

## CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developers: KILAUEA TOWN CENTER, L.L.C., a Delaware limited liability company  
Address: P.O. Box 770 #370  
Park City, Utah 84060

Project Name(\*): KILAUEA PLANTATION CENTER  
Address: 4244 Kilauea Road, Kilauea, Hawaii 96754

Registration No. 3119 Effective date: May 15, 2006  
(Partial Conversion) Expiration date: June 15, 2007

### 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 Real Estate Commission minimal information sufficient for a Preliminary Public Report. A final Public Report will be issued by the developer when complete information is filed.  
(yellow)
- FINAL: The developer has legally created a condominium and has filed complete information with the Commission.  
(white)  
 No prior reports have been issued.  
 This report supersedes all prior public reports.  
 This report must be read together with
- SECOND SUPPLEMENTARY: This report updates information contained in the:  
(pink)  
 Preliminary Public Report dated:  
 Final Public Report dated:  
 Supplementary Public Report dated: April 19, 1996
- 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-30 286/986/189/1190/892/0197/1098/0104

**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. Title to the units owned by Kilauea Plantation Offices, Inc. was transferred to Kilauea Town Center, LLC, the current developer.
2. Title to the Grace Development unit was transferred to Elliott Rosenblum under the prior public report. Unit 1 is not subject to any Public Report.
3. The number of units in this project is three. The alignment has been changed. Future phase(s) may have more new units (part of Unit 3).
4. All residential development on land zoned R-6 will be in a future phase.
5. Issuance of an effective date for this Public Report does not constitute an approval of the project by the Real Estate Commission, or any other governmental agency, nor does it imply that all County codes, ordinances and subdivision requirements have been complied with.
6. This project does not involve the sale of individual subdivided lots. The land area beneath and immediately adjacent to each unit, as shown on the Amended 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 Amended Condominium Map merely represent the location of the limited common element assigned to each unit.
7. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads and driveways.
8. James O'Connor, broker for the project, is a member of NSE Management Company, LLC, a foreign limited liability company, the manager/developer of the fee owner of Kilauea Town Center, L.L.C., a Delaware limited liability company.
9. There are specific reciprocal rights and responsibilities regarding future development between the owner of Unit 1 and the owners of the remaining commercial units in the project. See the Declaration and Bylaws for specific information.
10. The address for the Attorney for the Developer has been changed.
11. All fee owners are currently developing a master plan for further development of the Project, which may or may not occur. If a master plan is adopted a further supplementary public report will be required.

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 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

Developers: KILAUEA TOWN CENTER, L.L.C., a Delaware limited liability company Phone: (435) 645-7010  
Name\*  
P.O. Box 770 #370  
Business Address  
Park City, Utah 84060

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):

See attached members list of both Fee Owner and the LLC which serves as manager of Fee Owner (Exhibit J)

Real Estate Broker\*: O'CONNOR REALTY, LLC Phone: (808) 828-1464  
Name (RB-14728)  
P.O. Box 1122  
Business Address  
Kilauea, Hawaii 96754

Escrow: FIRST HAWAII TITLE CORPORATION Phone: (808) 521-3411  
Name  
201 Merchant Street, Suite 2000  
Business Address  
Honolulu, Hawaii 96813

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

Condominium Managing Agent\*: SELF-MANAGED BY ASSOCIATION OF Phone: \_\_\_\_\_  
Name  
CONDOMINIUM OWNERS  
Business Address

Attorney for Developer: STEVEN R. LEE Phone: (808) 246-1101  
Name  
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.	93-200700
			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 dated July 22, 1994, recorded as Document No. 94-125014; Second Amendment to Declaration of Condominium Property Regime and Condominium Map dated March 9, 1995, recorded as Document No. 95-034556; Third Amendment to Declaration of Condominium Property Regime dated December 19, 2005, recorded as Document No. 2005-008143.

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.	1962
<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 and Condominium Map dated March 9, 1995, recorded as Document No. 95-034556; Third Amendment to Declaration of Condominium Property Regime dated December 19, 2005, recorded as Document No. 2005-008143.

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.	93-200702
			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

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%*	90%
Bylaws	65%	65%
House Rules	----	----

\*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:

Each unit owner has the right to develop their own unit without creating damage to the remaining units in the project. Developer intends to create multiple additional free-standing units in the project. The owners of individual units retain the right to create separate condominium projects within one or more of the buildings in any existing condominium unit. Each such project will remain subject to the Declaration for this Project and all restrictions of record. Each unit shall retain its common interest in this project although that common interest may be subject to a separate Declaration and divided further.



**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: 4244 Kilauea Road Tax Map Key: (TMK): (4) 5-2-23-28  
Kilauea, Hawaii 96754

Address  TMK is expected to change because each unit will have its own CPR designation.

Land Area: 6.185  square feet  acre(s) Zoning: C-N and R-6

Fee Owners: KILAUEA TOWN CENTER, L.L.C., a Delaware limited liability company (Owner of Units 2 & 3)  
 Name\*  
P.O. Box 770-#370  
 Business Address  
Park City, Utah 84060

ELLIOTT ROSENBLUM (Owner of Unit 1)  
 Name\*  
307 7<sup>th</sup> Avenue, 23<sup>rd</sup> Floor  
 Business Address  
New York City, New York 10001

Lessor: N/A  
 Name  
 Address

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 4 Floors Per Building: Unit 1 contains 2 floors  
Units 2 & 3 contain 1 floor  
 Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

- Concrete  Hollow Tile  Wood (Unit 1 & 3)  
 Other: Stone/Rock (Unit 2)

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted by Zoning</u>	
[* X ] Residential	_____	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
[ X ] Commercial	<u>2</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
[ ] Mix Residential/Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
[ ] Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
[ ] Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
[ ] Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
[ ] Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
[ ] Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
[ X ] Other: <u>Gazebo</u>	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

\*No current residential use

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

Yes  No

5. Special Use Restrictions:

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

- Pets: No pets are allowed in commercial space.
- Number of Occupants: \_\_\_\_\_
- Other: \_\_\_\_\_
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 (Unit 1) 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>1</u>	<u>1</u>	<u>0 / 8</u>	<u>5,796</u>	<u>---</u>	<u>Two-story commercial</u>
<u>2</u>	<u>1</u>	<u>0 / 3</u>	<u>1,958</u>	<u>---</u>	<u>One-story commercial</u>
<u>3</u>	<u>1</u>	<u>0 / 0</u>	<u>0</u>	<u>53</u>	<u>Gazebo</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.**

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: N/A  
 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.

There are no residential apartments under the current phase of development.

7. Parking Stalls:

Total Parking Stalls:     \*\*    

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	_____	_____	_____	_____	_____	_____	_____
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned: Unit 1	_____	<u>20+</u>	_____	_____	_____	_____	<u>20+</u>
Unit 2	_____	<u>10+</u>	_____	_____	_____	_____	<u>10+</u>
Unit 3	_____	<u>0</u>	_____	_____	_____	_____	<u>0</u>
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>    30+    </u>		<u>    0    </u>		<u>    0    </u>		<u>    30+    </u>

\*\*There is ample room for parking of thirty (30) or more vehicles on Units 3 the project's limited common elements. There are no assigned parking spaces for ten or more vehicles.

Each apartment will have the exclusive use of at least two (2) 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):

N/A

11. Conformance to Present Zoning Code:

- a.  No variances to zoning code have been granted.  
 Variance(s) to zoning code was/were granted as follows:

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

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

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>X</u>	_____	_____
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 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 March 2, 2006  
and issued by First Hawaii Title Corporation

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.

[ X ] 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.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
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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:**

Units 1 and 2 were constructed in 1928, Unit 3 was constructed in 1994.

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):

Developer reserves the right to create a residential section of the project or create a separate phase or project within this project. It is intended that part of Unit 3 will become residential apartments. Owners of individual units with multiple commercial rental spaces may create separate CPR projects within such units.

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
[ X ] 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.

There are no maintenance fees for this Project.

- 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:

[ X ] 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 December 16, 2005  
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. 3119 filed with the Real Estate Commission on June 9, 1994

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

C. **Additional Information Not Covered Above:**

This is a condominium project, not a subdivision. Units purchased are not subdivided lots. To determine whether your expectations can be realized, you should carefully review the contents of this report. You should also conduct your own investigations to ascertain the validity of information provided. Please remember that issuance of an effective date for this report does not mean the Real Estate Commission has approved the project.

This project is subject to the potential requirement of additional parking and implementation of a master plan for the property in the event a change in the character of the commercial business creates an increased demand for off-street parking. The developer advises that preliminary work on a master plan has already begun, without any such requirement by the County of Kauai. See Article IX of the Declaration for more information.

Part of the limited common element land area of Unit 3 is located in the R-6 zone under the Comprehensive Zoning Ordinance (the "CZO") of the County of Kauai. All uses of Unit 3 shall conform to those permitted by the CZO and the County of Kauai. Residential apartments may not be overburdened by the commercial units.

All units of this project are subject to an agreement to exchange easements which will allow the use of a certain vehicular access and utility improvements on Unit 3 by adjoining landowners and Unit 1. Unit 3 may, in return for the grant of easement, receive participation of the adjoining landowner(s) in the construction of improvements to the easement. Units 2 and 3 will also receive an easement across TMK No. (4) 5-2-005-024 as part of the consideration. Pursuant to the terms of the agreement to exchange easements, certain future obligations will arise for the purpose of repair, maintenance and replacement of improvements to said easements. Under certain circumstances the easements in question may be modified or relocated pursuant to the agreement of the parties or action by the County of Kauai. Developer advises that, while the exact location of the easements is yet to be determined, the easements are most likely to be located only on Unit 3 or a new common element. Prospective purchasers of Units 2 and 3 should review and verify status of the agreement by which such easements may be granted as a part of the evaluation of potential purchase.

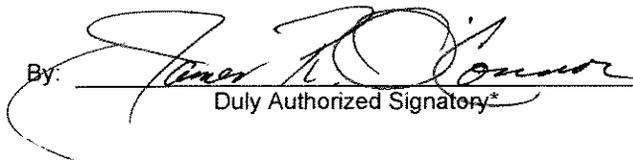
**LEAD WARNING STATEMENT**

Pursuant to federal law, 42, U.S.C. 4852(d), the Residential Lead-Based Paint reduction Act, "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

- 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.

KILAUEA TOWN CENTER, L.L.C.  
A Delaware limited liability company

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

By:   
Duly Authorized Signatory\*

\_\_\_\_\_  
Date

12/23/05

NSE MANAGEMENT COMPANY, LLC  
A Foreign limited liability company

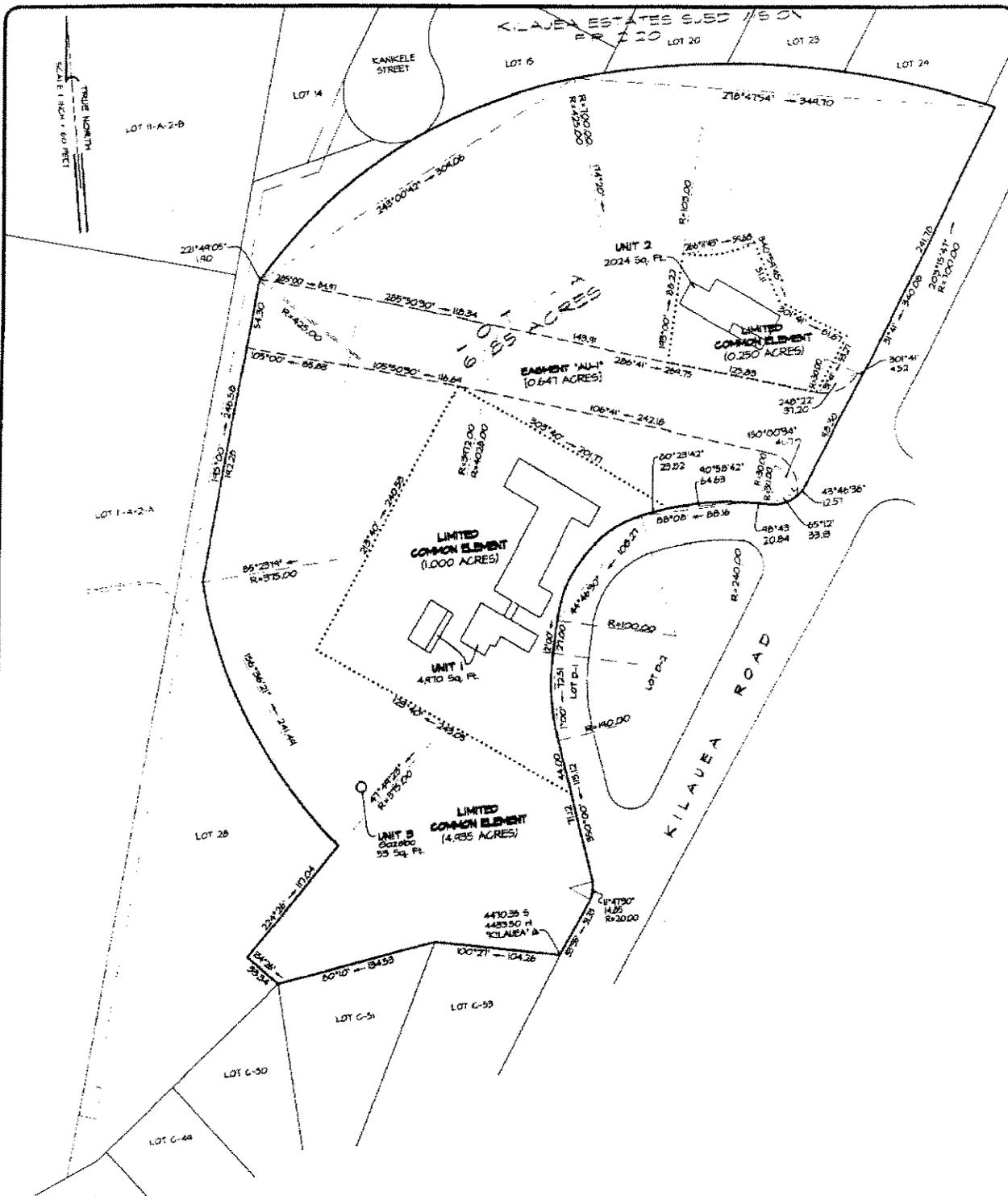
\_\_\_\_\_  
JAMES R. O'CONNOR, MANAGER  
Printed Name & Title of Person Signing Above

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.**



AMENDED CONDOMINIUM MAP NO. 1962  
**"KILAUEA PLANTATION CENTER CONDOMINIUM"**  
 SHOWING  
 UNITS 1, 2 & 3,  
 AND DESIGNATING  
 EASEMENT "AU-1"  
 being portions of  
 LOT 1-A  
 KILAUEA GARDENS SUBDIVISION  
 (FILE PLAN 1554)  
 AT  
 KILAUEA, HANALEI, KAUA, HAWAII



Prepared for  
 THE S CONCOR CORP.  
 P.O. BOX 922  
 KILAUEA, KAUA, HI 46154  
 MARCH, 1985  
 REV. JANUARY 3, 2006  
 REVISE UNITS 2 & 3  
 ADD EASEMENT "AU-1"

NOTE  
 1. This project does not involve  
 the sale of individual lots. The  
 vertical lines on the Condominium  
 Map are for illustration purposes  
 only. They represent either a limited  
 common element or common element.



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.  
 1000 Beehive Drive, Honolulu, HI 96814 (808) 876-7256

ENR 1415-2-23-28

**EXHIBIT "A"**

Project No. 2822

## 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 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 supplementary public report must be in place and a receipt for the same signed by the buyer to have an effective agreement to sell.
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:

Except as limited by law and the sales contract, 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.

**EXHIBIT "C"**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS**

Qty.	Unit No.	Total Area of Limited Common Elements*	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	Percentage of Common Int.
1	1	1 acre	0 / 8	5,796	---	16%
1	2	0.250 acre	0 / 3	1,935	---	4%
1	3	4.935 acres	0 / 0	---	53	80%

\*\*W/ROADWAY

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. Units 1, 2 and 3 will each burden the common elements as shown above. Therefore, the assessment of undivided interest both for common expense and for voting is as follows: 16% for Unit 1; 4% for Unit 2; and 80% for Unit 3.

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 together with their respective signatures.

\*Note: Land areas referenced herein are not legally subdivided lots. Unit 3 has two limited common elements. See the Third Amendment to Declaration of Condominium Property Regime and the Amended Condominium Map No. 1962.

## EXHIBIT "D"

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT KILAUEA TOWN CENTER CONDOMINIUM

The Escrow Agreement ("Agreement") between FIRST HAWAII TITLE CORPORATION (the "Escrow"), and KILAUEA TOWN CENTER, L.L.C., a Delaware limited liability company, (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 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.
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 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.
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.

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;
- (b) any future common access and current or future common installations, if any;
- (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 including, specifically, any access and utility installations required by future development, as described in the Declaration of Condominium Property Regime.

**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 1, 2, and 3 are located, shown and designated on the Condominium Map and the table below.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
1	1.00 acre
2	0.250 acre
3	4.935 acres

NOTE: Limited common element AU-1 is a limited common element for Units 2 and 3 and for use by the general public.

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

## EXHIBIT "F"

The following encumbrances apply to Unit 2 only:

1. Real property taxes due and owing. Check with the County of Kauai Director of Finance for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. GRANT

In favor of: KAUAI ELECTRIC COMPANY, LIMITED, which interest is now held by KAUAI ISLAND UTILITY CO-OP, and MUTUAL TELEPHONE COMPANY, now known as HAWAIIAN TELCOM, INC.

Dated: September 30, 1949

Book: 2270

Page: 56

Purpose: granting an easement for utility and incidental purposes

4. The terms and provisions, including the failure to comply with any covenants, conditions and preservations, contained in the various agreements, as set forth in Deed dated September 06, 1972, recorded in Book 8566 at Page 245.
5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

### AGREEMENT TO INCORPORATE AGRICULTURAL RESTRICTIONS

By and Between: KILAUEA GARDENS INVESTMENT HUI, a registered general partnership, and JO DEVELOPERS, INC., a Hawaii corporation, "Subdividers", and the COUNTY OF KAUAI Planning Department, "Department"

Dated: February 13, 1978

Book: 12852

Page: 348

6. CONVEYANCE OF WATER FACILITY

Dated: February 10, 1982

Book: 16200

Page: 38

7. Encroachment of small utility building from Tax Map Key (4) 5-2-7-34 onto the southerly boundary of Lot 1A, as set forth in Deed dated January 31, 1990, recorded as Document No. 90-015613
8. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF "KILAUEA PLANTATION CENTER"

Dated: November 15, 1993  
Document No. 93-200700

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 Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Condominium Map No. 1962, to which reference is hereby made

The foregoing Declaration of Condominium Property Regime was amended by the following:

Document No.	Dated
94-125014	07/22/94
95-034556	03/09/95
2006-008143	12/19/2005

9. BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF KILAUEA PLANTATION CENTER

Dated: November 15, 1993  
Document No. 93-200702  
to which reference is hereby made

10. **AS TO ITEM I ONLY:**

- a) AGREEMENT TO EXCHANGE EASEMENTS

By and Between: KILAUEA PLANTATION OFFICES, INC., a Hawaii corporation, KILAUEA FALLS RETREAT, INC., a Hawaii corporation, and BERTSCH CONSTRUCTION, INC., a North Dakota corporation

Dated: April 12, 1995  
Document No. 95-065674

b) GRANT OF SECTION "A" EASEMENT (ROADWAY A)

In Favor Of: UNLIMITED CONSTRUCTION SERVICES,  
INCORPORATED, a Hawaii corporation  
Dated: September 19, 1997  
Document No. 97-127894  
Purpose: granting an easement for right of entry and incidental  
purposes

c) CONVEYANCE OF WATER FACILITY

Dated: June 24, 1998  
Document No. 98-111063  
RE: Unit 2

d) The terms and provisions, covenants, easements and reservations as contained in the following:

APARTMENT DEED (ORIGINAL)

Dated: November 15, 1993  
Document No. 94-070952  
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 Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

11. AS TO ITEM II ONLY:

a) WAIVER AND RELEASE

Dated: December 29, 1995  
Document No. 96-002768  
Re: Lack of County-supplied water service for Unit 3

b) The terms, provisions, covenants, easements and reservations as contained in the following:

FINAL JUDGMENT – SPECIAL PROCEEDING NO. 97-0460

Claimants: KILAUEA PLANTATION OFFICES, INC., and  
KILAUEA FALLS RETREAT, INC.  
Respondent: BERTSCH CONSTRUCTION, INC.  
Dated: January 29, 1998

Document No. 98-022471  
RE: Agreement to Exchange Easements dated April 12, 1995.  
Pursuant to Order granting Bertsch Construction Inc.'s  
Motion to Confirm Arbitration Award entered January 29,  
19898, in the American Arbitration Case No. 78-110-  
00002-97, judgment is entered confirming the terms and  
provisions of the Arbitration Award attached as Exhibit "1"  
to the Final Judgment  
(ALSO AFFECTS OTHER PROPERTY)

c) CONVEYANCE OF WATER FACILITY

In favor of: BOARD OF WATER SUPPLY, COUNTY OF KAUAI  
Dated: March 24, 1998  
Document No. 98-054743  
RE: Unit 3

d) The terms, provisions, covenants, easements and reservations as contained in the following:

APARTMENT DEED (ORIGINAL)

Dated: December 2, 1997  
Document No. 97-046646

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 Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

e) Easement AU-1 (0.647 acres, more or less) provides limited access for the general public to what is known as the "Post Office Property" to the north of the Project; PROVIDED HOWEVER, that Easement AU-1 will, upon any future public dedication, cease automatically to be part of the Project; all as set forth in instrument dated December 19, 2005, recorded as Document No. 2006-008143.

## EXHIBIT "G"

### AMENDED DISCLOSURE ABSTRACT

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

1. The Developer of the project is KILAUEA TOWN CENTER, L.L.C., a Delaware limited liability company, whose address is P.O. Box 770-#370, Park City, Utah 84060, telephone (435) 645-7010.

2. This report covers only Units 2 and 3 of the project.

3. See Exhibit "H" to the Final Public Report for the projected annual maintenance fees. There are no depreciable common elements, only periodic maintenance is required.

4. 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

5. All of the apartments of the project are to be used for permitted 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.

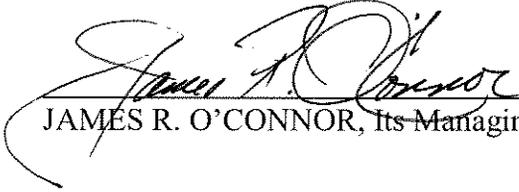
6. The real estate broker for the project is James R. O'Connor, d/b/a The O'Connor Corp. (RB-14728), PO Box 1122, Kilauea, Hawaii 96754, telephone (808) 828-1464.

7. 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.

8. The Developer discloses Common Interest has been divided equally as shown: Unit 1 – 16%; Unit 2 – 4%; and Unit 3 – 80%, reflecting the approximate relative areas of the units.

KILAUEA TOWN CENTER  
a Delaware limited liability company

NSE MANAGEMENT COMPANY, LLC  
A Delaware limited liability company, its Manager

  
JAMES R. O'CONNOR, Its Managing Agent

12/16/05  
Date

---

RECEIPT

The undersigned has received a copy of the foregoing Disclosure Abstract this \_\_\_\_ day  
of \_\_\_\_\_, 2005.

Purchaser(s):

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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>
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**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>
Utilities and Services					
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	_____				_____
Maintenance, Repairs and Supplies					
Building	_____				_____
Grounds: driveway and parking	_____				_____
Management					
Management Fee	_____				_____
Payroll and Payroll Taxes	_____				_____
Office Expenses	_____				_____
Insurance	_____				_____
Reserves(*)	_____				_____
Taxes and Government Assessments	_____				_____
Audit Fees	_____				_____
Other	_____				_____
TOTAL	=====				=====

We, DORN L. SCHMIDT, as agent and employed by NSE MANAGEMENT COMPANY, LLC, a Foreign limited liability company, which company manages KILAUEA TOWN CENTER, L.L.C, a Delaware limited liability company, the condominium developer, for the KILAUEA TOWN CENTER CONDOMINIUM 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
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.

JOANN A. YUKIMURA  
MAYOR



PETER A. NAKAMURA  
PLANNING DIRECTOR

Jeffrey R. Lacy  
DEPUTY PLANNING DIRECTOR

TELEPHONE 1808 244-2500

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4280 RICE STREET  
LIHUE, KAUAI, HAWAII 96756

May 29, 1992

COPY

Ms. Cindy Walraven  
Kilauea Plantation Center  
P. O. Box 1  
Hanalei, Kauai, HI 96714

Subject: Variance Permit V-91-4  
Class IV Zoning Permit Z-IV-91-9  
Kilauea Plantation Center  
TMK: 5-2-04:62

The Planning Commission at its meeting held on May 28, 1992, approved your request to allow retail or office space uses within the stone buildings (1,300 sq. ft. residence and 600 sq. ft. detached garage) affected by the subject permits, with the following conditions:

1. Parking in the County parking site fronting the Kilauea Plantation Center, identified as Tax Map Key: 5-2-08:51, shall be prohibited.
2. The applicant shall continue to adhere to conditions #1-a, b, and c. Furthermore, condition #1 shall be amended to include:  
  
"1-d. The applicant fails to comply with the prohibition of off-street parking on Tax Map Key: 5-2-08:51."
3. The applicant is advised that "a change in commercial use in any of the existing buildings..." as stipulated in condition #1-a, refers to all the existing buildings on the property currently in commercial uses.
4. For the purposes of monitoring any change in commercial uses, the applicant shall submit to the Planning Department a list of existing and current commercial tenants on the property.

EXHIBIT "I"

Ms. Cindy Walraven  
Page 2  
May 29, 1992

5. The applicant shall notify the Planning Department of the:

- OFFICE/RETAIL*  
*BM*
- a. Specific commercial uses that will occupy the buildings affected by the subject permits (1,300 square feet residence and 600 square feet detached garage) once the prospective tenant is committed to occupy such space(s); and
  - b. any change in commercial uses in any of the buildings on the property in the future.



JEFFREY LACY  
Deputy Planning Director

cc: Heather M. Harvey

END OF EXHIBIT "I"

## EXHIBIT "J"

KILAUEA TOWN CENTER, LLC

## CLASS A MEMBERS

NAME	MAILING ADDRESS	PHONE	FAX	ALT. PHONE	EMAIL	AMOUNT INVESTED	PERCENT INVESTED
Dougherty, John 519-66-2424	P.O. Box 682465 Park City, Utah 84068	435-640-2597	435-655-8474	435-901-8626	<a href="mailto:utahnow@aol.com">utahnow@aol.com</a>	\$50,000	3.28%
Holladay Ranch Holding, L.P. Holladay Ranch Management, LC General Partner- Kurt Larsen 87-0640792	2941 Estates Circle Park City, Utah 84060	435-647-3831	435-615-1237	801-550-3333	<a href="mailto:klarsen@BDCP.net">klarsen@BDCP.net</a>	\$250,000	16.39%
Kilauea Bay Company, LLC 87-0557558	P.O. Box 770 #370 Park City, Utah 84060	435-645-7010	435-645-7016	801-971-1842	<a href="mailto:dls@csolutions.net">dls@csolutions.net</a>	\$325,000	21.31%
La Pay, Michael 553-31-7621	P.O. Box 681665 Park City, Utah 84068	435-649-4944	435-655-8636	435-640-5700	<a href="mailto:mlapav@sisna.com">mlapav@sisna.com</a>	\$50,000	3.28%
Moore, David G. 517-72-9108	3776 Rising Star Lane Park City, Utah 84060	435-645-9575	435-655-9174	435-645-9227	<a href="mailto:DMG@4-Moore.com">DMG@4-Moore.com</a>	\$250,000	16.39%
Moore, Douglas 516-64-0725	6906 Royal Birkdale Place <b>OR</b> P.O. Box 675592 Rancho Santa Fe, CA 92067	435-828-4534	425-828-9124	858-344-4809	<a href="mailto:dougmoore@dgminvestment.com">dougmoore@dgminvestment.com</a>	\$250,000	16.39%
RLH General Trust Robert L. Henderson, Trustee 353-48-1626	P.O. Box 681509 Park City, Utah 84068	435-649-5999	435-649-5216	435-901-9930	<a href="mailto:robb@viewpointleather.com">robb@viewpointleather.com</a>	\$250,000	16.39%
TEDCO, Inc. David Broser 88-0295898	630 Third Ave., 7 <sup>th</sup> Fl. New York City, NY 10017	212-682-1000 ext. 292			<a href="mailto:davidbros@aol.com">davidbros@aol.com</a>	\$50,000	3.28%
The Klenner Family Trust 560-46-8876	23150 Collins Street Woodland Hills, CA 91367	818-347-7050				\$50,000	3.28%
<b>TOTAL</b>						<b>\$1,525,000</b>	<b>100.00%</b>

**KILAUEA TOWN CENTER, LLC**

**CLASS B MEMBERS**

NAME	MAILING ADDRESS	PHONE	FAX	ALT. PHONE	EMAIL	AMOUNT INVESTED	PERCENT INVESTED
NSE Management Company, LLC 87-0655022	P.O. Box 770 #370 Park City, Utah 84060	435-645-7010	435-645-7016	801-971-1842	dls@csolutions.net	\$100.00	\$100.00%
<b>NSE MANAGEMENT COMPANY, LLC</b>							
<b>MEMBERS</b>							
Dorn L. Schmidt	P.O. Box 770 #370 Park City, Utah 84060	435-645-7010	435-645-7016	801-971-1842			
James R. O'Connor	P.O. Box 770 #370 Park City, Utah 84060		808-828-1257	801-971-1842	joc@oconnor-hawaii.com		
David G. Livingston	P.O. Box 770 #370 Park City, Utah 84060	808-651-0265	808-826-4247	801-971-1842	dgl.kauai@verizon.net		
Richard Sheinberg	P.O. Box 770 #370 Park City, Utah 84060	435-645-7010	435-645-7016	801-971-1842			