

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer Ulrich H. Rachner

Address P.O. Box 692, Kilauea, Hawaii 96754

Project Name(\*): Mauka Kai Estates Agricultural Condominium

Address: Lot 22A, Kalihiwai Ridge Subdivision, Phase II at Kalihiwai & Kilauea, Hanalei, Kauai, Hawaii

Registration No. 3859

Effective date: April 15, 1998

Expiration date: May 15, 1999

Preparation of this Report:

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

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

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

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

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

Type of Report:

PRELIMINARY: (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. A Final Public Report will be issued by the developer when complete information is filed.

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

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

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

(\*) Exactly as named in the Declaration

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report as Exhibit D.

Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Report:

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

No prior reports have been issued by the developer.

Changes made are as follows:

SPECIAL NOTICE:

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

1. This Public Report does not constitute an approval of the project by any public entity nor does it assert or imply that all applicable Kauai County codes, ordinances and/or subdivision requirements have been complied with.
2. This project does not involve the sale of individual subdivided lots. The dotted lines on the Condominium Map (Exhibit A) are for illustration purposes only. They merely represent the approximate location of the limited common element assigned to each unit.
3. Facilities and improvements normally associated with County approved subdivisions may not necessarily be provided for, and services such as County street maintenance, enhanced water facilities, fire service, related services and trash collection will not be available for interior roads. THERE ARE NO IMPROVED INTERIOR STREETS IN THE PROJECT NOR WATER SERVICE NOR OTHER PUBLIC UTILITIES TO THE INDIVIDUAL UNITS.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW EXHIBIT F, AND ALL OF THE OTHER 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, ChapterA, 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: Ulrich H. Rachner Phone: (808) 828-6718  
Name (Business)  
Business Address P.O. Box 692  
Kilauea, Hawaii 96754

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

None  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker: James R. Buckley of Regency Pacific Realty, Phone: (808) 826-7498  
Name a division of Regency Pacific, Inc. (Business)  
Business Address P.O. Box 1046  
Hanalei, Hawaii 96714

Escrow: First Hawaii Title Corp. Phone: (808) 826-6812  
Name (Business)  
Business Address P.O. Box 507  
Hanalei, Hawaii 96714

General Contractor: Mark R. Gauthier Phone: (808) 826-6693  
Name (Business)  
Business Address 3967 Kalakaua Place  
Hanalei, Hawaii 96714

Condominium Managing Agent: James R. Buckley of Regency Pacific Realty, Phone: (808) 826-7498  
Name a division of Regency Pacific, Inc. (Business)  
Business Address P.O. Box 1046  
Hanalei, Hawaii 96714

Attorney for Developer: Peter C. Miller, Esq. Phone: (808) 826-4606  
Name (Business)  
Business Address P.O. Box 1230  
Hanalei, Hawaii 96714

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

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

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

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 97-173501  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed- Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]: None.

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

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 2634  
 Filed- Land Court Condo Map No. \_\_\_\_\_

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

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

The Bylaws for this condominium are:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 97-173502  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed- Land Court: Document No. \_\_\_\_\_

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]: None.

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

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents**

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

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

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

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

2. Developer:

- No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.
- Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:



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: Lot 22A, Kalihiwai Ridge Subdivision, Phase II Tax Map Key (TMK): (4) 5-2-22-21  
Kalihiwai & Kilauea, Hanalei, Kauai, Hawaii  
 Address  TMK is expected to change because \_\_\_\_\_

Land Area: 48.771  square feet  acre(s) Zoning: Open, with a small  
portion zoned agricultural

Fee Owner: Name ULRICH H. RACHNER, a married man, JOHN W. WETZLER and SUZANNE E. WETZLER, husband and wife, GREGORY R. BRUNDAGE and MARY BETH BRUNDAGE, husband and wife, STEPHEN MACK OLDFIELD, unmarried, and THOMAS SCOTT MARTIN, unmarried

Address c/o Ulrich H. Rachner  
P.O. Box 692  
Kilauea, Hawaii 96754

Lessor: 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: 5 Floors Per Building 1

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

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other Metal corner posts with shade cloth fabric walls

4. Uses Permitted by Zoning:

	No. of Use Permitted <u>Apts.</u>	<u>By Zoning</u>		No. of Use Permitted <u>Apts.</u>	<u>By Zoning</u>
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Agricultural	<u>5</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Other: <u>See page 20</u>	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?  
 Yes  No

5. Special Use Restrictions:

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

- Dogs, cats and other typical household pets are permissible in reasonable numbers and under reasonable conditions. See recorded declaration of restricted covenants for details.
- [X] Pets: \_\_\_\_\_  
 No Single Family Residence on any Lot shall be used for living purposes by more than the Single Family Residence was designed to accommodate pursuant to plans approved by the Kalihiwai Ridge Environmental Committee. See recorded declaration of restrictive covenants for details.
- [X] Number of Occupants: \_\_\_\_\_
- [X] Other: An owner must engage in agricultural activity to be permitted to construct a residence. The uses on the limited common elements shall be limited to those listed as permissible within the "A" Agricultural Land Use Rules.
- [ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0      Stairways: 0      Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf) *</u>	<u>Net Storage Shed Area (sf)</u>	<u>(Identify)</u>
<u>A</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>9</u>	<u>N/A</u>
<u>B</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>9</u>	<u>N/A</u>
<u>C</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>9</u>	<u>N/A</u>
<u>D</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>9</u>	<u>N/A</u>
<u>E</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>9</u>	<u>N/A</u>

Total Number of Apartments: 5

\*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:      See Exhibit A (Condominium Map)

Permitted Alterations to Apartments:

As allowed by the Kauai County zoning ordinances, the Declaration and the recorded covenants, conditions and restrictions upon each permanent improvement. An amendment to the Declaration of Condominium Property Regime and the Condominium Map (Exh.A) by the Association of Unit Owners will be required in order to disclose actual improvements as a matter of public record.

7. Parking Stalls:

Total Parking Stalls: There are no designate parking stalls. However, there is ample room in each unit's limited common element to accommodate parking and the CCRs require at least a 2 car garage for each residence.

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	_____	<u>1</u>	_____	_____	_____	_____	<u>5</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>5</u>		<u>0</u>		<u>0</u>		<u>5</u>

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

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool       Storage Area       Recreation Area

Laundry Area       Tennis Court       Trash Chute/Enclosure(s)

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

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

There are no violations.       Violations will not be cured.

Violations and cost to cure are listed below:       Violations will be cured by \_\_\_\_\_  
Date

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

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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

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

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

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

Limitations may include restrictions on extending, enlarging, or continuing the non-conformiy, 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     B    

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   B  

as follows: The land areas of the limited common areas set aside for the respective Units is as shown on the Condominium Map, which is Exhibit A hereto.

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

described in Exhibit   C  

as follows:

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

Exhibit   E   describes the encumbrances against the title contained in the title report dated   November 14, 1997  

and issued by   First Hawaii Title Corp.

Blanket Liens:

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

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

[X] There are blanket liens which may affect title to the individual apartments.

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	This mortgage is secured by the interests of owners Martin and Oldfield and secures repayment of a loan to them from owner Rachner. The mortgage will be released as necessary to allow the condominium interests to be conveyed free of the encumbrance. In the event that this mortgage is foreclosed upon prior to conveyance of Buyer's unit, Buyer will be entitled to a refund of all of his deposit moneys.

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 Date of Completion:

Construction of Unit A, B, C, D and E storage sheds was completed on January 15, 1998.

H. Project Phases:

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

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

IV. CONDOMINIUM MANAGEMENT

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

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

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

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

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

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

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

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

C. **Utility Charges for Apartments:**

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

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

V. MISCELLANEOUS

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

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit  H  contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated  See Exhibit and Provisions for Escrow Agreement(s)   
Exhibit  I  contains a summary of the pertinent provisions of the escrow agreement.
- Other  Specimen Limited Warranty Apartment Deed

B. **Buyers Right to Cancel Sales Contract:**

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

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

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

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been issued 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 - NONE.
- 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 Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge

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

This Public Report is a part of Registration No. 3859 filed with the Real Estate Commission on January 2, 1998

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. They are not necessarily serviced by infrastructure which one has come to expect as part of a subdivision lot. Also, if a residence is not already constructed, you will be required to comply with zoning codes to be allowed to construct a residence on your limited common element. To determine whether your expectations can be realized, you should carefully review the contents of this Report, especially Exhibit F, which is a summary of the recorded restrictive covenants for the real property upon which this project is located. Among other things, the restrictive covenants govern building type and cost, land use insurance requirements, architectural review, required association membership, animals and maintenance of the property. You should also conduct your own investigations and ascertain the validity of information provided. Please remember that issuance of an effective date for this Report does not mean the Real Estate Commission has approved the project. **Neither does it mean that the Common Element roadway has been improved or that that water, public utilities or other services have been extended to the respective Units.** You should fully investigate the status of these issues before making a purchase.

The County of Kauai Planning Department has advised that, in order to process the necessary permits for the construction of a farm dwelling and the processing of a farm dwelling agreement, authorization from at least 75% of the legal and equitable ownership of the entire project shall be required, consistent with the Declaration of Condominium Property Regime and the Bylaws ("condominium documents"). Except as limited specifically by the condominium documents, all uses permitted in the agricultural zone are permitted. Such uses include, but are not limited to, growing crops, raising animals, residence, diversified agriculture, forestry, orchards and nurseries and wildlife management. See Kauai County Comprehensive Zoning Ordinance, Article 8.7. for detailed information. In relation to specifically permitted uses of buildings and other improvements, structures shall only be occupied or used for agriculture, associated residential uses, and/or other uses permitted under the Kauai County Zoning Ordinances and the condominium documents. A farm dwelling may not be constructed unless a unit owner demonstrates to the County his ability to derive income from his property, established and verified prior to any building permit approval. You should check with the Kauai County Planning Department for the status of the County's position on these and related issues.

A buyer should understand that development and use of the property shall be in compliance with all County Codes and Ordinances, that owners in this condominium project will not necessarily receive the same County benefits as owners of approved subdivided lots, and that owners who develop their properties later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations. The issuance of building permits by the County of Kauai for the agricultural sheds does not constitute a guarantee that water or water services by the County of Kauai will be provided to the property at any time in the future. Also, zoning and land use restrictions are subject to change and each purchaser should maintain awareness of such conditions.

D. 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.

Ulrich H. Rachner

Printed Name of Developer

By: 

Duly Authorized Signatory

12-8-97

Date

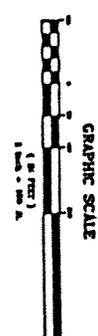
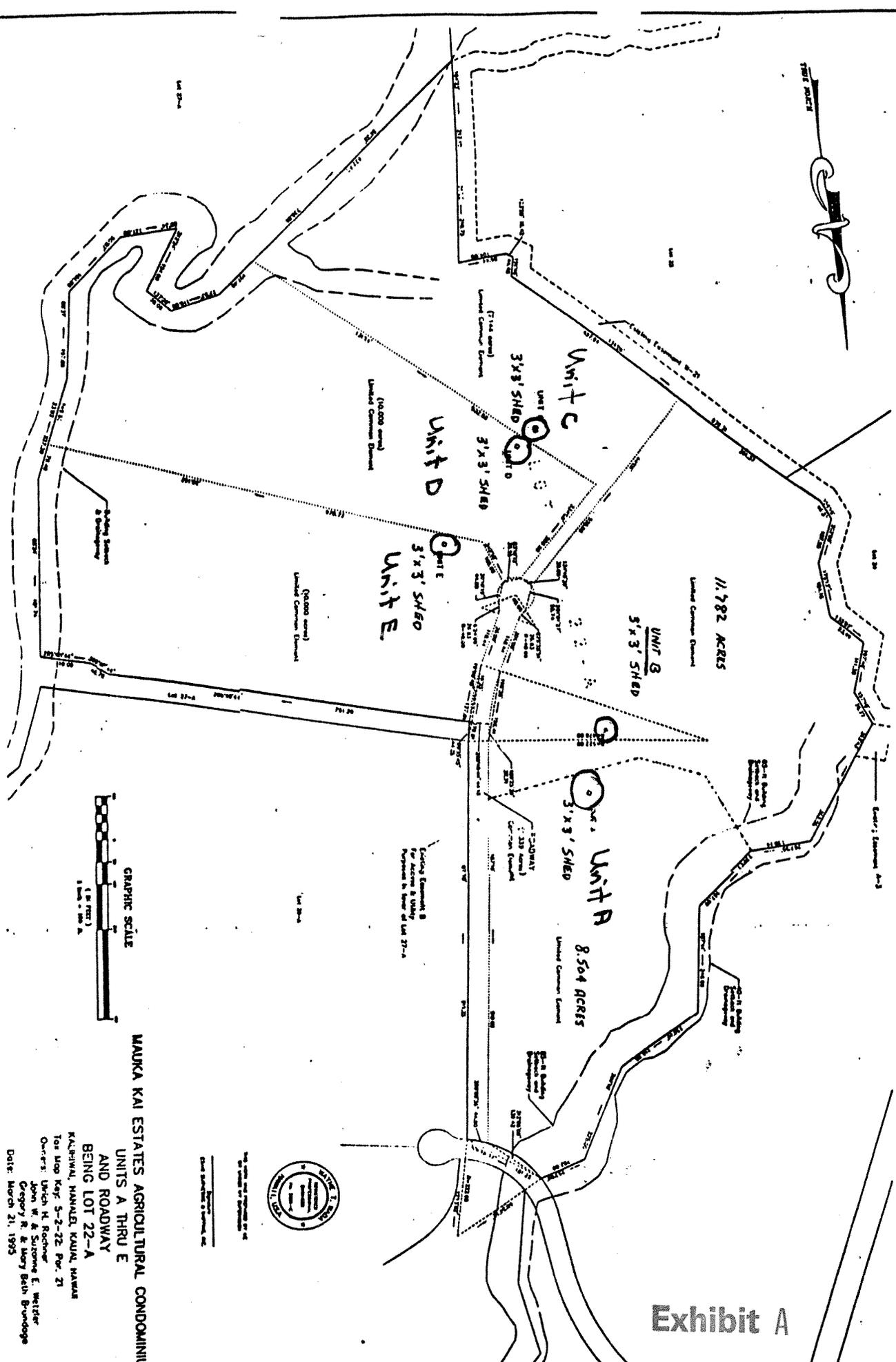
Ulrich H. Rachner, Developer

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai



**MAUKA KAI ESTATES AGRICULTURAL CONDOMINIUM  
UNITS A THRU E  
AND ROADWAY  
BEING LOT 22-A**

KALSHIVA, NANAIKI, KAUAL, HAWAII  
To: Map Key: 5-2-72 Pw. 21  
Owners: Ulrich H. Roegner  
Gregory R. & Mary Beth Brundage  
Date: March 21, 1995



**Exhibit A**

EXHIBIT B

COMMON ELEMENTS OF THE PROJECT

The common elements of the project are:

- (1) All of the land in fee simple;
- (2) All commonly used present and future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, water; sewage, irrigation, cable and telephone;
- (3) Any and all areas or facilities designated on the Condominium Map for common use of the units, including a roadway of 1.339 acres; and
- (4) Any and all other future elements and facilities for common use or reasonably necessary to or useful to the existence, upkeep and safety of the Project.

LIMITED COMMON ELEMENTS OF THE PROJECT

Certain parts of the common elements, herein referred to as the "limited common elements", are hereby designated and set aside for the exclusive use of one or more apartments, and such apartment(s) shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

- (1) The immediate land area around and upon which each apartment is located, the boundaries of which are as so shown and designated on the Condominium Map and the table below, said land area being deemed a limited common element appurtenant to and for the exclusive use of that respective apartment.

Apartment No.	Area of Limited Common Element
A	8.504 acres
B	11.782 acres
C	7.144 acres
D	10.000 acres
E	10.000 acres

All costs of every kind pertaining to the aforesaid limited common elements, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement shall be borne solely by the owner of the apartment to which said limited common elements are appurtenant.

EXHIBIT C

SCHEDULE OF APARTMENTS AND COMMON INTERESTS

Qty.	Apt. No.	Area of Ltd. Common Area (acres)	No. of Bdrm/Bath	Approx. Net Living Area (sq. ft.)	Approx. Farm Shed Area (sq.ft.)	Percentage of Common Interest
1	A	8.504	0	0	9	20%
1	B	11.782	0	0	9	20%
1	C	7.144	0	0	9	20%
1	D	10.000	0	0	9	20%
1	E	10.000	0	0	9	20%

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

EXHIBIT D

DISCLOSURE ABSTRACT FOR  
MAUKA KAI ESTATES AGRICULTURAL CONDOMINIUM PROJECT  
LOT 22-A KALIHIWAI RIDGE, PHASE II

Pursuant to Hawaii Revised Statutes, Section 514A-61, the Developer of MAUKA KAI ESTATES AGRICULTURAL CONDOMINIUM PROJECT LOT, located on Lot 22-A of KALIHIWAI RIDGE, PHASE II makes the following disclosures:

1. The Developer of the project is ULRICH H. RACHNER, P. O. Box 692, Kilauea, Hawaii, 96754.
2. See Exhibit G for the projected annual maintenance fees. The Developer hereby certifies that the estimations have been based on generally accepted accounting principles.
3. No warranty will apply to any individual agricultural units. There are pre-existing structures on the property and no warranty will be made regarding the agricultural buildings.
4. If any condominium unit is converted to residential use, no such units will be used for both hotel and residential use; these are condominium units in which residential use is permitted, but hotel use is not.
5. There will be no commercial use except those activities permitted by the Kauai County Comprehensive Zoning Ordinance.
6. Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed for the above-referenced project. There are five units, each of which sustains a structure and each of which will burden the common elements equally. Therefore, the assessment of undivided interest both for common expense and for voting is 20% for each unit.
7. The Common Element roadway is unimproved and water, public utilities and other services are not supplied to the individual Units of this project.

Dated: 12-8-, 1997

  
\_\_\_\_\_  
Ulrich H. Rachner, Developer

RECEIPT

The undersigned has received a copy of the foregoing disclosure abstract with Exhibit \_\_\_ this \_\_\_ day of \_\_\_\_\_, 199\_\_\_.

Purchaser(s)

\_\_\_\_\_

\_\_\_\_\_

Exhibit D

## **Mauka Kai Estates Agricultural Condominium Project**

### **EXHIBIT E**

#### **ENCUMBRANCES AGAINST TITLE**

1. Real Property Taxes. Check with the County of Kauai, Department of Finance, Real Property Tax Division, for detailed information.
2. Terms and provisions of that certain Agreement between the STATE OF HAWAII and C. BREWER AND COMPANY, LIMITED, dated March 16, 1977, recorded in the Bureau of Conveyances of the State of Hawaii in Book 12110 Page 330. Re: Use of land (in addition to other land) for agricultural purposes.
3. The terms, provisions, covenants, easements and reservations as contained in the Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge dated October 3, 1988, recorded in said Bureau of Conveyances of the State of Hawaii in Liber 22452 at Page 429, as now or hereafter amended and supplemented by Correction to Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge dated July 5, 1990, recorded in said Bureau as Document No. 90-104733, and by Annexing Declaration and Declaration of Restrictive Covenants dated November 7, 1991 recorded in said Bureau of Conveyances as Document No. 91-155979, and by Annexing Declaration and Declaration of Restrictive Covenants dated March 17, 1992, recorded in said Bureau of Conveyances as Document No. 92-045028.
4. Unrecorded Kalihiwai Ridge Environmental Design Rules and Guidelines pursuant to Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge, dated October 12, 1988, as amended.
5. The terms, provisions, covenants, easements and reservations as contained in the Declaration dated July 16, 1991, recorded in the Bureau of Conveyances of the State of Hawaii as Document Number 91-097979, as amended by Amendment dated November 26, 1991 and recorded in said Bureau of Conveyances as Document Number 91-166866 and as further amended by Amendment dated December 12, 1994 and recorded in said Bureau of Conveyances as Document Number 94-210073.
6. The terms, provisions, covenants, easements and reservations as contained in the Declaration dated November 8, 1991, recorded in the Bureau of Conveyances of the State of Hawaii as Document Number 91-155965.
7. The terms and provisions of that certain Agreement to Incorporate Agricultural Restrictions Into Instruments of Conveyance dated November 7, 1991, by and BETWEEN C. BREWER PROPERTIES, INC. and the COUNTY OF KAUAI PLANNING DEPARTMENT, recorded in said Bureau of Conveyances as Document No. 91-155967.
8. The terms, provisions, covenants, easements and reservations as contained in the Declaration dated November 7, 1991, recorded in the Bureau of Conveyances of the State of Hawaii as Document Number 91-155968.

9. Indemnity Agreement dated September 23, 1991, recorded as Document No. 91-164222, entered into by and between C. BREWER PROPERTIES, INC., a Hawaii corporation, "Brewer", and the DEPARTMENT OF PUBLIC WORKS OF THE COUNTY OF KAUAI, "County"; re: Brewer agreed to indemnify and hold the County harmless from any and all claims, actions, or judgments for damage to property or injury or death to persons arising out of or resulting from the design, construction and diversion of waters caused by the drain system generally and specifically including but not limited to the use of the water from the reservoir on Lot 3 for irrigation and agricultural pursuits on their respective lots within the Kalihiwai Ridge, Phase II Subdivision, where such damage, injury or death is adjudged or found to be the result of contamination of the reservoir from the subdivision roadways which have been dedicated by Brewer to the County, etc.

10. Right-of-Entry Agreement dated August 6, 1991, recorded as Document No. 91-166237, entered into by and between C. BREWER PROPERTIES, INC., a Hawaii corporation, "Owner", and the DEPARTMENT OF WATER, COUNTY OF KAUAI, "Department"; re: granting a right-of entry over and across the land described herein for the purposes of conducting all necessary inspections for and on behalf of the Department, and, if appropriate, for constructing, maintaining, conducting water meter readings on, and repairing any and all facilities and improvements for the conveyance of potable water to the lots which will result from Subdivision Application No. S-89-79.

11. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in that certain Deed from C. BREWER PROPERTIES, INC., a Hawaii corporation, as "Grantor", dated March 25, 1992, recorded in the Bureau of Conveyances of the State of Hawaii as Document 92-045029, including, but not limited to the following provisions:

"EXCEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, easements for landscape, conservation, and setback purposes, for electrical, gas, water transmission, water collection, communication, and other utility purposes, and for sewer, drainage, irrigation, and water pipeline, ditch and facility purposes and roadway and vehicular and pedestrian access over, under, across, along, upon, and through any easements designated on said File Plan 2053, together with rights of reasonable access therewithin and thereto for the exercise of any said easement rights, with the right to grant to the State of Hawaii, County of Kauai, Kalihiwai Ridge Community Association or other appropriate governmental agency or to any public or private utility or other corporation, partnership, individual or entity easements for any of such purposes within said easements so designated, upon such terms as the Grantor deems necessary or desirable.

"EXCEPTING AND RESERVING ALSO, HOWEVER, unto Grantor, its successors and assigns, all water and water rights within and/or appurtenant to the granted premises or any easement areas over, under, across, along, upon or through which easements or other rights are hereby granted, including, without limitation, all surface and subterranean waters on and under the granted premises, and all rights, if any, to wells, springs, streams, and percolating waters located on or under the granted premises, with the right to assign and transfer any such water and/or water rights to the State of Hawaii, County of Kauai, Kilauea Irrigation Co., Inc., Kilauea Agronomics, Inc., Kalihiwai Ridge Community Association or other appropriate governmental agency, or

any public or private utility or other corporation, partnership, individual or entity; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land of the granted premises or any improvements thereon.

“EXCEPTING AND RESERVING ALSO, HOWEVER, unto Grantor, its successors and assigns, forever, as appurtenant to the lands which are located adjacent to or in the vicinity of the granted premises and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operations, the unrestricted right to engage in any type of farming operation, including, but not limited to open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides and/or herbicides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration and other nuisances to be discharged or emitted over and upon the granted premises, Grantees hereby agreeing for themselves, their heirs, devisees, personal representatives and assigns that Grantor shall not be responsible or liable to Grantees, their heirs, devisees, personal representatives and assigns for the consequences from the creation and discharge of such noxious emissions and that Grantees shall indemnify and hold Grantor harmless from any liability or expense arising from any such nuisance, whether claim for such liability or expense is made by Grantees or Grantees' guests or other persons using the granted premises.”

12. Co-Owners Agreement for Lot #22 - Phase II - Kalihiwai Ridge Subdivision by and between Ulrich H. Rachner, John W. & Suzanne E. Wetzler, and Gregory R. & Mary Beth Brundage, Dated March 24, 1992 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-045030, as amended by Amendment to Co-Owner's Agreement dated May 15, 1997 and recorded in the said Bureau of Conveyances as Document Number 97-076953.

13. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in that certain Deed from C. BREWER PROPERTIES, INC., a Hawaii corporation, as “Grantor”, dated April 16, 1992, recorded in the Bureau of Conveyances of the State of Hawaii as Document 92-057890.

14. Waiver and Release by ULRICH RACHNER, acknowledged July 26, 1994 and recorded in the Bureau of Conveyances of the State of Hawaii as Document 94-127964.

15. Farm Dwelling Agreement by and between ULRICH H. RACHNER and the COUNTY OF KAUAI PLANNING DEPARTMENT re: a building permit, dated June 25, 1996 and recorded in the Bureau of Conveyances of the State of Hawaii as Document 96-094397.

16. Waiver and Release by ULRICH H. RACHNER, dated November 4, 1996 and recorded in the Bureau of Conveyances of the State of Hawaii as Document 96-170281.

17. Mortgage by STEVEN MACK OLDFIELD and THOMAS SCOTT MARTIN, as Mortgager, in favor of ULRICH H. RACHNER, as Mortgagee, in the original sum of \$170,560, dated May 12, 1997 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-076956.

*NOTE: At the time of the first conveyance of each apartment of the Mauka Kai Agricultural Condominium Project, the apartment being conveyed and its common interest shall be released from this mortgage by partial release duly recorded.*

18. Claims arising out of customary or traditional Hawaiian rights, including but not limited to those for access or gathering purposes protected by the Constitution and/or the laws of the State of Hawaii.

End of Encumbrances.

## EXHIBIT F

### SUMMARY OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS OF KALIHIWAI RIDGE SUBDIVISION

This Project is located on one of the lots of the Kalihiwai Ridge Subdivision. The Subdivision is controlled by a "Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge" (herein called the "CCRs") recorded on October 11, 1988 at Book 22452, Page 429 of the records of the State of Hawaii Bureau of conveyances, as amended from time to time and as supplemented by Correction to Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge dated July 5, 1990, recorded as Document No. 90-104733, and by Annexing Declaration of Restrictive Covenants dated November 7, 1991, recorded as Document No. 91-155979 and the Annexing Declaration dated March 17, 1992, recorded as Document No. 92-045028, and the First Amendment to Declaration of Protective Covenants dated August 9, 1993, recorded as Document No. 94-037305, all of said recordings being in the Bureau of Conveyances of the State of Hawaii.

This is a summary of the types of restrictions applicable to the Kalihiwai Ridge Subdivision as a whole, and to the Subdivision Lot upon which this Project is located. This is not meant to completely recite the actual provisions of the CCRs, nor to cover every issue in which a prospective purchaser might have an interest. The prospective purchaser is urged to obtain a full copy of the CCRs, and the subsequent documents affecting it, from the Developer prior to entering into an agreement to purchase a unit in this Project.

#### ARTICLE II CONTROL OF REAL PROPERTY USE

Article II of the CCRs has to do with the goals of the CCRs for Kalihiwai Ridge, the requirement that all new construction and modification of existing improvements, except by the Developer of the Subdivision, are required to first be approved by the Kalihiwai Ridge Environmental Committee in accordance with the applicable Environmental Design Rules, and rules applicable to the assignment or attempted assignment by owners of rights and obligations.

#### ARTICLE III THE ASSOCIATION

This Article III discusses the Kalihiwai Ridge Community Association (the "Association"), comprised of all the owners of Lots, its general purposes and powers, membership, election of Boards of Directors, voting rights, its Articles and Bylaws, notices regarding Association meetings and similar matters.

#### ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

This Article deals with the right of the Association to govern the lots, enter onto lots to determine compliance with rules, and to own, manage and maintain Association Property. It includes the right to incur expense on behalf of the Association and acquire and hold necessary personal property to perform its functions. The Association also has the power to implement rules and regulations to enhance the value of the property and prohibit noxious and

offensive activities. Each owner is entitled to a copy of every rule and regulation passed. The Association also has the power to enforce the rules and CCRs, to collect fees, and to levy fines and collect them.

#### ARTICLE V ASSESSMENTS

Each Lot Owner, in this case the Project itself, will be required to pay Association fees. Payment for such fees is contemplated in the Common Expenses to be assessed for the project. This Article also deals with the method of establishing a budget and assessments. Additional assessments may be made when the need arises. The assessments, fines, penalties, etc. constitute liens upon the lots, in addition to individual responsibility of the owners for payment thereof.

#### ARTICLE VI RIGHTS AND RESTRICTIONS

No Lot owner will be allowed to engage in activities which would risk removal of liability insurance coverage, nor may they violate the law of the State of Hawaii or ordinances of the County of Kauai. This Article also prohibits subdivision of lots or consolidation of lots without the consent of the environmental committee in compliance with certain procedures.

Condominiums and further restrictive covenants must have prior approval under Article VI of the Developer. No timesharing is permitted. Occupancy limitations are stated, including the number of Single Family Residences, Additional Dwelling Units and guest facilities. There are specific limits on the nature and number of vehicles and other activities that would be deemed "unsightly" as well as preclusion of other activities such as unusual accumulations of trash, garbage, refuse, lumber and other bulky materials, including farm implements which are not consistent with the use of the land or not adequately screened from public view. There is also a limitation on excessive noise and unscreened light. Agricultural animals are limited to those approved by the environmental committee for the subdivision. Animals must be properly cared for, particularly livestock, poultry, fish and game. No storage shed may be used for residential purposes. No temporary buildings are permitted. No new improvement may be made nor may any existing improvement be materially altered unless the plans are approved by the Kalihiwai Ridge Environmental Committee.

This Article restricts temporary buildings and structures, trailers and tents and prohibits the use of garages, sheds, trailers, mobile homes, tents, temporary buildings or partially completed buildings for human habitation.

This Article limits the nature and size of signs. The Article precludes mining and drilling. Clearing and grading are subject to prior approval by the environmental Committee and the County of Kauai. Cultivation of crops must be performed in a good, safe manner with environmental approval on methods used to control dust, insects, weeds, and drainage. Unit Owners must protect against flooding and erosion and dangerous chemicals. They must also maintain their lots at all times so that they do not become overgrown and unsightly. owners causing damage to Association property will be required to pay for it.

Structures on lots must be located to be inconspicuous and each Single Family Residence on a Lot must have appurtenant to it a garage to accommodate at least two automobiles and must be architecturally harmonious to it.

This Article also deals with other limitations upon structures, materials, architectural design, sanitary waste, etc., including substantial provisions for enforcement.

#### ARTICLE VII LAKE LOTS

This Article deals with the regulation of the lake and the lots that surround it at the subdivision, including the operation of boats, introduction of new species, and the utilization of lots fronting the lake.

#### ARTICLE VIII EASEMENTS

Easements are to be granted through each Lot for emergency repair and other items needed for the benefit of the subdivision.

#### ARTICLE IX ENVIRONMENTAL COMMITTEE

This Article discusses the creation and maintenance of the environmental committee, including its initial members and subsequent members. It outlines committee functions, including design review for all improvements to the subdivision lots and project limited common elements and enforcement of rules. The article discusses requirements for plans, standards for review. This includes the requirement of the posting of improvement bonds in the amount of \$10,000.00 per Lot. The committee has the right to assess a reasonable fee not less than \$500.00 for the review of proposed plans, plus the cost of any professional consultants the Committee hires to advise it. The committee can also adopt rules for its own procedures. Fines are discussed, including fines of over \$2,500.00 for engaging in construction without proper clearance and permission. These fines may be enforced as liens against individual lots for violative activity. Work must be prosecuted to completion after approval

#### ARTICLE X INSURANCE

This outlines insurance requirements for the project including minimum One Million Dollar liability coverage. Individual owners will be required to maintain insurance on their own Lot.

#### ARTICLE XI DESTRUCTION/CONDEMNATION AND RESTORATION

This dealt with the condemnation of subdivision improvements by public authorities and when and how partially or completely destroyed improvements are to be repaired or replaced.

#### ARTICLE XII EXPANSION OF KALIHIAI RIDGE

This Article deals with the right of the Declarant to annex additional property, up to approximately three thousand acres of adjacent lands to the Kalihiwai Subdivision, and the

means by which this may be accomplished. This right to annex land shall expire on or before the twentieth anniversary date of the covenants were recorded on October 11, 1988.

### ARTICLE XIII ENFORCEMENT

This Article deals with the various methods by which the rules of the Subdivision may be enforced.

### ARTICLE XIV MISCELLANEOUS

This Article has to do with many miscellaneous items. It includes the duration of the CCRs, being initially for twenty years and an automatic extension for ten year terms unless and until seventy-five percent (75%) of the Owners of lots vote to the contrary at least one year prior to the scheduled termination of the Covenants. It also deals with amendments to the Covenants requiring a 66.66% majority of the voting power of the Association. The amendment does not apply to the duration of the CCRs, and certain other matters, which can only be amended by a one hundred percent (100%) vote of the voting power of the Association. Other miscellaneous provisions are discussed, including the means by which the CCRs would be interpreted in a court of law, protection of encumbrancers, notice requirements, assignability of rights, severability of clauses, and so forth.

END OF EXHIBIT F

EXHIBIT     G    

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>
A	\$120.00/mo.                      \$1440.00/yr.
B	\$120.00/mo.                      \$1440.00/yr
C	\$120.00/mo.                      \$1440.00/yr
D	\$120.00/mo.                      \$1440.00/yr
E	\$120.00/mo.                      \$1440.00/yr

In addition to the above, the Kalihiwai Ridge Community Association has the ability to collect both "Regular Assessments" and "Supplementary Assessments" as described in Article V of its recorded Declaration of Protective Covenants, Conditions and Restriction for Kalihiwai Ridge, non-payment of which can result in a lien upon the real property. At the time of this report, no Supplementary Assessments are being imposed, but a Regular Assessment of \$310.00 per year is being assessed against each Lot in Kalihiwai Ridge. The share for each Unit of this CPR at this rate will be \$62.00 per year.

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

Estimate of Maintenance Fee Disbursements:

Monthly x 12 months = Yearly Total

Utilities and Services

Air Conditioning N/A  
 Electricity  
   [ ] common elements only N/A  
   [ ] common elements and apartments N/A  
 Elevator N/A  
 Gas N/A  
   [ ] common elements only  
   [ ] common elements and apartments  
 Refuse Collection N/A  
 Telephone N/A  
 Water and Sewer N/A

Maintenance, Repairs and Supplies

Building N/A  
 Grounds N/A  
 Roadway Maintenance \$125.00/mo. x 12 mo. \$1500.00/yr.

Management

Management Fee \$200.00/mo. x 12 mo. \$2,400.00/yr.  
 Payroll and Payroll Taxes N/A  
 Office Expenses N/A

Insurance (Liability only) \$100.00/mo x 12 mo. \$1,200.00/yr.

Reserves (\*) No Reserve Study (5 units)\*\* \$175.00/mo. x 12 mo. \$2,100.00/yr.

Taxes and Government Assessments

Audit Fees N/A

Other None

\*\* DEVELOPER DISCLOSES THAT NO RESERVE STUDY WAS DONE IN ACCORDANCE WITH CHAPTER 514A-83.6, HRS, AND REPLACEMENT RESERVE RULES, SUBCHAPTER 6, TITLE 16, CHAPTER 106 HAWAII ADMINISTRATIVE RULES, AS AMENDED.

TOTAL \$600.00/mo. x 12 mo. \$7,200.00/yr.

I, JAMES F. BUCKLEY, as agent for/and/or employed by REGENCY PACIFIC REALTY, the condominium managing agent/developer for the MAUKA KAI ESTATES AGRICULTURAL 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.

James F. Buckley  
 Signature

3-2-98  
 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 H

### SUMMARY OF SALES CONTRACT

The sales contracts for Units in the MAUKA KAI ESTATES AGRICULTURAL CONDOMINIUM PROJECT will contain, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized) :

1. The method of payment of the purchase price to the escrow agent, subject to other terms.
2. The purchase price does not include the closing costs, prorations and additional costs provided in other sections of the contract.
3. Whether, at the time of execution of the contract, an effective date for a final public report has been issued. If not, then the contract is merely a reservation agreement and it may be cancelled at any time by either the Buyer or Seller and no deposit shall be accepted on behalf of the Seller..
4. The terms and conditions of the sale which include, among other provisions, the following:
  - (a) Buyer has received the Declaration of Condominium Property Regime, Bylaws of the Association of Apartment Owners, form of Apartment Deed, and Escrow Agreement and acknowledges that he has had adequate opportunity to read those documents and to examine the project plans and accepts them.
  - (b) If an effective date for the final public report has been issued, then Buyer agrees that all payments made will be placed on deposit with escrow pursuant to the terms of an appropriate escrow agreement.
  - (c) Risk of loss to the apartment and percentage interest in the common elements will be borne by Seller until the date of closing as defined in the contract. Buyer will not be entitled to possession of the apartment until the date of closing.
  - (d) Until the Apartment Deed conveying title is delivered to Buyer, the Seller may exercise all of the powers of the Association and of the Buyer as a member thereof.
  - (e) After issuance of the final public report and Buyer's waiver of its right to cancel under Hawaii Revised Statutes Section 514A-62, Buyer shall have the right to rescind the contract only if there is a material change in the Project which directly, substantially and adversely affects the use or value of Buyer's apartment or appurtenant limited common elements or those amenities of the project available for the Buyer's use subject to waiver by the Buyer pursuant to the terms set forth in the contract and Hawaii Revised Statutes Section 514A-63.
  - (f) Time is of the essence of the obligations of Buyer under the contract.
  - (g) Neither Seller nor any of its representatives has made any representations as to the rental income to be derived from the unit.

(h) The contract shall not be construed as a present transfer of any interest in the property but it is an agreement to transfer in the future, contingent upon issuance of a final public report for the Project.

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

## EXHIBIT I

### SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between FIRST HAWAII TITLE CORPORATION (the "Escrow"), and DECLARANTS of the MAUKA KAI ESTATES AGRICULTURAL CONDOMINIUM PROJECT, (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

3. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.

4. Escrow will coordinate with any Lender of Buyer and will receive Buyer's financing documents and funds from Lender, if any

5. Developer shall give written notice to Buyer with a copy to Escrow of payments due under the Sales Contract. Escrow will collect payment due from Buyer as specified by Developer.

6. Escrow will not disbursements of Buyer's funds or proceeds of the sale (including any payments made on loan commitments from Lenders) except by way of refunds until: (a) Escrow receives a copy of a "Receipt for Public Report(s) and Notice of Right to Cancel, in the form specified by Section 514A-62 of the Condominium Act for the Final and any Supplementary Public Reports, executed by the purchaser; (b) Escrow has received a certification from Developer, acceptable to Escrow, stating that the Sales Contract has become effective and requirements of Section 514A-39 and 514A-63 have been met as those quoted phrases are used in Section 514A-65 of the Condominium Act; and (c) until the purchaser's apartment deed is filed in the Bureau of Conveyances of the State of Hawaii.

7. Escrow will return deposited sums to the Buyer without interest (a) if Developer and Buyer give Escrow written notice to return the funds to Buyer, (b) if Developer and Buyer notify Escrow of Developer's exercise of any option it has to rescind the Sales Contract; or (c) if Developer and Buyer notify Escrow that conditions providing for a refund under Sections 514A-62 or 63 HRS have been met.

8. Escrow will otherwise arrange for and supervise the signing of all documents which are to be signed subsequent to and contemplated by the Sales Contract and shall act with diligence and dispatch to perform all necessary and customary escrow functions to close the sale pursuant to the terms and conditions set forth in the Sales Contracts.

9. Escrow's compensation for performance hereunder shall be as agreed upon by Escrow and Developer by separate letter for each apartment sold under a binding Sales Contract and for which an apartment deed has been duly recorded in the Office of the Registrar of Conveyances of the State of Hawaii.

**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.***

## **Mauka Kai Estates Agricultural Condominium Project**

### **EXHIBIT J**

#### **SUMMARY OF KALIHIWAI RIDGE ENVIRONMENTAL DESIGN RULES AND GUIDELINES.**

These implement design standards for improvements built in this subdivision. They, like the recorded declaration of restrictive covenants, require submission in advance of construction all plans for improvements of all types. General guidelines for siting, architectural style and standards, drainage, landscape design, roof characteristics, exterior lighting, driveways, fencing and overall quality and effect are set forth. Site improvement standards are given for occupancy limitations, with no use of mobile homes, trailer homes, portable buildings, sheds, tents, etc. for residency allowed. Utilities must be underground. Setbacks of 50 feet from Lot boundaries are required. This also contains restrictions on building height, site grading, etc., Minimum living space floor area of a single family residence is 1500 square feet. One guest facility of 400-500 square feet, no kitchen, allowed per Lot. Limitations are set forth for pets and animals, unsightliness and maintenance. A procedure is outlined for submission and approval of plans, requiring a review fee and a bond, as well as provisions for enforcement.

***End of Exhibit J***