

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer Karl H. Oberacker, Trustee and Maureen L. Oberacker, wife of Karl H. Oberacker

Address P.O. Box 15666, Honolulu, HI 96830

Project Name(\*): Spencer Court (Phase 2)

Address: 1020 Spencer Street, Honolulu, HI 96822

Registration No. 4228

Effective date: December 20, 1999

Expiration date: January 20, 2001

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.
X 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
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

Not Required - Disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

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

No prior reports have been issued by the developer.

Changes made are as follows:

## TABLE OF CONTENTS

	<b>Page</b>
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
<b>I. PERSONS CONNECTED WITH THE PROJECT</b>	<b>5</b>
Developer                      Attorney for Developer                      General Contractor	
Real Estate Broker      Escrow Company                      Condominium Managing Agent	
<b>II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS</b>	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
<b>III. THE CONDOMINIUM PROJECT</b>	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
<b>IV. CONDOMINIUM MANAGEMENT</b>	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
<b>V. MISCELLANEOUS</b>	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A: Description of Buildings	
EXHIBIT B: Boundaries of Each Apartment	
EXHIBIT C: Permitted Alterations to Apartments	
EXHIBIT D: Common Elements	
EXHIBIT E: Limited Common Elements	
EXHIBIT F: Common Interest	
EXHIBIT G: Encumbrances Against Title	
EXHIBIT H: Description of Warranties	
EXHIBIT I: Disclosure Abstract	
EXHIBIT J: Summary of Sales Contract	
EXHIBIT K: Summary of Escrow Agreement	
EXHIBIT L: Power of Attorney	

## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Karl H. Oberacker, Trustee of the Phone: (808) 536-6752  
Name (Business)  
Karl H. Oberacker Revocable Living  
Trust Dated November 14, 1979 and  
Maureen L. Oberacker, wife of Karl H. Oberacker  
P.O. Box 15666  
Business address  
Honolulu, HI 96830

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

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker: Coldwell Banker Pacific Properties Phone: (808) 732-1414  
Name (Business)  
4211 Waialae Avenue, Suite 104  
Business Address  
Honolulu, HI 96816  
Attention: Margaret E. Murchie

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211  
Name (Business)  
235 Queen Street, 1<sup>st</sup> Floor  
Business Address  
Honolulu, HI 96813

General Contractor:\* Gary Wetzel, dba Rainbow Builders Phone: (808) 942-9144  
Name (Business)  
725-B Luakaha Street  
Business Address  
Honolulu, HI 96813

Condominium Managing Agent: Hawaii First, Inc. Phone: (808) 531-5566  
Name (Business)  
900 Fort Street Mall, Suite 1220  
Business Address  
Honolulu, Hawaii 96813  
Attention: Jodee Acoba-Suganuma

Attorney for Developer: Oshima Chun Fong & Chung Phone: 528-4200  
Name (Business)  
Davies Pacific Center, Suite 400  
Business Address  
841 Bishop Street  
Honolulu, HI 96813  
Attention: Deborah M. Chun

## 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. 95-041968  
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 Condominium Property Regime of Spencer Court dated August 18, 1995, as Document No. 95-108315, and Second Amendment dated December 11, 1995, as Document No. 95-159948, and Third Amendment dated June 15, 1999, as Document No. 99-09950.

- 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. 2228  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

- 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. 95-041969  
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]: N/A

- 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>Majority of the Board of Directors</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:

**The developer previously had the reserved right to construct Phase 2 and/or to withdraw Phase 2 from the project and the condominium property regime. The developer has exercised his right to construct Phase 2, however, continues to reserve the right to subdivide and remove Phase 2 from the project and the condominium property regime for the project.**

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- 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 N/A 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: N/A

Rent Renegotiation Date(s): N/A

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit N/A 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 N/A 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: N/A

Rent Renegotiation Date(s): N/A

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit N/A 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: 1020 Spencer Street  
Honolulu, Hawaii 96822

Tax Map Key (TMK): Portion of TMK (1) 2-4-016-027 Lot Number:

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

Land Area: 10,336  square feet  acre(s)

Zoning: A-2

Fee Owner: Karl H. Oberacker, Trustee and  
Maureen L. Oberacker  
 Name  
P.O. Box 15666  
 Address  
Honolulu, HI 96830

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

C. **Buildings and Other Improvements: Phase 2**

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

2. Number of Buildings: 1 Floors Per Building 3  
 Exhibit A contains further explanations.

3. Principal Construction Material:  
 Concrete  Hollow Tile  Wood  
 Other Gypsum Board, ceramic tile and related building materials.

4. Uses Permitted by Zoning:

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

Pets: Animals exceeding 25lbs (other than seeing eye dogs) may not be kept in the apartments, No more than one (1) dog or one (1) cat or one (1) bird may be kept in each apartment. Female cats and dogs must be spayed. See House Rules for specification.

Number of Occupants: \_\_\_\_\_

Other: The apartments may not be rented for transient or hotel purposes nor used for time sharing nor for the operation of a business. No waterbeds allowed.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

Apt. Type	Quantity	BR/BATH	Net Living Area (sf)*	Lanai/Patio (sf)
Apt. 4	1	3 / 2	1304	58
Apt. 5	1	3 / 2	1476	338 (lanai) 393 (garage)
Apt. 6	1	3 / 2**	2405	621 (lanai) 406 (garage)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Number of Apartments: 3 (portion of the total 6 units for the entire Project)

**\*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.**

**\*\*The net living area of the apartment is sufficient to accommodate a fourth bedroom, provided that prior written approval for the additional bedroom is obtained (i) from the Board; and (ii) (where the Board deems necessary) from other directly affected apartment owners, in accordance with the Declaration.**

Boundaries of Each Apartment:

See Exhibit B

Permitted Alterations to Apartments:

See Exhibits C

7. Parking Stalls:

Total Parking Stalls NOTE: A total of 8 parking stalls were constructed with Phase 1; two of  
 exclusive of attached garages: 2 the 8 parking stalls are appurtenant to Apt. 4 in Phase 2.  
 Apt. 5 and 6 both have attached garages, each of which  
 provide parking for 2 vehicles.

	<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	<u>1</u>	<u>    </u>	<u>1</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>2</u>
Guest	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Unassigned	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Extra for Purchase	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Other:	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Total Covered & Open:	<u>1</u>	<u>    </u>	<u>1</u>	<u>    </u>	<u>0</u>	<u>    </u>	<u>    </u>

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

- Commercial parking garage permitted in condominium project.
- Exhibit N/A 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: Private Park

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-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 Interest:**

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   D  .

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit  E .

as follows:

3. Common 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  F .

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  G  describes the encumbrances against the title contained in the title report dated July 29, 1999 and issued by  Title Guaranty of Hawaii, Incorporated .

**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 Loans	The buyer's interest is subordinate to the existing loans, and a default by Developer may result in Buyer losing the right to purchase the unit. Buyer's deposits will be refunded, less any escrow cancelation fees.

**F. Construction Warranties:**

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

1. Building and Other Improvements:

See Exhibit H

2. Appliances:

See Exhibit H

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

Status—as of June 30, 1999, the structure of the building for Phase 2 has been completed.\*  
The Completion Date for Phase 2 was June 30, 1999.

**\*Buyers will be provided with the option to upgrade their units with particular bathroom and kitchen finishes and appliances. Thus, while the structure and interior walls have been completed, these items shall be completed only after the buyer submits a down-payment for the unit and determines whether upgraded or standard finishes and appliances will be used.**

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):

**\*Please see Section E.2. for an explanation of the developer's previously reserved, but since exercised, right to construct Phase 2.**



## 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 J contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated August 10, 1999.  
Exhibit K contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

### 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.

Contingent Final Public Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) The Contingent 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 thirty (30) days from the date the report(s) were delivered to the buyer; **AND**
- D) A Final Public Report is issued within nine (9) months from the effective date of the Contingent Final Public 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, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other: \_\_\_\_\_

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer 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.

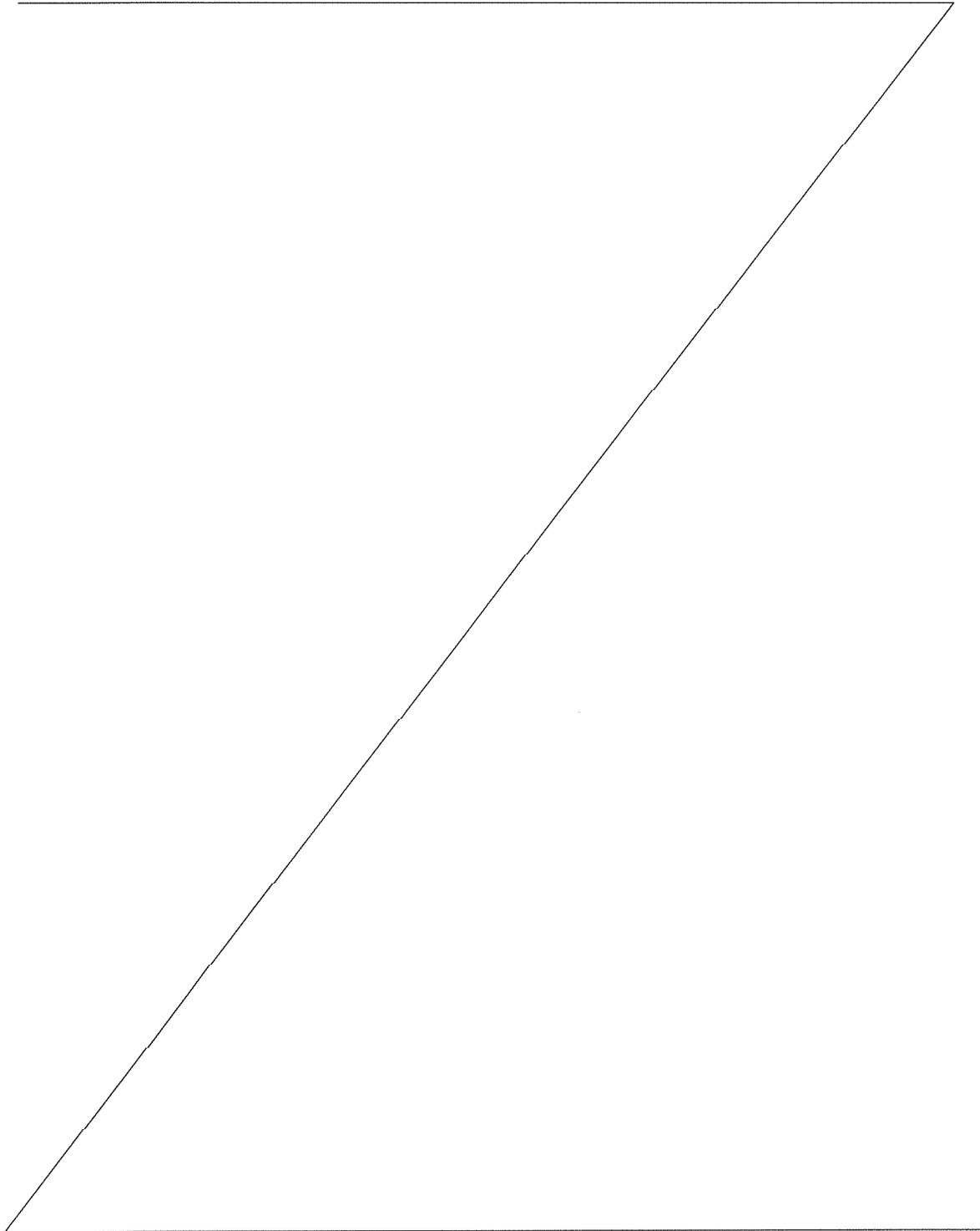
This Public Report is a part of Registration No. 4228 filed with the Real Estate Commission on August 18, 1999.

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**

NONE



- 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.

KARL H. OBERACKER, Trustee of the Karl H. Oberacker Revocable Living Trust dated November 14, 1979 and MAUREEN L. OBERACKER, wife of Karl H. Oberacker

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

By: \_\_\_\_\_

Duly Authorized Signatory

\_\_\_\_\_  
August 18, 1999

Date

KARL H. OBERACKER, as Trustee aforesaid, and as attorney-in-fact for Maureen L. Oberacker under that certain Power of Attorney dated June 15, 1999 and recorded in the State of Hawaii Bureau of Conveyances as Document No. 99-099049. See Exhibit L

\_\_\_\_\_  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu  
Planning Department, City and County of Honolulu  
Federal Housing Administration

## **Exhibit A**

### **Spencer Court - Phase 2**

#### **Description of Buildings**

Phase 2 shall consist of one building designated as "Building A", containing a total of three (3) residential apartments. Building A will be a three-story structure without basement. Building A will consist of apartments 4, 5 and 6. Apartment 4 will be located on the first story. Apartments 5 and 6 will each occupy two levels, which will be the second and third stories of Building A. The principal materials used in the construction of Building A will be concrete, gypsum board, ceramic tile and other related building materials.

## **Exhibit B**

### **Spencer Court - Phase 2**

#### **Boundaries of Each Apartment**

The Apartment shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls, the floors and ceilings surrounding each Apartment, or any pipes, wires, conduits or other utility or service lines running through such Apartment which are utilized for or serve more than one Apartment, the same being deemed common elements. Each Apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, all doors and door frames (including the exterior unfinished surfaces thereof), windows and window frames (including the exterior unfinished surfaces thereof), the lanai air space, the interior decorated or finished surfaces of all perimeter party and load-bearing walls, floors, floor coverings and ceilings, and all fixtures originally installed or contained therein.

## **Exhibit C**

### **Spencer Court - Phase 2**

#### **Permitted Alterations to Apartments**

Except as otherwise reserved or provided in the Declaration, construction of any structural alteration or addition to any Apartment different in any material respect from the Condominium Map of the Project shall be undertaken by the Association or an Apartment owner only pursuant to an amendment of the Declaration, duly executed by or pursuant to the affirmative vote of Apartment owners representing eighty percent (80%) of the Common Interest of the Project and accompanied by the written consent of the holders of all liens affecting any of the Apartments and in accordance with complete plans and specifications therefore first approved in writing by the Board.

Subject to the above, the following alterations may be made:

1. "Nonmaterial structural additions to the common elements" as such term is defined in Section 514A-89, Hawaii Revised Statutes, as amended, shall be undertaken by the Association or any Apartment Owner only pursuant to the written approval thereof by the Board and the majority of the Apartment owners.
2. Any additions to or alterations of an Apartment made solely within such Apartment or solely within the Limited Common Elements appurtenant to or for the exclusive use of such Apartment or of certain Apartments shall be undertaken by such Apartment owner or owners only pursuant to the written approval thereof, including the plans therefore, by the Board, the holders of mortgages affecting such Apartment, and all other Apartment owners thereby directly affected (as determined by the Board in its sole discretion).
3. An Apartment Owner owning two Apartments on the same floor of the Building may alter or remove all or portions of the intervening walls which separate such Apartments and make other alterations or additions solely within such Apartments and convert such Apartments into a single Apartment; provided that the structural integrity of the Building and the soundness and safety of the Project shall not be thereby affected and such alteration, removal and restoration will not reduce the value of the Project or impair any easement or hereditament thereof, and the finish of the common element then remaining shall be restored to a condition substantially comparable to that of the common element prior to such alteration. All such alterations, removal or additions, including the plans thereof, which shall be prepared by a licensed, registered architect shall be subject only to the approval of the holders of mortgages affecting such Apartments, if any, and the Board. Following the conversion of both Apartments into a single Apartment, the

Apartment owner of the single Apartment may reconvert the same into the two original Apartments. All alterations, removal, or additions to convert the single Apartment into the two original Apartments, including the plans thereof, which shall be prepared by a licensed, registered architect shall be subject only to the approval of the holders of mortgages affecting the single Apartment, if any, and the Board.

## **Exhibit D**

### **Spencer Court - Phase 2**

#### **Common Elements**

- (a) The Land in fee simple.
- (b) All structural components, such as foundations, girders, beams, supports, unfinished perimeter walls and load-bearing walls (except for the inner finished surfaces within each Apartment), the roofs of the Buildings, all exterior walkways, railings and any fences enclosing any portion of the Project.
- (c) All yards and grounds, including park and recreational facilities and landscaping therein, and all refuse facilities, if any, whether within or appurtenant to the Project.
- (d) All roads, parking areas (except for the garages appurtenant to Apartments 5 and 6), driveways and walkways which are rationally of common use by owners of more than one Apartment.
- (e) All ducts, sewer lines, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities over, under and across the Project which serve more than one Apartment for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution.
- (f) One (1) visitor parking stall located by Building A as shown on the Condominium Map available for use by the guests, visitors and invitees of the Apartment owners.
- (g) Any and all other apparatus and installations intended for common use and all devises and other parts of the Land necessary or convenient to the existence, maintenance and safety of the Condominium Property Regime, or normally in common use.

## **Exhibit E**

### **Spencer Court - Phase 2**

#### **Limited Common Elements**

A. The parking stalls assigned to an Apartment.

B. The mailbox assigned to an Apartment which shall be appurtenant to and for the exclusive use of such Apartment. Each Apartment shall at all times have at least one mailbox appurtenant to it.

C. All other Common Elements of the Project which are rationally related to less than all of the Apartments shall be limited to the use of such Apartment or Apartments to which the same are related.

**Exhibit F**

**Spencer Court - Phase 2**

**Common Interest**

The common interest appurtenant to each apartment is as follows;

<u>Apartment Number</u>	<u>Percent Common Interest</u>
4	13.18%
5	21.35%
6	33.21%

Pursuant to Section 514A-15(b) of the Hawaii Revised Statutes, as amended, each Apartment owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to his or her Apartment only upon the issuance of a Certificate of Occupancy relating to his or her Apartment.

## **Exhibit G**

### **Spencer Court - Phase 2**

#### **Encumbrances Against Title**

1. The reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Right-of-way for sewer and water pipe lines running through a portion of Lot 3 as shown on said File Plan No. 225.
3. The effect of any failure to comply with the terms, covenants, conditions and provisions set forth in Deed dated February 1, 1923, recorded in the Bureau of Conveyances of the State of Hawaii in Book 676, Page 38.
4. As to the undivided interest in Roadway: Right-of-way for sewer and water pipe lines running through a portion of said Roadway as shown on File Plan No. 225.
5. Any and all possible encroachments as shown on Survey Map dated January 21, 1993, by James R. Thompson, registered professional land surveyor.
6. The terms and provisions, including the failure to comply with any covenants, conditions and restrictions contained in the Declaration dated February 11, 1994, recorded in the Bureau of Conveyances of the State of Hawaii as Document Number 94-037337, as amended by instrument dated August 18, 1995, and recorded as Document No. 95-108315, and instrument dated December 4, 1995, and recorded as Document Number 95-159948.
7. For information regarding real property taxes as may be due in owing, reference made to the City and County of Honolulu, Director of Finance.
8. The terms and provisions, including the failure to comply with any covenants, conditions and restrictions contained in the Declaration dated February 11, 1994, recorded in the Bureau of Conveyances of the State of Hawaii as Document Number 94-037337, as amended by instrument dated August 18, 1995, and recorded as Document No. 95-108315, and instrument dated December 4, 1995, and recorded as Document Number 95-159948.
9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in DECLARATION dated February 11, 1994, recorded as Document No. 94-037337.
10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Declaration of Condominium Property Regime for the "Spencer Court" Condominium Project dated January 19, 1995 and recorded in said bureau

as Document No. 95-041668 and noted on map 2228 and any amendments thereto. Said Declaration was amended by First Amendment to Declaration of Condominium Property Regime of Spencer Court dated August 18, 1995, recorded as Document No. 95-108315, and further amended by Second Amendment to Declaration of Condominium Property Regime of Spencer Court dated December 11, 1995, recorded as Document No. 95-159948.

11. The terms and provisions, including failure to comply with any covenants, conditions and reservations, contained in the By-Laws of the Association of Apartment Owners dated January 19, 1995 and recorded in said bureau as Document No. 95-041969.

12. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the DEFERRAL AGREEMENT dated October 27, 1995, recorded as Document No. 95-140422, by and between MAKIKI PROPERTIES, INC., a Hawaii corporation, and the DEPARTMENT OF PUBLIC WORKS, which defers the construction and dedication of certain street setback improvements, for a period of time not to exceed twenty years from the date of said Agreement.

13. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Apartment Deed dated December 13, 1995, recorded as Document No. 95-161315.

14. As to Apartment 5 and 6: First Mortgage, Security Agreement, Financing Statement and Absolute Assignment of Rentals and Lessor's Interest in Leases by and between KARL H. OBERACKER, Trustee of the Karl H. Oberacker Revocable Living Trust dated November 14, 1979, as Mortgagor and FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee dated February 2, 1999 and recorded in said bureau as Document No. 99-017843 in the amount of \$250,000.00.

**Exhibit H**

**Spencer Court - Phase 2**

**Description of Warranties**

See Disclosure Abstract attached hereto as Exhibit I

## **Exhibit I**

### **Spencer Court - Phase 2**

#### **Disclosure Abstract**

Name and Address of Project:	Spencer Court 1020 Spencer Street Honolulu, Hawaii 96822
Name and Address of Developer and Seller:	Karl H. Oberacker, Trustee P.O. Box 15666 Honolulu, Hawaii 96830
Managing Agent:	Hawaii First, Inc. 900 Fort Street Mall, Suite 1220 Honolulu, Hawaii 96813
Monthly Common Expenses and Monthly Estimated Cost for Each Apartment:	See Exhibits 1 and 2 attached hereto and made a part hereof.
Description of Warranties:	Section D.16 of the Sales Contract and Deposit Receipt states:  “Seller does not have a typical one-year warranty from the contractor. Seller will give to Purchaser a construction warranty from Seller which shall last for a period of one (1) year from the date of Closing. In addition, Seller will give to Purchaser a warranty covering the appliances in the Apartment which shall last for a period of ninety (90) days from the date of Closing. Purchaser acknowledges that Seller has made no other warranties, expressed or implied, with respect to the Apartment or any Common Element or anything installed therein.  At Seller’s option an inspection program may be instituted and, if so, Purchaser agrees to inspect Purchaser’s Apartment on a date and at a time to be specified by Seller and upon completion of such inspection, to sign an inspection sheet to be furnished by Seller which shall list all defects or damages to the Apartment, if any. Purchaser shall have the right to designate a representative to inspect Purchaser’s Apartment provided, that such designation be made in writing by Purchaser and delivered to Seller at least fifteen (15) calendar days prior to final Closing. Purchaser agrees to accept possession of the Apartment despite the existence of

such defects or damages to the Apartment regardless of extent, including, but not limited to, any defects and appliances and fixtures which may be listed in said inspection sheet but which do not render the Apartment uninhabitable. Seller will cooperate with and assist Purchaser in having legitimate listed defects or damages corrected or repaired within a reasonable time thereafter by the contractor. Purchaser agrees to indemnify Seller for any damages or losses, including interest and attorneys' fees, resulting from any refusal to make such inspection, to sign such inspection sheet or to accept possession of the Apartment upon request by Seller and, if Purchaser shall make any such refusal, Purchaser shall be deemed to be in default under this Sales Contract and Seller, at its option, shall be entitled to cancel this Sales Contract and keep all payments made hereunder as liquidated damages. Purchaser hereby waives all right of inspection and rights to Seller's cooperation and assistance with the contractor or other warrantors if Purchaser fails to inspect Purchaser's Apartment on the date and time specified by Seller and Purchaser acknowledges that such waiver shall not in any way affect Purchaser's obligations hereunder, including, without limitation, the making of payments B, C and D and the performance of Purchaser's Closing obligations."

Reservation of Rights:

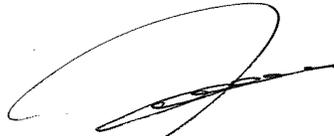
Section D.28 of the Sales Contract and Deposit Receipt states:

“(a) Purchaser acknowledges and agrees that Seller shall have and Seller hereby reserves the right to conduct extensive sales activities on the Project, including the use of model apartments, sales management offices, parking stalls within the exclusive control of Seller for parking for prospective purchasers and extensive sales displays and activities until the Closing of sale of the last unsold Apartment in the Project; provided that such sales activities are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession and aesthetic enjoyment of the Project by Purchaser.

(b) Seller hereby reserves the right to designate, use, enjoy and grant or dedicate to any public utility, service company or governmental authority such rights-of-way and easements as Seller, in its sole discretion, may from time to time determine for transmission facilities in appurtenances for electricity, gas, telephone, electromagnetic signal distribution and any other utility or similar distribution system, including, but not limited to, microwave, radio and television antennas, water, sewers, drainage, flowage and any other public utility or public service

company purposes, services and substances whatsoever over, across, under and through the land comprising the Project (the "Land"), including the right to enter to construct, reconstruct, install, operate, maintain, repair and replace such lines, facilities and appurtenances, and the right to designate, use, enjoy and grant or dedicate rights-of-way for access and egress to others over the Land. These reserved rights to be exercised in such manner that will cause the least practicable interference with the Apartment Owners' use and occupancy of the Land, together with the right to trim and keep trimmed any tree or trees in the way of utility lines and appurtenances. The foregoing reservations shall survive until such time as the Apartment Deed for the Project is executed by Seller and recorded in the Bureau of Conveyances.

(c) Purchaser hereby accepts the foregoing rights of Seller, as well as any inconvenience or annoyance which Purchaser may experience as a result of the exercise of any such rights by Seller, and Purchaser hereby expressly waives any rights, claims, or actions which Purchaser may otherwise have against Seller or third parties as a result of such exercise of Seller's rights. Purchaser expressly acknowledges and agrees that the provisions of this paragraph shall survive the execution, delivery to Purchaser, and the filing and the recording of the Apartment Deed."



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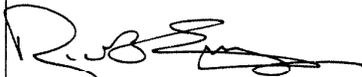
Karl H. Oberacker, Trustee of the Karl H. Oberacker Revocable Living Trust dated November 14, 1979, and as Attorney-in-fact for Maureen L. Oberacker

**Exhibit 1  
Spencer Court**

**Estimated Monthly Common Expenses**

	2000 Annual	2000 Monthly
<b>Operating Revenues</b>		
Maintenance Fees	19,992.00	1,666.00
Late Fees	-	-
<b>Total Operating Revenues</b>	\$ 19,992.00	\$ 1,666.00
<b>Non Operating Revenues</b>		
Interest Income-Reserves	-	-
Interest Income-Operating	60.00	5.00
<b>Total Non Operating Revenue</b>	\$ 60.00	\$ 5.00
<b>Total Revenues</b>	\$ 20,052.00	\$ 1,671.00
<b>Operating Expenses</b>		
<b>Administrative</b>		
Administrative-General	60.00	5.00
Property Mgmt-Contract	1,560.00	130.00
Property Mgmt-Other Costs	240.00	20.00
Annual Meeting	240.00	20.00
Legal/Professional Fees	-	-
Accounting Fees-Audit/Tax	240.00	20.00
Admin-Other	60.00	5.00
<b>Total Administrative</b>	\$ 2,400.00	\$ 200.00
<b>Operations</b>		
Electricity-Project	780.00	65.00
Water & Sewer	2,100.00	175.00
Maintenance Contract	2,760.00	230.00
Supplies	912.00	76.00
<b>Total Operations</b>	\$ 6,552.00	\$ 546.00
<b>Repair &amp; Maintenance</b>		
Building	960.00	80.00
Irrigation	600.00	50.00
Electrical	480.00	40.00
<b>Total Repair &amp; Maintenance</b>	\$ 2,040.00	\$ 170.00
<b>General</b>		
Taxes-General Excise	60.00	5.00
Insurance-Package	2,219.96	185.00
Insurance-D&O	780.00	65.00
<b>Total General</b>	\$ 2,999.96	\$ 255.00
<b>Capital Disbursements</b>	-	
Capital Reserve Allowance	6,000.00	500.00
<b>Total Capital Disbursements</b>	\$ 6,000.00	\$ 500.00
<b>Total Expenses</b>	\$ 19,991.96	\$ 1,671.00
<b>Net Income</b>	-	\$ -

It is hereby certified that the foregoing estimate of the monthly common expenses and the estimated maintenance fees per Apartment were calculated based upon the generally accepted accounting principles.

  
Richard Emery  
Hawaii First Inc., Managing Agent

**Exhibit 2**

**Spencer Court - Phase 2**

**Estimated Maintenance Fees per Apartment for Phase 2**

The following are the estimated maintenance fees payable by the Purchaser;

UNIT	SQ. FT. FLOOR AREA INCLUDING LANAIS AND ATTACHED GARAGE	COMMON INTEREST	ESTIMATED MONTHLY MAINTENANCE FEES
4	1,362	13.18%	\$219.58
5	2,207	21.35%	\$355.69
6	3,432	33.21%	\$553.28

## **Exhibit J**

### **Spencer Court - Phase 2**

#### **Summary of Sales Contract**

A specimen sales contract and deposit receipt has been submitted to the Real Estate Commission as part of the registration. The specimen Sales Contract and Deposit Receipt provides, in part, as follows:

(a) Purchaser represents that Purchaser is financially capable of making all required payments at the required times stated in the Sales Contract. If Purchaser must finance the purchase of the Apartment, Purchaser shall apply for mortgage financing from a Mortgage Lender within five (5) days from the date of execution by Seller of this Sales Contract. Purchaser will deliver any executed copy of any notification of loan approval or mortgage commitment upon receipt to Seller. Seller, in its sole discretion, may disapprove of any loan approval or mortgage commitment Purchaser submits to Seller under this Sales Contract within fifteen (15) days after the receipt of same. If Seller does not provide Purchaser with written notice of its disapproval within the fifteen (15) day period, the loan approval or mortgage commitment shall be deemed approved. Purchaser understands that Seller has no obligation to arrange for Purchaser's mortgage financing and that Seller is unwilling to approve financing which would require Seller to pay any points or fees to the Mortgage Lender. In order to keep Seller informed of Purchaser's progress in obtaining a mortgage loan, Purchaser authorizes any Mortgage Lender to transmit to Seller any and all information necessary for this purpose, including, but not limited to, copies of all correspondence between Purchaser and the Mortgage Lender. If Purchaser's application or eligibility for a mortgage loan for the amount to be paid in mortgage proceeds as set forth in the Sales Contract is rejected or not approved within thirty (30) days after application, then Seller may elect to cancel the Sales Contract upon written notice to Purchaser and, if canceled, Seller shall direct escrow to refund to Purchaser all sums paid by Purchaser less escrow's cancellation fee and costs incurred by escrow. Seller shall not be responsible for any cancellation fees imposed by the Mortgage Lender. If Purchaser's mortgage loan approval is contingent or conditioned on a sale by Purchaser of another property or on any other condition, Seller may, in its sole discretion and at any time, elect to cancel the sales contract as a rejection of loan eligibility. If Seller does not so elect to cancel this Sales Contract, Purchaser shall qualify for mortgage financing including the satisfaction and removal of any such contingency prior to the Closing Date.

(b) Purchaser will pay one-half (1/2) of escrow's fees, forty percent (40%) of the cost of standard owner's title insurance, Purchaser's notary fees, condominium ownership transfer fees, all recording fees except for documents to clear Seller's title, and all costs, including recording fees incurred in connection with Purchaser's mortgage loan. Seller will pay one-half (1/2) of the escrow fees, sixty percent (60%) of the cost of standard owner's title insurance, Seller's notary fees, recording fees for documents to clear Seller's title and applicable

conveyance taxes. Real property taxes and assessments and maintenance fees will be prorated as of the Closing Date. All other closing costs shall be paid in accordance with customary practice in Hawaii.

(c) In addition to payment of the closing costs referred to in paragraph (b) above, Purchaser shall be required to prepay maintenance fees for a period of up to two (2) months, prepay insurance premiums for up to one (1) year, prepay real property taxes for the remainder of the tax year, prorated as of the date of recordation of the Apartment Deed, and pay a nonrefundable start-up fee in an amount equal to two (2) months maintenance fees, which shall be a one-time, nontransferable, nonrefundable assessment at sale, not as a common expense, shall be in addition to the normal monthly maintenance fees, shall be held, accounted for, and expended as funds of the Association for the benefit of all of the Apartment Owners by Seller, all of which shall be paid at Closing.

(d) Purchaser agrees that Purchaser has entered into the Sales Contract without any reference or representation by Seller or any sales person; (1) that Seller or anyone affiliated with the Seller or any unaffiliated third party will provide, directly or indirectly, any services relating to the rental or sale or management on behalf of Purchaser of the Apartment; (2) as to projected rental income, occupancy rate, or other matters related to the rental of the Apartment; (3) as to possible tax advantages or other economic benefits accruing to an Apartment Owner who chooses to rent an Apartment; or (4) as to projected appreciation in the value of the Apartment. Purchaser shall be solely responsible for any rental or other disposition of the Apartment. Purchaser agrees and acknowledges that in the event the offer to sell and the purchase of the Apartment or the activities of Purchaser with respect to the Apartment are determined to be or are alleged to give rise to any violation of any federal or state securities laws or regulation, Seller may obtain an injunction enjoining such acts of the Purchaser and, Seller may, in addition, pursue any other remedies and, Purchaser shall pay the Seller's costs and attorney's fees in connection therewith. In the event that the Purchaser or anyone claiming by or through Purchaser alleges that the offer to sell or the purchase of the Apartment gives rise to any violation of any federal or state disclosure laws or regulations, the Purchaser covenants not to sue for any remedy other than to sue for refund of the purchase price and actual closing costs plus interest at ten percent (10%) per annum from the date of Closing to the date of repayment. Purchaser agrees to absorb any additional charges incurred with respect to the Apartment as a reasonable use value of the Apartment.

(e) If, at the time of execution of the Sales Contract by Purchaser and Seller, a final public report for Phase 2 of the Project has not been issued by the Real Estate Commission of the State of Hawaii, the Sales Contract shall not be legally binding upon either Purchaser or Seller. In such event, the Sales Contract shall constitute a "reservation" and not a binding contract as contemplated by 15 USC § 1700 et seq. and 24 CFR § 1710. The Sales Contract shall not become a binding sales contract unless and until (1) a final public report is issued on Phase 2 of the Project, (2) Purchaser executes a separate receipt and notice instrument in the form and content as set forth in Hawaii Revised Statutes, as amended, and waives Purchaser's right to cancel this Sales Contract, and (3) Purchaser and Seller execute a separate affirmative instrument (which may be included as part of said receipt and notice instrument) (the "Affirmative

Instrument”) expressing their intent to render the Sales Contract a binding contract. The reservation may be canceled at any time before it is rendered a binding contract, with or without cause, at the option of either party by written notice of such cancellation to the other party. In the event of such cancellation, Seller shall cause escrow to refund all payments previously made by Purchaser (less any cancellation fees for escrow) without interest, and neither party shall have any other or further liability hereunder or with respect to the Project. The party canceling the Sales Contract pursuant to the provisions of this paragraph shall bear the cost of any credit report and other reasonable expenses incurred in the processing of the Sales Contract. If Purchaser cancels the Sales Contract, pursuant to the provisions of this paragraph, the maximum amount of the cost, fees and expenses to be borne by Purchaser shall be \$250.00. If Purchaser does not execute and return to Seller said receipt and notice instrument within thirty (30) days from the date of delivery to Purchaser of the final public report for Phase 2 of the Project and neither party cancels this Sales Contract, Purchaser shall be deemed to have executed said receipt and notice instrument and to have waived his right to cancel the Sales Contract if the Apartment is conveyed to Purchaser.

(f) If this Sales Contract is executed after the issuance of a final public report for Phase 2 of the Project and Seller or Seller’s agent shall have delivered to Purchaser a copy of such final public report, together with a copy of all other public reports for the project, if any, and Purchaser shall have executed and returned to Seller the receipt and notice instrument described above and waived Purchaser’s right to cancel the Sales Contract, then the Sales Contract shall be a fully binding contract upon Purchaser and Seller upon acceptance thereof by Seller and the requirement for the execution of the Affirmative Instrument shall be of no force and effect.

(g) Further, if the Sales Contract is executed after the issuance of the final public report for Phase 2 of the Project as aforesaid, and Purchaser does not execute and return to Seller the receipt and notice instrument within thirty (30) days from the date of delivery to Purchaser of such final public report, together with a copy of all other public reports for the Project, if any, or if the Apartment is conveyed to Purchaser prior to the expiration of such thirty (30) day period, Purchaser shall be deemed to have executed said receipt and notice instrument and to have waived Purchaser’s right to cancel the Sales Contract and the Sales Contract shall be a fully binding Sales Contract without the execution of the Affirmative Instrument.

## **Exhibit K**

### **Spencer Court - Phase 2**

#### **Summary of Escrow Agreement**

An executed escrow agreement has been submitted to the Real Estate Commission of the State of Hawaii as part of the registration. The escrow agreement dated August 10, 1999 identifies Title Guaranty Escrow Services, Inc. as the escrow agent. The escrow agreement provides that the escrow agent shall refund to Purchaser all of Purchaser's funds, without interest, less a cancellation fee of not less than \$25.00, if Purchaser shall request refund of his funds and any one of the following shall have occurred:

(a) Developer and Purchaser have requested escrow, in writing, to return to Purchaser the funds of Purchaser then held under the escrow agreement by escrow; or

(b) Developer has notified escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission stated therein or otherwise available to Developer; or

(c) With respect to a Purchaser whose funds were obtained prior to the issuance of the final public report, the Purchaser has exercised such Purchaser's right to cancel the Sales Contract pursuant to Section 514A-62 of the Hawaii Revised Statutes, as amended; or

(d) The Purchaser has exercised Purchaser's right to rescind the Sales Contract pursuant to Section 514A-63 of the Hawaii Revised Statutes, as amended.

**Exhibit L**

**Spencer Court - Phase 2**

**Power of Attorney**

See Attached File-Stamped Copy

R-719

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JUN 22, 1999 08:30 AM

Doc No(s) 99-099049

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

AFTER RECORDATION, RETURN BY MAIL  OR PICKUP :

OSHIMA, CHUN, FONG & CHUNG (DMC/JMY)  
841 BISHOP STREET, SUITE 400  
HONOLULU, HAWAII 96813  
TELEPHONE: 528-4200

TYPE OF DOCUMENT: POWER OF ATTORNEY (TOTAL PAGES: 3)

PARTIES TO DOCUMENT: MAUREEN L. OBERACKER

TAX MAP KEY FOR PROPERTY: N/A

### POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, MAUREEN L. OBERACKER, whose mailing address is P.O. Box 15666, Honolulu, Hawaii 96830, hereby make, constitute and appoint KARL H. OBERACKER, whose mailing address is P.O. Box 15666, Honolulu, Hawaii 96830, my true and lawful attorney to act in, manage and conduct all of my estate and affairs relating in any way to my interest in that certain Spencer Court condominium project located at 1020 Spencer Court, Honolulu, Hawaii 96822, and for that purpose, in my name, place and stead and for my use and benefit and as my act and deed to make, indorse, accept, receive, execute, acknowledge and deliver deeds, leases, assignments, agreements, certificates, mortgages, releases, hypothecations, checks, notes, escrow instructions, receipts and any and all other instruments in writing of whatever kind and

nature and to take any and all other actions as my said attorney may deem necessary, convenient or proper in order to act in, manage and conduct my estate and affairs on my behalf.

The execution of such documents or instruments by said attorney is good and sufficient evidence that said attorney deems such document or instrument to be necessary or appropriate.

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act, deed, matter and thing whatsoever in and about my estate, property and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person if personally present, the above specially enumerated powers being in aid and exemplification of the full, complete and general power herein granted and not in limitation or definition thereof, hereby ratifying all that my said attorney shall lawfully do or cause to be done by virtue of these presents.

The power of attorney herein granted shall not be affected by my disability.

This Power of Attorney shall be effective as of JUNE 15, 1999, and unless sooner terminated, this Power of Attorney shall expire on JUNE 30, 2002.

IN WITNESS WHEREOF, I have hereunto set my hand this 15<sup>th</sup> day of JUNE, 1999.

  
\_\_\_\_\_  
MAUREEN L. OBERACKER

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) SS.

On this the 15<sup>th</sup> day of JUNE, 1999 before me personally appeared

**MAUREEN L. OBERACKER**  personally known to me **-OR-**  proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to executed such instrument in such capacities.

LS



Notary Public, State of Hawaii

Melissa Wilson

My commission expires July 22, 2002

Printed Name of Notary Public

My Commission Expires: \_\_\_\_\_

**Description of Attached Document**

Title or Type of Document: Power of Attorney

Document Date: JUNE 15, 1999 Number of Pages: 3

Signer(s) Other Than Named Above: None