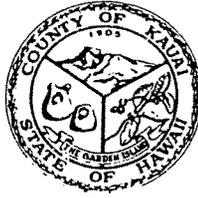
12/24/07  
 Date

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has 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.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

EXHIBIT I

JOANN A. YUKIMURA  
MAYOR



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

JEFFREY LACY  
PLANNING DIRECTOR

DEE M. CROWELL  
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

March 12, 1993

COPY

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
250 South King Street, Suite 702  
Honolulu, Hawaii 96813

Subject: Comments on Niku Farms Condominium Report  
Tax Map Key:5-3-08:5  
Princeville, Kauai  
LOTR:11/30/92

After reviewing the subject document, we have the following comments to offer:

The amount of limited common elements proposed corresponds to the allowable unit density permitted by the CZO. The subject property is zoned Agriculture District (A) and Open District (O) and qualifies for four (4) units.

When applying for Zoning Permits with the Planning Department, the owners must be made aware that 75% of the owners or their assignee, are required to sign the permit form(s). Should an assignee be designated, such assignee shall present proof of authorization from the 75% of the owners at the time a permit is applied for. This is a requirement because the Planning Department does not recognize the Condominium Public Report to be a legal subdivision of land.

The uses on the limited common elements shall be limited to those listed as permissible within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Farm dwellings on the lot shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Page 2  
March 12, 1993

There should be a disclosure provision written into this and all ensuing condominium reports stating that the report should not mean that all County Codes and Ordinances have been complied with. Subsequent development and use shall comply with all applicable County Codes and Ordinances. It should also be made clear that the Condominium Public Report does not necessarily mean that all County requirements pertaining to subdivision of lands have been met. Therefore, such facilities/improvements that are normally associated with County-approved subdivisions such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for. Further, such services as County street maintenance and trash collection will not be available for interior road/driveways.

Because there are more than one farm dwelling proposed/permitted, the landowners pursuant to the County Farm Dwelling Agreement, should be made aware that any dwelling(s) constructed after the first one will require an inspection of the property by the Planning Department to verify whether agricultural activities are being conducted on the property. If not, such permits to construct additional farm dwellings could be denied.

Should you have any questions, please feel free to contact Bryan Mamaclay of my staff at 245-3919.

  
JEFFREY LACY  
Planning Director

cc: Steven R. Lee

END OF EXHIBIT I

## EXHIBIT J

### SUMMARY OF PROTECTIVE COVENANTS AFFECTING ALL LOTS IN KILAUEA FARMS SUBDIVISION

These are what the Developer deems to be significant parts of the recorded Protective Covenants (the "covenants") constituting use restrictions on all Kilauea Farms lot. This project is located on one lot of the Kilauea Farms Subdivision, located at Kilauea, Kauai, Hawaii (the "covenants"). All Lot-Owners together form an "Association", which insures that protective covenants may be enforced and honored. Others may be of concern to individual owners. Full copies of the Covenants may be obtained from the developer. The prospective purchaser is urged to read a full copy prior to entering into an agreement to purchase.

#### 4.2 Maintenance of Association Property.

The Association shall be obligated to provide for the care of Association Property. Association obligations shall include keeping property in attractive and sanitary condition as well as making necessary and desirable improvements on Association Property.

#### 4.7, Paragraph 3:

The Association has the right to enforce rules and regulations under the Declaration, Bylaws, or any amendments to said document, by imposing a reasonable fine or by suspension of voting privileges, for a time not to exceed 30 days.

#### 5.1 Assessments.

Each Lot Owner (in this case, this condominium project) pays amounts based on a "Point" system for points assigned to each Lot, which amounts are called "Assessments". The current assessment is \$150.00/per year for this condominium Lot.

The Board shall have the power and authority to determine all matters in connection with Assessments, including authority to determine where, when and how assessments should be paid, and each Owner shall comply.

#### 5.4 Supplementary Assessments.

The Association may levy supplementary assessments, payable over such period as the Association may determine for the purpose of defraying any expenses and to cover the deficiency in the event that the amount received by the Association from regular assessments is less than the amount determined and assessed by the Association.

#### 6.8 No Unsightliness.

No unsightliness shall be permitted on any Lot. All unsightly structures, objects, equipment shall be enclosed within an approved structure or screened from view so as not to be visible from neighboring property. All equipment or machinery exceeding one-half ton shall be kept in an enclosed structure or screened from view, except when in use. Service areas, storage and compose piles, solar dryers, shall be screened from view. Pipes drainage ways, wires, antennae visual signals, meters tanks, disposal systems shall be kept and maintained in a structure or below ground. No bulk materials, plant waste, trash, scrap, or refuse shall accumulate on any Lot unless screened from view. Trailers, vehicles or boats not in good operating condition shall be housed or screened from view. No garage or accessory building shall be used for other than parking vehicles, machinery, and tools. No carpenter shops, hobby shops or power equipment shall be utilized therein except as specifically permitted.

#### 6.9 Noise.

No sound devices, except security or civil defense devices shall be used on any lot. Any approved device exceeding normal conditions shall be subject to limitation.

#### 6.10 Light.

No unreasonably bright light (or one emitting unreasonable glare) shall be permitted. All exterior lighting shall conform to the rules and regulations of the Kilauea Farms Environmental Committee. All light fixtures visible from neighboring lots must be approved by the Kilauea Farms Environmental Committee.

#### 6.13 Temporary Structures.

No temporary buildings shall be permitted to remain on any lot.

#### 6.14 Animals.

All animals kept on a lot whether for economic or personal use shall be kept only in a density compatible with neighboring lots and shall be cared for with practices of good animal husbandry, including prompt removal of waste, control pests, maintaining adequate fencing, and control of noxious odors. Storage of food supplies shall be done as to prevent the scattering of materials by the wind.

#### 6.15 Signs.

No signs shall be erected or maintained except such signs as may be required by legal proceedings; signs necessary to identify the ownership of the lot and its address; signs necessary to give direction, advise of rules or caution or warn of danger; signs necessary for job identification (one per contractor). No sign shall be directly illuminated higher than six feet above the ground elevation.

#### 6.17 Clearing and Grading.

The clearing and grading of any lot shall be performed only in strict accordance with plans and specifications therefore which have been approved by Kilauea Farms Environmental Committee; no wanton cutting or desecration of existing trees will be permitted.

#### 6.18 Cultivation of Crops.

All cultivation of crops shall be conducted only on approved locations as provided by Kilauea Farms Environmental Committee. Proper farming techniques, such as the following, shall be observed: control of dust; use of chemicals (i.e. pesticides, fertilizers); prompt removal or disposal of waste; control of water, erosion; courteous observance of planting near lot boundaries so as not to disturb neighbors while planting, harvesting, spraying, watering etc.; protection of water sources from contamination and dangerous chemicals is required.

#### 6.19 Structure Limitations.

Structures on all lots shall be located inconspicuously so not to be obtrusive to the landscape. A residence structure must also contain a garage or carport to accommodate at least 2 vehicles. No structure may be permitted whose height exceeds 30 feet. Structures should not obstruct views from other lots (with the exception of chimneys).

#### 6.20 Design Criteria.

The character of Kilauea Farms shall be one of natural materials, colors and forms compatible with the natural landscape of the area.

#### 6.21 Construction Period.

During the course of construction, with the understanding that all construction shall be performed in strict diligence, the provisions and conditions contained in the declaration shall be waived to the extent necessary to permit such construction. All such construction activities shall be conducted within the rules and regulations of the Kilauea Farms Environmental Committee.

#### 6.22 Flooding and Erosion.

No Owner shall permit the construction of any improvement which will interfere with the normal flow of storm waters or cause unnatural runoff damaging his or neighboring lots. This is not to prohibit the construction of storm drains so long as they comply with Committee specifications.

#### 6.24 Owner Caused Damage.

In the event that there is loss, or owner (or owner's guests) cause damage to Association property, such owner shall be responsible, unless fully covered by insurance. Any such funds may be required to be secured by a lien on said owner's lot.

#### 7.3 Regulation of Boating.

The operation of all boats located within a Lake Lot shall be subject to the following restrictions:

1. Vessels in excess of 18 feet in length are prohibited.
2. Vessels powered by combustion engines are prohibited.
3. Vessels shall not exceed speeds of 5 miles per hour.
4. No vessel shall remain on the Lake overnight, unless it remains anchored at a facility specifically engineered for such purpose.

#### 7.4 No Dumping or Littering.

No plant waste or refuse except approved, authorized fill, shall be deposited into any Lake Lot.

#### 7.5 Introduction of Species of Animals.

No fish or game shall be introduced to any Lake Lot without the permission and the recommendation of the Kilauea Farms Environmental Committee. The committee shall consider the following when determining the introduction of any species to any Lake Lot:

1. Whether the species would threaten the existence and stability of other species as predator, compete for food, threaten breeding areas, in relation to its ecological requirements.

2. The availability of acceptable removal of such species should control of its population become necessary.

3. Whether or not species will enhance the use and enjoyment of the Lake Lot.

4. If a foreseeable risk of conflict with land use in the areas is prevalent.

#### 7.6 Improvements.

No improvements may be constructed except in strict accordance and with the approval of specific plans by the Committee. Such improvements, other than mooring facilities, generally shall be permitted only within the boundaries of the lot to which they are appurtenant.

#### 7.7 Maintenance.

Lake Lot Owners are responsible for the maintenance of their lot and any area to the water's edge and shall see that all debris is removed promptly, kept free from weeds, and shall maintain all improvements. If any owner fails to maintain his lot, the Association may maintain it for him and an assessment may be imposed by Association.

#### 7.8 Indemnity.

Owners use the Lake Lot at their sole risk and will hold the Association harmless from any claims in connection with such owner's use.

### 8.1 Easements in Lots for Repair and Maintenance

The Association shall have an easement for access through each lot for making (but are not obligated to make) emergency repairs as to prevent damage to Association property.

### 9.1 Creation.

The Kilauea Farms Environmental Committee has been created and shall consist of three members with an alternate member who shall act only in the absence of a member.

### 9.7 Review of Plans.

The Committee may specify the procedures for approval of plans, provided that the Committee's approval or disapproval of such plans, shall be given in writing within sixty days after submission and after the Owner's compliance with the requirements. If the Committee disapproves of any such plans, it shall send notice of its disapproval to the persons applying for approval and shall also return the cash bond, or security. If notice of disapproval is not so sent within said sixty days, the plans shall be deemed to have been approved by the Committee.

### 9.8 Requirements for Plans.

All plans and specifications for any new improvement shall be prepared by an Architect and submitted to the Committee for its approval. The plans and specifications for any alteration to the exterior of any existing building need not be prepared by an Architect. After approval of any plans, the Committee shall provide owner with a statement of approval. Approval by the Committee shall not warrant or imply legality, safety, etc. and each owner shall be responsible for his own compliance with all restrictive covenants rules, regulations and ordinances. Each owner shall also be solely responsible for obtaining any necessary general plan amendments, and for the satisfaction of any charges that may be imposed in connection with such regulation requirements.

### 9.9 Standards of Review.

The Committee shall consider the suitability of the proposed building or other improvement for the area in which it will be located. The Committee shall require the overall visual character to be one of natural

materials and forms compatible with those occurring in the natural landscape.

#### 9.10 Bond Requirements.

The lot Owner shall provide to the Committee a cash bond in the sum of \$5,000.00 guaranteeing completion of all the improvements. Said bond may be retained and used by the Association in the event that the improvements have not been timely completed in accordance with the plans. The Association shall promptly refund said bond upon receipt of written certification from the Committee that the improvements have been timely completed in accordance with the plans. If at the time of submission there is a bond then outstanding, an additional bond need not be provided. As an alternative to the bond, the Lot Owner may provide to the Committee either of the following: An owner's completion bond in the amount of \$5,000.00 or a promissory note in favor of the Association, secured by a second mortgage, in the amount of \$5,000.00.

#### 9.13 Rule-Making Authority.

The committee shall adopt rules and regulations, without limitation, regulating construction and implementing provisions of this Declaration pertaining to design, building materials, aesthetic requirements, and other improvements.

#### 12.1 Reservations of Right to Expand.

Declarant reserves the right to expand by annexing not more than 7,000 acres of additional land to the Subdivision (but not to this condominium project) in the vicinity of the Real Property. Such expansion shall not require the consent of any Owners.

#### 12.6 Alternative Method of Expansion.

The Association may be expanded upon approval by an affirmative vote of Members. Voting by proxy shall be permitted. Notice of said meeting shall be in writing. Such notice shall be given to all Owners not less than thirty nor more than fifty days before the date of the meeting.

#### 13.1 Duration of Declaration.

Each of the provisions contained in the Declaration of

Protective Covenants runs with the land and will continue and remain in full force and effect for a period of twenty years from adoption.

13.2 Amendment.

Any provision contained in this Declaration may be amended or changed by the Recording of a written instrument specifying the amendment executed by Members who hold not less than 66.6 percent of the voting power of the Association.

13.4 Enforcement and Remedies.

In addition to any other remedies provided, all covenants shall be enforceable by the Association, by the Kilauea Farms Environmental Committee or by the Declarant, or by any Owner, in a proceeding for a prohibitive or mandatory injunction or in a suit or action to recover damages. If court proceedings are instituted, the prevailing party shall be entitled to recover from the losing party all costs and expenses in connection therewith, including reasonable attorney's fees.

END OF EXHIBIT J

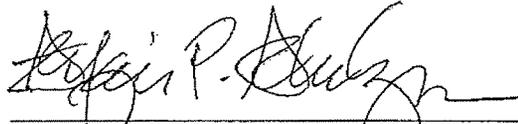
**ARCHITECT'S CONDITION REPORT**

STATE OF HAWAII            )  
  ) SS.  
COUNTY OF KAUAI         )

The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number AR-3806, has inspected the condominium project "Niku Farms", consisting of an 8 year old dwelling structure located on Unit A which may be occupied for residential use, and an 8 year old detached garage also located on Unit A, both situated at 4852 E. Waiakalua St., Kauai, Hawaii, and identified by Tax Key No. (4) 5-1-5-37-1.

The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing appear to be in good condition for the stated age thereof. The structure and related systems and components have a probable expected useful life in excess of 25 years.

DATED: Kapaa, Kauai, Hawaii February 2, 2006.

  
\_\_\_\_\_  
Stefan P. Schweitzer, Architect

**ARCHITECT'S CONDITION REPORT**

STATE OF HAWAII            )  
  ) SS  
COUNTY OF KAUAI        )

The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 7899, has inspected the condominium project NIKU FARMS, consisting of a FIVE year old dwelling structure which may be occupied for residential use situated at 4810 WAIAKALUA STREET, Kauai, Hawaii, and identified by Tax Key No. (4) 5-1-005: 037 0002

The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing appear to be in EXCELLENT condition for the stated age thereof. The structure and related systems and components have a probable expected useful life in excess of FIFTY years.

DATED: 8/02/07, Kauai, Hawaii August, 2007.

(STAMP)

L.S.

Heobla Schmutz

Subscribed and sworn to before me this  
2nd day of August, 2007

[Signature]

NOTARY PUBLIC, State of Hawaii  
Print Name: ROGELIO A. SARAOS

My commission expires: 3-9-11

(SEAL)

**ARCHITECT'S CONDITION REPORT**

STATE OF HAWAII            )  
  ) SS  
COUNTY OF KAUAI        )

The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 7899, has inspected the condominium project NIKU FARMS, consisting of a FOUR year old garage and storage structure which may not be occupied for residential use situated at 4810 WAIAKALUA STREET, Kauai, Hawaii, and identified by Tax Key No. (4) 5-1-005: 037 0002

The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing appear to be in EXCELLENT condition for the stated age thereof. The structure and related systems and components have a probable expected useful life in excess of FIFTY years.

DATED: 8/02/07 , Kauai, Hawaii August , 2007.

(STAMP)

L.S.

Heidi Schmeitz

Subscribed and sworn to before me this  
2<sup>nd</sup> day of August , 2007

Rogelio A. Saraos

NOTARY PUBLIC, State of Hawaii  
Print Name: ROGELIO A. SARAOS  
My commission expires: 3-9-11

(SEAL)

**ARCHITECT'S CONDITION REPORT**

STATE OF HAWAII            )  
  ) SS  
COUNTY OF KAUAI        )

The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 7899, has inspected the condominium project NIKU FARMS, consisting of a FOUR year old dwelling structure which may be occupied for residential use situated at 4760 WAIAKALUA STREET, Kauai, Hawaii, and identified by Tax Key No. (4) 5-1-005: 037 0004.

The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing appear to be in EXCELLENT condition for the stated age thereof. The structure and related systems and components have a probable expected useful life in excess of FIFTY years.

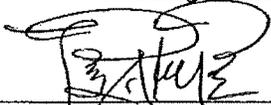
DATED: 8/02/07, Kauai, Hawaii August, 2002.

(STAMP)

L.S.

Healda Schmutz

Subscribed and sworn to before me this  
2<sup>nd</sup> day of August, 2002



NOTARY PUBLIC, State of Hawaii  
Print Name: ROGELIO A. SARAOS  
My commission expires: 3-9-07

(SEAL)