# CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: MICHAEL D. SHERMAN AND SCOTT P. SHERMAN

Address: P.O. BOX 1170 BRIDGEHAMPTON, NEW YORK 11932

Project Name(*): HALE IHILANI

Address: LOT 8, KILAUEA AGRICULTURAL SUBDIVISION PARCEL 7, EAST WAIAKALUA, HANALEI, KAUAI, HAWAII

Registration No. 4161 Effective date: October 25, 2002

Expiration date: November 25, 2003

Preparation of this Report:

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

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

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

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

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

Type of Report:

___ PRELIMINARY: The developer may not as yet have created the condominium but has filed with the (yellow) Real Estate Commission minimal information sufficient for a Preliminary Public Report. A final Public Report will be issued by the developer when complete information is filed.

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

_X_ SUPPLEMENTARY: (pink) This report updates information contained in the:
[ ] Preliminary Public Report dated:_____
[X] Final Public Report dated: JUNE 2, 1999
[ ] Supplementary Public Report dated:_____

And
[X] 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 586-2644 to submit your request.

**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. UNIT 1 WAS SOLD UNDER THE ORIGINAL FINAL PUBLIC REPORT. THIS SUPPLEMENTARY REPORT APPLIES TO UNITS 2 AND 3 ONLY. 2. SINCE ISSUANCE OF AN EFFECTIVE DATE FOR THE FINAL PUBLIC REPORT, THE FIRST AND SECOND AMENDMENTS TO DECLARATION OF CONDOMINIUM PROPERTY REGIME AND DECLARATION OF PROTECTIVE COVENANTS AND HOUSE RULES FOR THE PROJECT WERE RECORDED. SECTION XI OF THE DECLARATION - "PURPOSES OF BUILDINGS AND RESTRICTIONS AS TO USE " WAS AMENDED AND SECTION 15 OF THE DECLARATION OF PROTECTIVE COVENANTS AND HOUSE RULES - "LANDSCAPING, GRAZING AND FENCING" WAS AMENDED. COPIES OF THESE AMENDMENTS ARE PROVIDED WITH THIS SUPPLEMENTARY PUBLIC REPORT AND WILL BE PROVIDED TO ALL PROSPECTIVE PURCHASERS ALONG WITH AN AMENDED DISCLOSURE ABSTRACT.

## SPECIAL NOTICE:

THIS IS A CONDOMINIUM PROJECT, NOT A SUBDIVISION. THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A DWELLING UNIT ON THE PROPERTY. THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO RESIDENTIAL USE. THE PURCHASER SHOULD CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, UPON THE PROPERTY.

1. THERE ARE PRESENTLY NO RESIDENTIAL STRUCTURES ON UNITS 1, 2 AND 3 OF THE PROPERTY. THE ONLY BUILDINGS ON UNITS 1, 2 AND 3 ARE SHADE STRUCTURES, EACH OF WHICH MAY BE DEFINED AS AN "APARTMENT" UNDER THE CONDOMINIUM PROPERTY ACT.

2. ISSUANCE OF AN EFFECTIVE DATE FOR THIS SUPPLEMENTARY 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.

3. 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 CONDOMINIUM MAP, IS DESIGNATED AS A LIMITED COMMON ELEMENT FOR THAT UNIT AND DOES NOT REPRESENT A LEGALLY SUBDIVIDED LOT. THE DOTTED LINES ON THE CONDOMINIUM MAP MERELY REPRESENT THE LOCATION OF THE LIMITED COMMON ELEMENT ASSIGNED TO EACH UNIT.

4. 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. THERE IS CURRENTLY A WATER METER AND CONNECTION TO THE PUBLIC WATER SYSTEM SERVING THIS PROJECT.

5. THIS IS AN AGRICULTURAL CONDOMINIUM AND ALL UNITS IN THE PROJECT ARE SUBJECT TO THE STATE OF HAWAII RESTRICTIONS. ADDITIONALLY, THERE MAY BE ROLL BACKS OF OR RETROACTIVE PROPERTY TAXES IF THERE ARE CHANGES IN THE LAND USE.

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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EXHIBIT A: Condominium Map and Limited Common Element Locations
EXHIBIT B: Summary of Addendum to Sales Contract
EXHIBIT C: Schedule of Apartments and Common Interest
EXHIBIT D: Summary of Portions of Escrow Agreement
EXHIBIT E: Common Elements and Limited Common Elements of the Project
EXHIBIT F: Encumbrances Against Title
EXHIBIT G: Amended Disclosure Abstract
EXHIBIT H: Amended Estimate of Initial Maintenance Fees and Disbursements
EXHIBIT I: Summary of Protective Covenants and House Rules for Hale Ihilani
EXHIBIT J: Memorandum from the County of Kauai Planning Department dated April 16, 1999

## 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 w0ith. 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: | MICHAEL D. SHERMAN, TRUSTEE, AND<br>SCOTT P. SHERMAN, TRUSTEE<br>Name*<br>P.O. BOX 1170<br>Business Address<br>BRIDGEHAMPTON, NY 11932 | Phone: (516) 537-1619 |

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

N/A

| | | |
|---|---|---|
| Real Estate Broker: | CENTURY 21 ALL ISLANDS<br>Name<br>P.O. BOX 712<br>Business Address<br>KILAUEA, HAWAII 96754 | Phone: (808) 828-1111 |
| Escrow: | FIRST HAWAII TITLE CORPORATION<br>Name<br>5-4280 KUHIO HIGHWAY, #B-201<br>Business Address<br>HANALEI, HAWAII 96714 | Phone: (808) 826-6812 |
| General Contractor: | CHAD M. RAUSCH<br>CHAD RAUSCH CONSTRUCTION<br>Name<br>P.O. BOX 56<br>Business Address<br>HANALEI, HAWAII 96714 | Phone: (808) 828-1266 |
| Condominium Managing Agent: | SELF-MANAGED BY THE ASSOCIATION<br>Name<br>OF APARTMENT OWNERS<br>Business Address | Phone: |
| Attorney for Developer | STEVEN R. LEE, ESQ.<br>Name<br>4473 PAHE'E STREET, STE. L<br>Business Address<br>LIHUE, HAWAII 96766 | Phone: (808) 246-1101 |

*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:
[ ] Proposed
[ X ] Recorded - Bureau of Conveyances: Document No. 99-042660
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]: First Amendment to Declaration of Condominium Property Regime of Hale Ihilani and Condominium Map No. 2867 and First Amendment to Declaration of Protective Covenants and Building Rules of Hale Ihilani dated June 15, 2000, recorded as Document No. 2000-092068; Second Amendment to Declaration of Condominium Property Regime of Hale Ihilani Condominium and Second Amendment to the Declaration of Protective Covenants and House Rules effective January 1, 2002, recorded as Document No. 2002-085141.

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
[ X] Recorded - Bureau of Conveyances Condo Map No. 2867
[ ] 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]: First Amendment to Declaration of Condominium Property Regime of Hale Ihilani and Condominium Map No. 2867 and First Amendment to Declaration of Protective Covenants and Building Rules of Hale Ihilani dated June 15, 2000, recorded as Document No. 2000-092068

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
[ X ] Recorded - Bureau of Conveyances: Document No. 99-042661
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]:

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 [ X ] 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:

| | Minimum Set by Law | This Condominium |
|---|---|---|
| Declaration (and Condo Map) | 75%* | 75% |
| Bylaws | 65% | 75% |
| House Rules | — | 75% |

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

2. Developer

[X] 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:

## III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

[X] Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.

[ ] Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit_____contains further explanation regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires:_____ Rent Renegotiation Date(s):

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit_____contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year

For Sub-leaseholds:

[ ] Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
[ ] Canceled [ ] Foreclosed

[ ] As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

[ ] Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit_____contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: Rent Renegotiation Date(s):

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit_____contains a schedule of the lease rent for each apartment per: [ ] Month [ ] Year

[ ] 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 8, KILAUEA AGRICULTURAL SUBDIVISION Tax Map Key: (TMK): (4) 5-1-5-48
PARCEL 7, EAST WAIAKALUA, HANALEI, KAUAI, HAWAII

[ X ] Address [ X ] TMK is expected to change because EACH UNIT MAY OBTAIN A STREET ADDRESS FROM THE DEPARTMENT OF PUBLIC WORKS, COUNTY OF KAUAI AND IS ENTITLED TO ITS OWN TMK NUMBER.

Land Area: 10.751 [ ] square feet [ X ] acre(s) Zoning: AGRICULTURE

Fee Owner: MICHAEL D. SHERMAN
Name
P.O. BOX 1170
Address
BRIDGEHAMPTON, NY 11932

SCOTT P. SHERMAN
215 NOYAC PATH
WATER MILL, NEW YORK 11976

CONSTANCE MAE FELLOW
18812 HADDINGTON LANE
DALLAS, TEXAS 75287

Lessor: N/A
Name

Address

C. **Buildings and Other Improvements:**

1. [ X ] New Building(s) WHEN THE FINAL PUBLIC REPORT WAS ISSUED
   [ ] Conversion of Existing Building(s)
   [ ] Both New Building(s) and Conversion

2. Number of Buildings: 3 Floors Per Building 1

   [ X ] Exhibit "C" contains further explanations.

3. Principal Construction Material:

   [ ] Concrete [ ] Hollow Tile [ ] Wood

   [ X ] Other STEEL POSTS AND SHADE CLOTH

4. Permitted Uses by Zoning:

| | No. of Apts. | Use Permitted by Zoning | |
|---|---|---|---|
| [ ] Residential | | [ ] Yes | [ ] No |
| [ ] Commercial | | [ ] Yes | [ ] No |
| [ ] Mix Res/Comm | | [ ] Yes | [ ] No |
| [ ] Hotel | | [ ] Yes | [ ] No |
| [ ] Timeshare | | [ ] Yes | [ ] No |
| [ ] Ohana | | [ ] Yes | [ ] No |
| [ ] Industrial | | [ ] Yes | [ ] No |
| [X] Agricultural | | [X] Yes | [ ] No |
| [X] Other: | 3 SHADE STRUCTURES | [X] Yes | [ ] No |

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

[ X ] 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:

[ X ] Pets: HOUSEHOLD PETS MAY BE KEPT CONSISTENT WITH ANY APPLICABLE LAW OR RESTRICTIVE COVENANtS APPLICABLE TO THE PROJECT SO LONG AS THEY DO NOT BECOME A NUISANCE TO THE OTHER OWNERS. (SEE SECTION 5.3(9) TO THE BYLAWS.)

[ ] Number of Occupants:

[ X ] Other: SEE THE DECLARATION OF PROTECTIVE COVENANTS AND BUILDING RULES, AS AMENDED.

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: Stairways: Trash Chutes:

| Apt. Type | Quantity | BR/Bath | Net Living Area (sf)* | Net Other Area (sf) | Identify |
|---|---|---|---|---|---|
| 1 | 1 | -0- | -0- | 3 | SHADE STRUCTURE |
| 2 | 1 | -0- | -0- | 3 | SHADE STRUCTURE |
| 3 | 1 | -0- | -0- | 3 | SHADE STRUCTURE |

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

7. Parking Stalls:

Total Parking Stalls: 3*

| | Regular | | Compact | | Tandem | | |
|---|---|---|---|---|---|---|---|
| | Covered | Open | Covered | Open | Covered | Open | TOTAL |
| Assigned (for each unit) | | 1 | | | | | 3 |
| Guest | | | | | | | |
| Unassigned | | | | | | | |
| Extra for Purchase | | | | | | | |
| Other: | | | | | | | |
| Total Covered & Open: | | 3 | | | | | 3* |

* THERE IS AMPLE ROOM FOR PARKING OF TWO OR MORE VEHICLES ON EACH UNIT'S LIMITED COMMON ELEMENT.

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

[ ] Commercial parking garage permitted in condominium project.

[ ] Exhibit _____ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

[X] 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

[X] 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. [X] 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 lawfully at one time but which does not now conform to present zoning requirements:

| | Conforming | Non-Conforming | Illegal |
|---|---|---|---|
| Uses | X | | |
| Structures | X | | |
| Lot | X | | |

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:

[X] 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.

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

[ X ] 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:

[ X ] 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 reports dated August 3, 2002 and July 16, 2002 and issued by TITLE GUARANTY OF HAWAII, INC. AND COMMONWEALTH LAND TITLE INSURANCE COMPANY, RESPECTIVELY.

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.

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

F. **Construction Warranties:**

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

1. Building and Other Improvements:

NONE

2. Appliances:

NONE

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

The agricultural shade structures for Units 1, 2 and 3 were completed in January 1999.

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 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
[ X] self-managed by the Association of Apartment Owners
[ ] the Developer or the Developer's affiliate.
[ ] Other

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

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

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

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

C. **Utility Charges for Apartments:**

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

[ X ] None [ ] Electricity _____ Common Elements only _____ Common Elements & Apartments)

[ ] Gas (_____ Common Elements only _____ Common Elements & Apartments)

[ ] Water [ ] Sewer [ ] Television Cable

[ ] Other

*DEVELOPER HAS NOT CONDUCTED A RESERVE STUDY IN ACCORDANCE WITH SECTION 514A-83.6, H.R.S., AND THE REPLACEMENT RESERVE RULES, SUBCHAPTER 6, TITLE 16, CHAPTER 107, HAWAII ADMINISTRATIVE RULES, AS AMENDED.

## 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

[ X ] Specimen Sales Contract
Exhibit "B" contains a summary of the pertinent provisions of the sales contract.

[ X ] Escrow Agreement dated MARCH 11, 1999.
Exhibit "D" contains a summary of the pertinent provisions of the escrow agreement.

[ X ] 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 be 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 GRANT OF EASEMENT; DECLARATION; GRANT OF EASEMENT; WAIVER AND RELEASE.

I) DECLARATION OF PROTECTIVE COVENANTS AND BUILDING RULES

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 Cashier's 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. 4161 filed with the Real Estate Commission on APRIL 15, 1999.

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

[ ] YELLOW paper stock [ ] WHITE paper stock [ X ] 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, ESPECIALLY EXHIBIT "I", A SUMMARY OF THE RECORDED RESTRICTIVE COVENANTS FOR THE SUBDIVISION WITHIN WHICH THIS PROJECT IS LOCATED. AMONG OTHER THINGS, THE RESTRICTIVE COVENANTS GOVERN LAND USE, BUILDING TYPE AND MATERIALS, POSSESSION OF ANIMALS AND CULTIVATION OF CROPS. YOU SHOULD ALSO CONDUCT YOUR OWN INVESTIGATIONS AND ASCERTAIN THE VALIDITY OF INFORMATION PROVIDED.

IT IS ANTICIPATED THAT THE INITIAL IMPROVEMENTS ON UNITS 1, 2 AND 3 WILL EACH BE REPLACED BY OR SUPPLEMENTED WITH A FARM DWELLING. THE PROSPECTIVE PURCHASER SHALL HAVE THE RIGHT TO BUILD SUCH FARM DWELLING AT PURCHASER'S EXPENSE. THE PURCHASER SHALL ALSO, IN SUCH EVENT, FILE THE "AS-BUILT" CERTIFICATION WITHIN THIRTY DAYS OF COMPLETION OF THE FARM DWELLING IN CONFORMANCE WITH SECTION 514A-12, HAWAII REVISED STATUTES, AND RECORD AN AMENDMENT TO THE DECLARATION OF CONDOMINIUM PROPERTY REGIME ("DECLARATION") TO DESCRIBE THE FARM DWELLING. THE COUNTY OF KAUAI PLANNING DEPARTMENT REQUIRES, IN ORDER TO PROCESS THE NECESSARY PERMITS FOR THE CONSTRUCTION OF A FARM DWELLING AND THE PROCESSING OF A FARM DWELLING AGREEMENT, AUTHORIZATION FROM AT LEAST 75% OF THE LEGAL AND EQUITABLE OWNERSHIP OF THE ENTIRE PROJECT, CONSISTENT WITH THE DECLARATION AND BYLAWS ("CONDOMINIUM DOCUMENTS"). EXCEPT AS LIMITED SPECIFICALLY BY THE CONDOMINIUM DOCUMENTS AND SUBDIVISION RESTRICTIVE COVENANTS (IF ANY), ALL USES PERMITTED IN THE AGRICULTURAL ZONE ARE PERMITTED. 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. A BUYER SHOULD UNDERSTAND THAT ALL DEVELOPMENT AND USE OF THE PROPERTY SHALL BE IN COMPLIANCE WITH COUNTY CODES AND ORDINANCES, THAT OWNERS IN THIS CONDOMINIUM PROJECT WILL NOT NECESSARILY RECEIVE THE SAME COUNTY BENEFITS AS OWNERS OF APPROVED SUBDIVIDED LOTS, AND THAT OWNERS WHO DEVELOP THEIR LIMITED COMMON ELEMENT LATER THAN OTHERS MAY FIND THAT LAND USE AND ZONING CHANGES OR INSUFFICIENT UTILITY CAPACITIES MAY THWART THEIR EXPECTATIONS.

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- ] (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.

MICHAEL D. SHERMAN AND SCOTT P. SHERMAN
Name of Developer

By: _____ 9/4/02
Duly Authorized Signatory* Date

By: _____ 9.4.02
Duly Authorized Signatory* Date

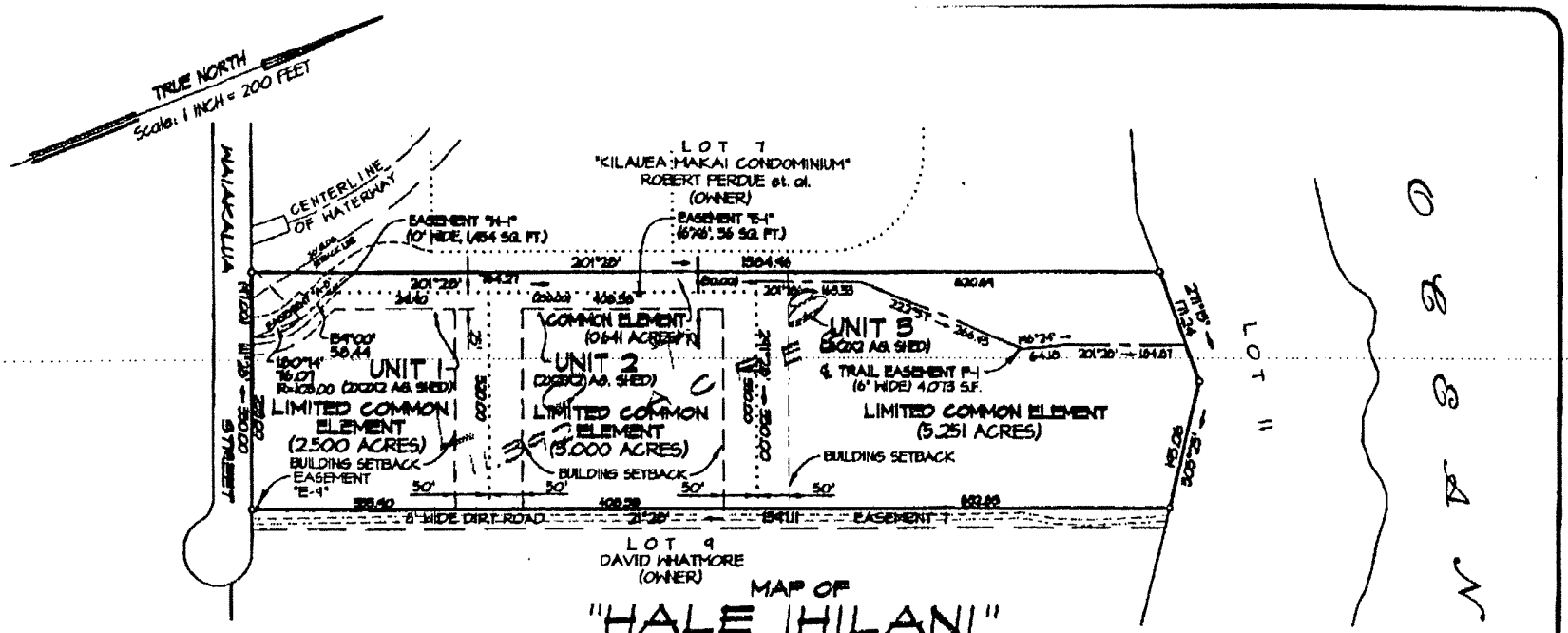
MICHAEL D. SHERMAN AND SCOTT P. SHERMAN, DEVELOPER, AS TRUSTEES
Printed Name & Title of Person Signing Above

**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.**




MAP OF

# "HALE HILANI"

## AGRICULTURAL CONDOMINIUM

SHOWING

## UNITS 1, 2 & 3

AND

## COMMON ELEMENT ROADWAY

AND DESIGNATING EASEMENTS E-1, P-1 & W-1

BEING PORTIONS OF

## LOT 8

"KILAUEA AGRICULTURAL SUBDIVISION, PARCEL 7"

(FILE PLAN 1647)

AT EAST WAIAKALUA, HANALEI, KAUAI, HAWAII

200 0 200

Graphic Scale in Feet

PREPARED FOR:

MICHAEL & SCOTT SHERMAN
P. O. BOX 1170
BRIDGEHAMPTON, N.Y. 11932

NOTE:

THIS PROJECT DOES NOT INVOLVE THE THE SALE OF INDIVIDUAL LOTS. THE DOTTED LINES ON THE CONDOMINIUM MAP ARE FOR ILLUSTRATION PURPOSES ONLY. THEY REPRESENT EITHER A LIMITED COMMON ELEMENT OR COMMON ELEMENT.

SEPTEMBER 16, 1998
REVISED: FEB. 23, 1999

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

RONALD J. WAGNER
LICENSED PROFESSIONAL LAND SURVEYOR
No. 5074
HAWAII, USA

THIS MAP HAS PREPARED BY ME OR UNDER MY SUPERVISION

RONALD J. WAGNER
Licensed Professional Land Surveyor
Certificate No. 5074

Condominium Plot Plan and Limited Common Element Locations

EXHIBIT B

## SUMMARY OF SALES CONTRACT

The HALE IHILANI Sales Contract and Receipt (the "contract"), contains, 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 closing date for the purchase.

3. Whether, at the time of execution of the contract, an effective date for a final public report has been issued.

4. The terms and conditions of the sale which include, among other provisions, the following:

(a) That Purchaser will receive a copy of the final public report for the project.

(b) Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow Agreement, and Purchaser is subject to all of the terms of the Escrow Agreement.

(c) Seller has a right to extend the closing date by 31 days or by 31 days after the public report effective date is issued, whichever is later.

(d) After issuance of the Final Public Report effective date and Buyer's waiver of its right to cancel under Hawaii Revised Statutes Section 514A-62, Purchaser shall not have the right to rescind the contract.

(e) Purchaser has received a copy of the Escrow Agreement.

(f) The unit the Purchaser is purchasing is shown on the condominium map; Purchaser will have the right to cancel if the Unit is different from that shown on Exhibit A.

(g) That a deed conveying clear title will be given at closing, subject to certain obligations.

(h) The Purchaser agrees to give future easements if reasonably required for the project.

(i) Except for unexpired builder's statutory warranties and assignable appliance warranties, the Purchaser will accept the Unit "AS-IS". Purchaser assumes all risks regarding any potential hazardous materials on the condo property or property adjoining or in the vicinity, including liability for suits by third parties. Seller is, however, unaware of any such conditions on the property.

(j) The payment of commissions, if any, is set out in the contract.

(k) Time is of the essence of the obligations of Purchaser under the contract.

(l) If Purchaser has defaults, Seller may cancel the contract or bring legal action against Purchaser to force sale, or obtain money damages.

SPECIAL NOTICE: THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL 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 NOT THIS SUMMARY.

**EXHIBIT C**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS**

| Qty. | Unit No. | Area of Limited Common Element* (Acres) | No. of Br./Bath | Appx. Net Living Area (Sq. Ft.) | Appx. Other Area (Sq. Ft.) | % of Common Int. |
|---|---|---|---|---|---|---|
| 1 | 1 | 2.500 | 0 | 0 | 3 | 33 1/3% |
| 1 | 2 | 3.000 | 0 | 0 | 3 | 33 1/3% |
| 1 | 3 | 5.251 | 0 | 0 | 3 | 33 1/3% |

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 equally. Therefore, the assessment of undivided interest both for common expense and for voting is 33 1/3% for each unit.

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

***Note: Land areas referenced herein are <u>not</u> legally subdivided lots.**

**END OF EXHIBIT C**

**EXHIBIT D**

**SUMMARY OF PORTIONS OF ESCROW AGREEMENT**

The Escrow Agreement ("Agreement") between FIRST HAWAII TITLE CORPORATION (the "Escrow"), and MICHAEL D. SHERMAN and SCOTT P. SHERMAN (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.

2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.

3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected within seven days of signing the sales contract to cancel and receive all funds paid, without deduction; or (b) the Real Estate Commission has not issued a Final Public Report on the project or the requirements of the sales contract have not been met; or (c) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met.

4. Escrow will return deposited sums to the Buyer without interest if Seller and Buyer give Escrow written notice to return the funds to Buyer, if there is a right to cancellation and refund of monies under the sales contract or otherwise. If there is a cancellation under the seven-day right, no fees will be charged Buyer. Thereafter, in the event of a cancellation as a matter of agreement or right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, and all other costs incurred in connection with the Escrow, not less than $25.00.

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

6. As Escrow's compensation for its performance under this Agreement, Escrow will receive its schedule rate for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon schedule rate.

**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) driveway and utility common element;

(c) common beach access trail S-3, running over Lot 11 of the subdivision of which this Project is a part. Contingent Trail Easement P-1, as described below and shown on the Condominium Map;

(d) Easement W-1 for waterline and related purposes;

(e) any future common entry improvements, including gate, landscaping or other improvements approved by two thirds of the common interests of the Project;

(f) 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

(g) any and all other future elements and facilities in common use or necessary to the Project.

### LIMITED COMMON ELEMENTS OF THE PROJECT

Certain parts of the common elements, referred to as the "limited common elements," have been designated and set aside for the exclusive use of one or more units, and such unit(s) have appurtenant exclusive easements for the use of such limited common elements. The limited common elements set aside, reserved and deemed a limited common element appurtenant to and for the exclusive use of each respective unit is that certain land area upon and around which Units 1, 2 and 3 are located, shown and designated on the Condominium Map and the table below.

| Unit Number | Area of Limited Common Element* |
|---|---|
| 1 | 2.500 acres |
| 2 | 3.000 acres |
| 3 | 5.251 acres |

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

END OF EXHIBIT E

**EXHIBIT F**

**ENCUMBRANCES AGAINST TITLE**

1. Real Property Taxes. Check with the County of Kauai, Department of Finance, Real Property Tax Division, for detailed information.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. A 50 foot building Setback line, as shown on File Plan No. 1647.

4. AGREEMENT

| | |
|---|---|
| By and Between: | GEORGE R. ARIYOSHI, "Governor," and C. BREWER AND COMPANY, LIMITED, a Hawaii Corporation, "Brewer" |
| Dated: | March 16, 1977 |
| Book: | 12110 |
| Page: | 330 |
| Re: | Use of land (besides other land) for agricultural purposes. |

5. AGREEMENT TO INCORPORATE AGRICULTURAL RESTRICTIONS INTO INSTRUMENTS OF CONVEYANCE

| | |
|---|---|
| By and Between: | HAWAIIANA INVESTMENT CO., INC., a Hawaii corporation, and THE COUNTY OF KAUAI, Planning Department |
| Dated: | June 30, 1980 |
| Book: | 15060 |
| Page: | 392 |

6. The terms, provisions, covenants, easements and reservations as contained in the following:

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR KILAUEA FARMS

| | |
|---|---|
| Dated: | February 23, 1981 |
| Book: | 15368 |
| Page: | 13 |
| | 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 |

The foregoing Declaration was amended and supplemented by the following:

| Book | Page | Dated |
|---|---|---|
| 15586 | 649 | 06/01/81 |
| 18684 | 779 | 03/12/85 |
| 19600 | 001 | 06/18/86 |

7. The restrictive covenants as contained in the following:

DEED

| | |
|---|---|
| Dated: | December 15, 1982 |
| Book: | 16748 |
| Page: | 750 |
| | 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 |

8. RIGHT-OF-ENTRY

| | |
|---|---|
| In Favor Of: | CITIZENS UTILITIES COMPANY and HAWAIIAN TELEPHONE COMPANY, now known as GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, a Hawaii corporation |
| Dated: | September 9, 1983 |
| Book: | 17486 |
| Page: | 553 |
| Purpose: | granting a right-of-entry and easement for electrical utilities purposes |

9. Terms and provisions contained in Access Easement dated May 9, 1985, recorded in the Bureau of Conveyances of the State of Hawaii in Book 18632 Page 32.

10. A nonexclusive easement for vehicular access and utility purposes over, across, upon and through Easement A-8, affecting Lot 8, in favor of Lots 6 and 7 of said File Plan 1647, as granted in (a) Deed dated August 2, 1985, recorded in said Bureau of Conveyances in Book 18831 Page 606, and (b) Deed dated December 11, 1986, recorded in said Bureau of Conveyances in Book 20175 Page 702.

11. Reservation as contained in the following:

DEED

| | |
|---|---|
| Dated: | March 24, 1987 |
| Book: | 20499 |
| Page: | 571 |
| | 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 |

12. GRANT

| | |
|---|---|
| In Favor Of: | CITIZENS UTILITIES COMPANY and HAWAIIAN TELEPHONE COMPANY, now known as GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, a Hawaii Corporation |
| Dated: | November 2, 1987 |
| Book: | 21469 |
| Page: | 117 |
| Purpose: | granting Easement E-9 (area 50 square feet) for anchor purposes. |

13. WAIVER AND RELEASE

| | |
|---|---|
| Dated: | December 18, 1998 |
| Document No. | 98-194250 |

14. CONVEYANCE OF WATER FACILITY

| | |
|---|---|
| Dated: | December 18, 1998 |
| Document No. | 99-034524 |

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

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR HALE IHILANI

| | |
|---|---|
| Dated: | November 27, 1998 |
| Document No. | 99-042660 |
| | 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 covenants (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. 1867, as amended, to which reference is hereby made.

First Amendment to Declaration of Condominium Property Regime of Hale Ihilani and Condominium Map No. 2867 and First Amendment to Declaration of Protective Covenants and Building Rules of Hale Ihilani dated June 15, 2000, recorded as Document No. 2000-092068; Second Amendment to Declaration of Condominium Property Regime of Hale Ihilani Condominium and Second Amendment to the Declaration of Protective Covenants and House Rules effective January 1, 2002, recorded as Document No. 2002-085141.

16. The terms, provisions, covenants, easements and reservations as contained in the following:

BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF HALE IHILANI

Dated: November 27, 1998
Document No.: 99-042661
To which reference is hereby made

17. The terms, provisions, covenants, easements and reservations as contained in the following:

DECLARATION OF PROTECTIVE COVENANTS AND BUILDING RULES OF HALE IHILANI

Dated: November 27, 1998
Document No.: 99-042662
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 covenants (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicapped persons.

First Amendment to Declaration of Condominium Property Regime of Hale Ihilani and Condominium Map No. 2867 and First Amendment to Declaration of Protective Covenants and Building Rules of Hale Ihilani dated June 15, 2000, recorded as Document No. 2000-092068; Second Amendment to Declaration of Condominium Property Regime of Hale Ihilani Condominium and Second Amendment to the Declaration of Protective Covenants and House Rules effective January 1, 2002, recorded as Document No. 2002-085141.

**END EXHIBIT "F"**

**EXHIBIT "G"**
**AMENDED DISCLOSURE ABSTRACT FOR**
**HALE IHILANI**

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

1. The Developer of the project is MICHAEL D. SHERMAN and SCOTT P. SHERMAN, P. O. Box 1170, Bridgehampton, New York, 11932.

2. See the attached Amended Exhibit "H" to the Final Public Report for the current annual maintenance fees. The Developer hereby certifies that the estimations have been based on generally accepted accounting principles.

3. Unit 1 was sold under the original Public Report. This reinstatement applies to Units 2 and 3 only. Since issuance of an effective date for the public report, the First and Second Amendments to Declaration and Protective Covenants and Building Rules have been recorded regarding the use area for the project. Copies of these amendments will be provided to all prospective purchasers.

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

6. The real estate agent for the project is Bruce Fehring, agent for Century 21 All Islands, successor to Emerald Isle Properties, Inc., whose address remains P. O. Box 712, Kilauea, Hawaii 96754. The phone number is (808) 828-1111.

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.**

MICHAEL D. SHERMAN — Date 3/15/02

SCOTT P. SHERMAN — Date 3/15/02

RECEIPT

The undersigned has received a copy of the foregoing disclosure abstract with Amended Exhibit "H" this ___ day of _____, 2002.

Purchaser(s): _____ _____

**AMENDED EXHIBIT "H"**

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

Estimate of Initial Maintenance Fees:

| Apartment | Monthly Fee x 12 months = | Yearly Total |
|---|---|---|
| 1 - 3 | $35.00 | $420.00 |

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 Service | | |
| Telephone | | |
| Water and Sewer | | |
| Maintenance, Repairs and Supplies | | |
| Building<br>Grounds<br>Roadway | $ 84.00 | $1,008.00 |
| Management | | |
| Subdivision Maintenance Fee | $ 21.00 | $ 252.00 |
| TOTAL | $105.00 | $1,260.00 |

The undersigned, Developers of the condominium project HALE IHILANI hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

MICHAEL D. SHERMAN

Dated: 8/15/02

SCOTT P. SHERMAN

Dated: 8/15/02

(*) 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 Section 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

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

**EXHIBIT "I"**
**SUMMARY OF PROTECTIVE COVENANTS AND HOUSE RULES FOR**
**HALE IHILANI**

This is a summary of the recorded Declaration of Protective Covenants and House Rules ("House Rules") for the condominium Project. This is not meant to completely recite the actual provisions of the House Rules, nor to cover every issue in which a purchaser might have interest. The prospective purchaser is urged to obtain a full copy of the House Rules from the condominium Developer prior to entering into an agreement to purchase a unit in this Project.

Building Permits. Any owner desiring to construct improvements on a unit will have to comply with County of Kauai building and zoning codes.

Water and Utilities. Each unit owner will be required to connect water, electricity and telephone to his/her improvements at his/her own cost and expense.

Wastewater Treatment. Each unit will be required to have its own state-approved wastewater treatment system located within its own limited common element area.

Roadway. There is no shared roadway, each unit will construct its own private access improvements.

Farming. Units in the Project must engage in agricultural activity as a condition precedent to the ability to build or occupy a "Farm Dwelling." Areas in which farming may occur are shown on the map attached to the Second Amendment to Declaration of Condominium Property Regime for the Project.

Construction/Building Areas. There are limits on materials and types of construction*.

Pets and Farm Animals/Noise in General. There are restrictions on types and numbers of animals as well as the levels of noise and dust permissible within the Project.

Common Area Land. The Association shall determine and control the common area land, if any.

Noxious Activities. There are restrictions regarding the spraying of chemicals and pesticides.

Common Element Expenses and Enforcement. The Association shall provide for common area expenses necessary to maintain the project in acceptable condition.

Repeal or Modification. These Covenants may be modified by an affirmative vote of the holders of 100% of the common interests in the Project.

Arbitration. Disputes concerning any unit owner, the Association, its Board, Managing Agent or the condominium documents shall be submitted to arbitration.

*There are special areas where agriculture may be undertaken and where farm dwellings may be constructed, and those activities are limited to protect views and insure safety to occupants of the Project.

**END OF EXHIBIT "I"**

EXHIBIT "J"

COPY

**COUNTY OF KAUAI**
**PLANNING DEPARTMENT**
**4444 Rice Street, Suite 473, Bldg. A,**
**Lihue, Hawaii 96766**

**M E M O R A N D U M**

DATE: April 16, 1999

TO: Senior Condominium Specialist
Real Estate Commission
P&VLD/DCCA
250 South King Street, Suite 702
Honolulu, Hawaii 96813

FROM: Dee M. Crowell, Planning Director

Subject: Certification of Inspection of Existing Buildings for

PROJECT NAME: HALE IHILANI CONDOMINIUM
TAX MAP KEY: (4) 5-1-05:48

The developer of the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai (Section 514A-40 (b)(1), HRS). Subject to the disclosures and waiver (item "g" below) specified herein, we certify the following:

a. The existing buildings on the proposed project referred to as Hale Ihilani Units 1, 2, and 3 are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by this department.

b. There were no variances approved for the subject property.

c. The parcel does not contain any outstanding legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.

d. There are no notices of violation of County Building or zoning codes outstanding according to our records.

e The number of units proposed for this parcel corresponds to the density allowed by the Comprehensive Zoning Ordinance (CZO).

f. The subject property is situated in the agricultural and Open districts.

g. WAIVER
The foregoing certification is not a warranty as to any compliance with all applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulation of condominiums under Subsection a-40 (b)(1), Hawaii revised Statutes.

If you have any questions, please contact Alvin Fukushima of my staff at 241-6697.

cc: Steven R. Lee

END EXHIBIT "J"