# CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: B. A. DYRE
Address: Post Box Number One
Kobe 651-01, Japan

Project Name(*): Pi'oi Condominium
Address: Lot 8, Namahana Farms Subdivision
Kalihiwai, Hanalei, Kauai, Hawaii

Registration No. 4668 (Conversion)

Effective date: July 12, 2001
Expiration date: August 12, 2002

Preparation of this Report:

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

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

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

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

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

Type of Report:

___ PRELIMINARY: (yellow)
The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. 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 with_____

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

And
[ ] Supersedes all prior public reports
[ ] Must be read together with_____
[ ] This report reactivates the_____
public report(s) which expired on_____

(*) Exactly as named in the Declaration

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:

[ ] Required and attached to this report [ X ] 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.

[ X ] No prior reports have been issued by the developer.

[ ] Changes made are as follows:

## SPECIAL ATTENTION

This is a CONDOMINIUM PROJECT, **not** a subdivision. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. The Purchaser should consult with the appropriate County agencies to determine whether the Purchaser may build a residential dwelling unit, or any other type of structure, on the property.

1. There are presently NO RESIDENTIAL STRUCTURES ON THE PROPERTY. The only buildings on the property are agricultural shade sheds, each of which may be defined as an "apartment" under the condominium property act.

2. This public report does **not** constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.

3. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and is **not** a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

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 owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

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: DESCRIPTION OF BUILDINGS
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## General Information On Condominiums

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

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

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

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

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

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

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

## Operation of the Condominium Project

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

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

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

## I. PERSONS CONNECTED WITH THE PROJECT

| | | |
|---|---|---|
| Developer: | B. A. DYRE<br>Post Box Number One<br>Kobe 651-01, Japan | Phone: 011-81-78-391-3075 |

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: | Coldwell Banker Bali Hai Realty, Inc.<br>P. O. Box 930<br>Hanalei, Kauai, Hawaii 96714 | Phone: (808) 826-7244 |
| Escrow: | Title Guaranty Escrow Services, Inc.<br>235 Queen Street<br>Honolulu, Hawaii 96813 | Phone: (808) 245-3381 |
| General Contractor: | Trenchless Engineering Corporation<br>P. O. Box 1200<br>Kilauea, Kauai, Hawaii 96754 | Phone: (808) 828-6115 |
| Condominium Managing Agent: | Self-managed by Association of Unit Owners | Phone: _____ |
| Attorney for Developer | Donald H. Wilson<br>Belles Graham Proudfoot & Wilson<br>4334 Rice Street, Suite 202<br>Lihue, Kauai, Hawaii 96766-1388 | Phone: (808) 245-4705 |

*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. 2001-085544
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]:

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. 3263
[ ] Filed - Land Court Condo Map No. _____

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

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

The Bylaws for this condominium are:
[ ] Proposed
[ X ] Recorded - Bureau of Conveyances: Document No. 2001-085545
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 [ ] Adopted [ X ] 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%* | 100% |
| Bylaws | 65% | 75% |
| House Rules | ----- | N/A |

*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.

[ X ] Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

The Developer reserves the right to change the Declaration and Condominium Map as provided for in Section M. of the Declaration.

## 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 of the Namahana Farms Subdivision
Kalihiwai, Hanalei, Kauai, Hawaii

Tax Map Key: (TMK): (4) 5-2-24-8

[ X ] Address [ X ] TMK is expected to change because addresses will be assigned by the County when houses are constructed; CPR numbers will be added to the current TMK number.

Land Area: 14.095 [ ] square feet [ X ] acre(s) Zoning: Agriculture

Fee Owner: B. A. DYRE
Post Box Number One
Kobe 651-01, Japan

Lessor: N/A
Name

Address

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 4 Floors Per Building 1

   [ X ] Exhibit "A" contains further explanations.

3. Principal Construction Material:

   [ ] Concrete [ ] Hollow Tile [ ] Wood

   [ X ] Other steel fence stakes with 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: Sheds | 4 | [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:

[ ] Pets: _____

[ ] Number of Occupants: _____

[ X ] Other: Declaration of Restrictive Covenants attached hereto as Exhibit "J", and Namahana Farms Subdivision Declaration of Covenants, Conditions & Restrictions attached hereto as Exhibit "K".

[ ] 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)* | Net Other Area (sf) | Identify |
|---|---|---|---|---|---|
| Unit 1 | 1 | 0/0 | N/A | 20 | Shade Shed |
| Unit 2 | 1 | 0/0 | N/A | 20 | Shade Shed |
| Unit 3 | 1 | 0/0 | N/A | 20 | Shade Shed |
| Unit 4 | 1 | 0/0 | N/A | 20 | Shade Shed |

Total number of Apartments: 4

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

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

Boundaries of Each Apartment:

See Exhibit "A"

Permitted Alterations to Apartments:

See Exhibit "B"

Apartments Designated for Owner-Occupants Only:
Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by Section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has not elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 8

| | Regular | | Compact | | Tandem | | |
|---|---|---|---|---|---|---|---|
| | Covered | Open | Covered | Open | Covered | Open | TOTAL |
| Assigned (for each unit) | | 2 | | | | | 8 |
| Guest | | | | | | | |
| Unassigned | | | | | | | |
| Extra for Purchase | | | | | | | |
| Other: | | | | | | | |
| Total Covered & Open: | 8 | | 0 | | 0 | | 8 |

Each apartment will have the exclusive use of at least 2 parking stall(s). Buyers are encouraged to find out which stall(s) will be available for their use.

[ ] Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

[ ] There are no recreational or common facilities.

[ ] Swimming pool [ ] Storage Area [ ] Recreation Area

[ ] Laundry Area [ ] Tennis court [ ] Trash Chute/Enclosure(s)

[X] Other: Common Driveway/Common Utilities

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 "C".

[ ] 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 "D".

[ ] as follows:

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

[ ] described in Exhibit _____.

[ X ] as follows:

Each unit shall have appurtenant thereto an undivided twenty-five percent (25%) interest in all common elements of the property, and the same proportionate share in all common profits and common expenses of the property (except as may be otherwise provided in the Bylaws) and for all other purposes, including voting. The percentage common interest for each unit is determined by apportioning a twenty-five percent (25%) interest to each of the four (4) units irrespective of the actual land areas contained in each unit.

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 "E" describes the encumbrances against the title contained in the title report dated June 15, 2001 and issued by Title Guaranty of Hawaii, Inc.

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: Units are sold "as is".

2. Appliances:

N/A

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

The construction of Units 1 through 4 sheds were completed on May 1, 2000.

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

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

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

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

Exhibit "F" 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 _____

## 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 "G" contains a summary of the pertinent provisions of the sales contract.

[ X ] Escrow Agreement dated June 5, 2001.
Exhibit "H" 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.

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 Namahana Farms Subdivision Declaration of Covenants, Conditions and Restrictions; Design Standards and Construction Rules for Namahana Farms Subdivision; Farm Dwelling Agreement; County of Kauai Waiver and Release as Document No. 2000-059472, and Document No. 2000-123411.

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. 4668 filed with the Real Estate Commission on June 22, 2001.

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

[ ] YELLOW paper stock [ X ] WHITE paper stock [ ] PINK paper stock

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

1. Purchasers should be aware that Chapter 205, Hawaii Revised Statutes ("H.R.S."), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

The term "farm dwelling" is defined in H.R.S. Chapter 205-4.5(a)(4) as a "single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwelling permitted within agricultural parks developed by the State or where agricultural activity provides income to the family occupying the dwelling."

The penalty for violation of H.R.S. Section 205-4.5, is a fine of not more than $5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than $5,000 for any additional violation.

In order for any purchaser to obtain a building permit to construct a single family residential unit (farm dwelling), the County of Kauai will require the purchaser to sign a Farm Dwelling Agreement in the form attached hereto as Exhibit "I".

In addition, Section K.2. of the Declaration imposes a duty of each unit owner to bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units with the Project. See Section K.2. of Exhibit "B", Alteration of Project.

2. The use of hazardous material is restricted except as provided under Article H of the Declaration and all hazardous materials laws.

3. The project, and all uses and improvements on the apartments in the project, are subject to each of the following:

(i) Declaration of Restrictive Covenants, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-123411, a true and correct copy of which is attached hereto as Exhibit "J," which imposes certain agricultural use restrictions, easements, and water service disclosures on the subject property;

(ii) Namahana Farms Subdivision Declaration of Covenants, Conditions and Restrictions, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-123412, a true and correct copy of which is attached hereto as Exhibit "K," which, among other things, imposes certain use restrictions, establishes a Namahana Farms Community Association, provides for Subdivision maintenance and assessment procedures, establishes a Design Review Committee, and reserves certain rights to the Developer of the Namahana Farms Subdivision; and

(iii) Design Standards and Construction Rules For Namahana Farms Subdivision, a true and correct copy of which is attached hereto as Exhibit "L," which establishes detailed standards and rules for the construction of improvements in the Namahana Farms Subdivision.

4. At the time of registration of this project there is only one approved County of Kauai water meter to serve the lot upon which the project is located. The one approved meter is designated for the use of Unit 3. If insufficient meter capacity is available in the future for all unit owners, the one approved meter will be a common meter for the use of all units which do not have their own separate meter.

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.

B. A. DYRE
Name of Developer

By: John F. Wehrheim
JOHN F. WEHRHEIM
His Attorney-in-Fact

May 24, 2001
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

***Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner, Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.**

# EXHIBIT "A"

## DESCRIPTION OF BUILDINGS

The project consists of four (4) agricultural shade sheds constructed principally of steel posts and screen, without a basement or foundation.

Units 1, 2, 3 and 4, located as shown on the Condominium Map, each contain a total area of 20 square feet.

The approximate net floor areas of each unit as set forth above is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls.

## EXHIBIT "B"

### ALTERATION OF PROJECT

Paragraph K of the Declaration provides that:

1. Provided that the unit owner satisfies the applicable terms and conditions of the Project Documents and obtains all of the necessary governmental permits, each unit owner shall have the right at his sole option at any time and from time to time, as hereinafter set forth, without the consent and/or approval of the owner of any other unit or any other persons or entity, to construct, reconstruct, repair, maintain, improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon or within the Yard Areas or other limited common elements or easements appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit owner who makes such alterations (hereinafter referred to as the "Altering Owner") shall have the right without the consent or joinder of any other person to amend this declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the Altering Owner shall duly record such amendment to this declaration in the Bureau of Conveyances, together with a complete set of the floor plans of such unit as so altered, certified by a registered architect or professional engineer to fully and accurately depict the altered portions of the property as built. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, consent to all such alterations and agree to give and shall be deemed to have given the Altering Owner a power of attorney to execute an amendment to the declaration solely for the purpose of describing the alterations to such unit in the declaration so that the Altering Owner shall hereafter have a power of attorney from all the other unit owners to execute such amendment to the declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable. If, despite the provisions of this paragraph, any governmental agency shall require some or all of the owners of units in the Project (other than the Altering Owner) to sign the necessary governmental permit application or related documents, then all of the other unit owners shall be required to sign any such permit applications or related documents (including authorizations allowing the Altering Owner to sign such governmental permits on behalf of such other owners) as may be necessary to allow the Altering Owner to obtain all such governmental permit necessary to make the alterations authorized by this paragraph. Any such unit owner who wrongfully refuses to sign such permits or provide the Altering Owner with the necessary authorizations: shall be liable to the Altering Owner for all such damages (including costs and attorneys' fees) incurred by the Altering Owner as a result of such refusal; and shall be subject to such other legal and/or equitable remedies as may be available to the Altering Owner.

2. In certain cases, H.R.S. Chapter 205 may require that the Condominium Houses located within the Project qualify and be used as Farm Dwellings. If one or more of the Condominium Houses within the Project must qualify as a Farm Dwelling, then the affected unit owner will be required to enter into an agreement with the County of Kauai certifying that the

Farm Dwelling will be used in connection with a farm or where agricultural activity provides income to the family occupying the Farm Dwelling. In addition, the Planning Department of the County of Kauai may not allow any Farm Dwelling to be constructed after the first Farm Dwelling within the Project unless the Planning Department inspects the Project to confirm whether agricultural activities are being conducted on the Project in accordance with H.R.S. Chapter 205. Each unit owner in the Project, therefore, shall bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area, for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units within the Project. Any assessment that may be necessary to maintain agricultural activities pursuant to this paragraph may be imposed upon each unit in accordance with the Bylaws as a common expense of the association in connection with the operation of the Project.

3. Any alteration of a unit pursuant to this paragraph K shall be subject to the following conditions:

(a) All such alterations shall conform with all applicable governmental regulations, laws and ordinances.

(b) Such alterations may decrease or increase the size of the affected unit, provided that no alteration shall extend or place the unit outside of the limits of the Yard Area appurtenant to such unit.

(c) All such alterations shall be at the sole expense of the unit owner making the change and shall be made within one (1) year of the commencement thereof and in a manner that will not unreasonably interfere with the other unit owner's use of his unit or Yard Area.

(d) The owner of the altered unit, at such owner's sole expense, shall have the right to utilize, relocate, construct, reconstruct, realign and/or develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services. When necessary, the owner of the altered unit may add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith. Provided, however, that no work done pursuant to this paragraph shall cause any unreasonable interruption in the service of such utilities to any other part of the Project, nor shall it unreasonably interfere with any other unit owner's use or enjoyment of his unit or Yard Area.

4. Under current laws, the Project is entitled to construct one (1) Guest House. The right to construct said Guest House is reserved to the owner of Unit 2. Said right may be assigned by the owner of Unit 2 to any other unit owner within the Project at any time. All provisions of the Comprehensive Zoning Ordinance and any other laws, ordinances or regulations which are applicable shall be observed by the unit owner to which the right to build a Guest House applies.

## EXHIBIT "D"

### LIMITED COMMON ELEMENTS

Certain units shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

Yard Area 1: Yard Area 1 consists of the land area under and surrounding Unit 1, contains approximately 1.111 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 1 for the support of the building and other improvements comprising Unit 1, and for the purposes described in the Project Documents.

Yard Area 2: Yard Area 2 consists of the land area under and surrounding Unit 2, contains approximately 5.309 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 2 for the support of the building and other improvements comprising Unit 2, and for the purposes described in the Project Documents.

Yard Area 3: Yard Area 3 consists of the land area under and surrounding Unit 3, contains approximately 5.871 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 3 for the support of the building and other improvements comprising Unit 3, and for the purposes described in the Project Documents.

Yard Area 4: Yard Area 4 consists of the land area under and surrounding Unit 4, contains approximately 1.804 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 4 for the support of the building and other improvements comprising Unit 4, and for the purposes described in the Project Documents.

## EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.

2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Grant Of Easements And Agreement dated March 17, 1992, and recorded in said Bureau as Document No. 92-053472, by and between C. Brewer Properties, Inc., a Hawaii corporation, and B. A. Dyre, a married man.

3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Waiver and Release Agreement dated April 25, 2000, and recorded in said Bureau as Document No. 2000-059472, by and between B. A. Dyre, husband of Shao Ling Dyre, and the County of Kauai.

4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Declaration dated April 19, 2000, recorded in said Bureau as Document No. 2000-123411.

   The foregoing includes, but is not limited to, matters relating to "Domestic water service will not be available to the additional service laterals beyond the 16 single service laterals servicing each of the original 16 lots until adequate water facilities are available. Installation of the additional service laterals does not imply water meter service approval."

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Declaration dated April 19, 2000, and recorded in said Bureau as Document No. 2000-123412.

6. Setback for building setback lines and drainageway as shown on File Plan No. 2274.

7. Designation of Easement "W-1" for irrigation purposes as shown on File Plan No. 2274.

8. Claims arising out of failure to convey the land described herein together with an easement or right of access.

9. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

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

Declaration of Condominium Property Regime of Pi'oi Condominium dated May 24, 2001, and recorded in said Bureau as Document No. 2001-085544.

Condominium Map No. 3263.

11. Bylaws of the Association of Unit Owners of Pi'oi Condominium dated May 24, 2001, and recorded in said Bureau as Document No. 2001-085545.

**EXHIBIT "F"**

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

Estimate of Initial Maintenance Fees:

| Apartment | Monthly Fee x 12 months = Yearly Total |
|---|---|
| Unit 1 | $50.00 x 12 = $600.00 |
| Unit 2 | $50.00 x 12 = $600.00 |
| Unit 3 | $50.00 x 12 = $600.00 |
| Unit 4 | $75.00 x 12 = $900.00 |

***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 Fee x 12 months = Yearly Total |
|---|---|
| Utilities and Services | |
| Air Conditioning | |
| Electricity | |
| [ ] common elements only | |
| [ ] common elements and apartments | |
| Elevator | |
| Gas | |
| [ ] common elements only | |
| [ ] common elements and apartments | |
| Refuse Collection | |
| Telephone | |
| Water and Sewer | |
| Maintenance, Repairs and Supplies | |
| Building | |
| Grounds | $ 25.00 x 12 = $ 300.00 |
| Management | |
| Management Fee | |
| Payroll and Payroll Taxes | |
| Office Expenses | |
| Insurance | $200.00 x 12 = $2,400.00 |
| Reserves(*) | |
| Taxes and Government Assessments | |
| Audit Fees | |
| Other | |
| TOTAL | $200.00 x 12 = $2,700.00 |

I, B. A.. DYRE, the owner/developer for the PI'OI CONDOMINIUM project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

B. A. DYRE

By John F. Wehrheim
JOHN F. WEHRHEIM
His Attorney-in-Fact

May 24, 2001
Date

(*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

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

End of EXHIBIT ___"F"

NOTE: Developer discloses that Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules.

## EXHIBIT "G"

## SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

The Deposit Receipt and Sales Contract, including the terms and conditions attached thereto as Article IV (hereinafter collectively called the "Sales Contract") contain the price and other terms and conditions under which a purchaser will agree to buy a unit in the Project. Among other things, the Sales Contract states:

(a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a unit.

(b) That the purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Sales Contract.

(c) That the Developer makes no representations concerning rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.

(d) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(e) Requirements relating to the purchaser's financing of the purchase of a unit.

(f) That the unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.

(g) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.

(h) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

(i) That the purchaser will not receive interest on deposits made under the Sales Contract.

(j) If the buyer shall default:

(1) The contract may, at the seller's option, be terminated by written notice to the buyer; and

(2) Any sums paid by the buyer shall belong to the seller as liquidated damages (up to a maximum of 20% of the total purchase price); and

(3) The seller may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorneys' fees, incurred by reason of default by the buyer shall be borne by the buyer.

Further, if the buyer shall default in making any payment when due, a late charge of one percent (1%) per month shall accrue from the due date until such payment, together with such late charge, is paid, or at any time prior to the time that such payment and late charge is paid in full, the seller may, at its option, terminate this contract as provided in paragraphs (1) through (3) above.

The Sales Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon purchasers and prospective purchasers to read with care the specimen sales Contract on file with the Real Estate Commission.

## EXHIBIT "H"

## SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

(a) Escrow will let the purchaser know when payments are due.

(b) Escrow will arrange for the purchaser to sign all necessary documents.

(c) The purchaser is entitled to a refund if the purchaser or seller cancels the Sales Contract in accordance with its cancellation provisions, or if the purchaser terminates its reservation before the Sales Contract is binding. However, Escrow may deduct from the refund cancellation fees in accordance with the Sales Contract.

In the event of a default by the purchaser, the funds paid by the purchaser shall belong to the seller as liquidated damages (up to a maximum of twenty percent (20%) of the total purchase price).

The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. It is incumbent upon purchasers and prospective purchasers to read with care the executed Escrow Agreement on file with the Real Estate Commission.

(d) The purchaser's funds that are placed in trust prior to closing may be used by the seller after (1) the purchaser has (i) been provided with a final public report; (ii) executed a receipt and notice and has waived his right to cancel or thirty (30) days have elapsed since the purchaser has been provided with the final public report and receipt and notice of right to cancel; and (2) the seller notifies escrow in writing that since (i) and (ii) have happened, the Sales Contract is binding; and (3) the seller's attorney advises escrow that the Sales Contract is binding and the requirements of Hawaii Revised Statutes, Sections 514A-63 and -65 have been met.

(e) Escrow may not disburse any buyer's funds in the construction of the project until completion of the project and the expiration of the mechanic's and materialmen's lien period. Escrow may disburse prior to completion of the project and expiration of the applicable lien period if the Developers would furnish each purchaser an Owners Title Insurance with an endorsement against any future liens placed on the apartments or project as a result of the development, plus providing the Real Estate Commission a release of the General Contractor's lien rights.

# EXHIBIT "I"

LAND COURT SYSTEM | REGULAR SYSTEM

RETURN BY: MAIL [ ] PICKUP [ ] To:

County of Kauai
Planning Department
4280 Rice Street
Lihue, Kauai, Hawaii 96766

## FARM DWELLING AGREEMENT

This agreement made and entered into as of the _____ day of _____, 19 _____, by and between _____, whose mailing address is _____, hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI, Planning Department, whose business and mailing address is 4280 Rice Street, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT",

## W I T N E S S E T H :

WHEREAS, the APPLICANT(S) warrant and represent that they are the _____ of that certain parcel of land, Tax Map Key No. _____ more particularly described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, this document pertains only to _____ as shown in Exhibit "B" and made part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use Commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, the parcel identified by Tax Map Key No._____

_____ is entitled to _____ residential units and one guest house; and

WHEREAS, this agreement is evidenced that _____ is entitled to one of those residential units; and

WHEREAS, a "family" as used in the definition of a "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the State Land Use District restriction is subject to a citation and fine of not more than $5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes; and

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on that certain parcel of land described in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

NOW THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District Regulations and as recited herein, who derive income from the agricultural activity on the parcel; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this agreement; and

4. That this agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S); and

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself/herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4396 Rice Street, Lihue, Hawaii, 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

11. This Agreement shall be a covenant running with the portion of land described in Exhibit A, and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors, and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnity agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

The unit owner shall also consult with the appropriate County and/or State agencies regarding all applicable laws or regulations prior to construction.

5. Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests, limited common elements, and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a unit shall reserve to all unit owners the rights set forth in this paragraph.

* SPECIAL NOTATION: When applying for building permits, use permits, zoning permits or any other land use permits with governmental agencies, 75% of the owners of the Project maybe required to sign the permit forms. In such case, all unit owners shall be required to sign such permit applications and related documents as may be necessary for any unit owner to obtain such permits.

The issuance of an effective date for the Condominium Public Report should not be construed to mean that all governmental laws, ordinances and regulations have been complied with and all subsequent development and use shall comply with applicable governmental laws, ordinances and regulations.

Additionally, the creation of the Condominium Property Regime does not mean that the land has met the subdivision requirements of the County. As such, certain facilities and improvements normally associated with County approved subdivisions may not be necessarily included as part of this Project.

## EXHIBIT "C"

## COMMON ELEMENTS

The common elements of the project shall specifically include, but are not limited to, the following:

1. The land described in Exhibit "A", attached to the Declaration, in fee simple.

2. All central and appurtenant installations for common services, including utilities.

3. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, use, maintenance or safety, or normally in common use.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the _____ day of _____, 19 _____.

APPROVED:

_____
Planning Director

APPROVED AS TO FORM
AND LEGALITY:

_____
County Attorney

Applicant(s)

_____

_____

_____

STATE OF HAWAII )
) ss.
COUNTY OF KAUAI )

On this _____ day of _____, 19 _____, before me personally appeared _____

_____
to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

_____
Notary Public, Fifth Judicial Circuit
State of Hawaii

My commission expires:

# EXHIBIT "J"

## SUMMARY OF DECLARATION OF RESTRICTIVE COVENANTS OF NAMAHANA FARMS SUBDIVISION

Uses of Units in the Pi'oi Condominium ("Project") are subject to the Declaration Of Restrictive Covenants ("Restrictive Covenants") dated April 19, 2000 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-123411. Among other things, the Restrictive Covenants provide as follows:

1. That all of the Lots in the Subdivision shall be subject to the Restrictive Covenants.

2. That all Lots are subject to the permissible uses within the "A" Agricultural District in the State of Hawaii Land Use Commission Rules and Regulations in effect from time to time.

3. That the Lots in the Subdivision are subject to various easements for access, utility, drainage, electric, and irrigation purposes, as more fully detailed in the Restrictive Covenants.

4. That, as required by the Department of Water, County of Kauai, domestic water service will not be available to the additional service laterals, beyond 16 single service laterals serving each of the original Lots, until adequate water facilities are available.

It is incumbent upon purchasers and prospective purchasers to read with care the Restrictive Covenants. Prospective purchasers may obtain a copy of the Restrictive Covenants by asking the Sales Agent for a copy.

# EXHIBIT "K"

## SUMMARY OF NAMAHANA FARMS SUBDIVISION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Uses, structures, and development within the Pi'oi Condominium ("Project") are subject to the Namahana Farms Subdivision Declaration Of Covenants, Conditions And Restrictions (the "Declaration"). Among other things, the Declaration provides as follows:

1. That all of the Lots in the Subdivision and all condominium units in the Project shall be subject to the Declaration.

2. That all of the owners of condominium units in the Project shall be members of the Namahana Farms Community Association (the "Association").

3. That the Association shall have certain powers and duties, including but not limited to ownership, improvement, repair, and maintenance of Common Areas within the Subdivision; assessment of owners for the common costs incurred by the Association; enforcement of owners' assessments; promulgation of rules and regulations; creation of an irrigation water system within the Subdivision; and hiring of a manager to manage the affairs of the Association.

4. That all Lots in the Subdivision and condominium units in the Project shall be subject to the Design Standards and Construction Rules.

5. That no building or improvement shall be constructed except as provided in the Design Standards, and except as approved by the Design Committee.

6. That all plans for improvements and buildings must be submitted to the Design Committee for its prior approval.

7. That certain uses, structures, and improvements shall be restricted or prohibited within the Subdivision and the Project.

8. That the Declarant under the Declaration reserves certain rights with regard to the Subdivision and the Project.

9. That the Association and each owner of a Lot or condominium unit shall be required to obtain certain insurance coverage.

10. That the Association, the Declarant, and each owner have the right to enforce the Declaration and to obtain legal remedies against any Lot or unit owner that violates the Declaration.

11. That the Declaration shall run with and bind the Property for a term expiring on December 31, 2050, and thereafter for successive periods of ten years unless terminated by the owners in accordance with the Declaration.

12. That the Declaration may be amended as set forth in the Declaration.

The Declaration contains other important provisions relating to the uses, development, and buildings allowed within the Subdivision and the Project. It is incumbent upon purchasers and prospective purchasers to read the Declaration with care. Prospective purchasers may obtain the Declaration by asking the Sales Agent for a copy.

# EXHIBIT "L"

## SUMMARY OF DESIGN STANDARDS AND CONSTRUCTION RULES FOR NAMAHANA FARMS SUBDIVISION

Construction of improvements within the Pi'oi Condominium ("Project") is subject to the Design Standards and Construction Rules For Namahana Farms Subdivision ("Design Standards") Among other things, the Design Standards provide as follows:

1. That all of the Lots in the Subdivision and condominium units in the Project shall be subject to the Design Standards.

2. That no building or improvement shall be constructed except as provided in the Design Standards, and except as approved by the Design Committee according to the procedures detailed in the Design Standards.

3. That all buildings and improvements shall be subject to the architectural and design criteria, and the construction rules, detailed in the Design Standards.

4. That the Association, the Declarant, and/or any Lot or CIR unit owner in the Subdivision may enforce the Design Standards and obtain legal remedies against any Lot or unit owner that violates the Design Standards.

The Design Standards contain other important provisions relating to the design and construction of improvements within the Project. It is incumbent upon purchasers and prospective purchasers to read with care the Design Standards. Prospective purchasers may obtain a copy of the Design Standards by asking the Sales Agent for a copy.