

## CONDOMINIUM PUBLIC REPORT

Prepared &  
Issued by: Developer: DORSEY F. DARWIN and LAURIE R. DARWIN  
Address: PO Box 262  
Kilauea, Hawaii 96764

Project Name (\*): Double D-2 Condominium  
Address: 7060 Kahuna Road  
Kapaa, Hawaii 96746

Registration No.: 4713  
(Conversion)

Effective date: January 25, 2002  
Expiration date: February 25, 2003

### Preparation of this Report:

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

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

**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:** This report updates information contained in the:  
**(pink)** [ ] 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.*

FORM: RECO-30 286/986/189/1190/892/01971098/0800



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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 serves 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\*:** Dorsey F. Darwin and Laurie R. Darwin Phone: (808) 828 6154  
PO Box 262 Kilauea, HI.96754

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

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**Real Estate Broker\*:** RE MAX Kauai.com Phone: (808) 826 9675  
Jim Pycha, PB  
PO Box 3578 Princeville, HI.96722

**Escrow:** Security Title Corporation Phone: (808) 245-6975  
4370 Kukui Grove Street, Suite 207  
Lihue, Hawaii 96766

**General Contractor\*:** Douglas G. Pickels, Phone: (808) 826 6962  
PO Box 486 Hanalei, HI.96714

**Condominium Managing Agent\*:** Self-managed by the Association of Unit Owners

**Attorney for Developer:** Helene Taylor Phone: (808) 245-9601  
4370 Kukui Grove Street, Suite 208  
Lihue, Hawaii 96766

\*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

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

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

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

The Declaration for this condominium is:

Proposed  
 Recorded – Bureau of Conveyances: Document No. 2001-106659  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration of Condominium Property Regime of Double D-2 Condominium, dated November 15, 2001; Recorded – Bureau of Conveyances: Document No. 2001-196112

- 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. 3302  
 Filed - Land Court condo Map No.

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

First Amendment to Declaration of Condominium Property Regime of Double D-2 Condominium, dated November 15, 2001; Recorded – Bureau of Conveyances: Document No. 2001-196112

- 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. 2001-106660  
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                       Developer does not plan to adopt House Rules

**E. Changes to Condominium Documents**

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>100%</u>
Bylaws	65%	<u>100%</u>
House Rules	----	<u>N/A</u>

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

2. Developer

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules

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

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

**II. 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 \_\_\_\_\_ 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

**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 if 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 lessees 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: 7060 Kahuna Road,  
Kapaa, HI 96746

TMK: (4) 4-6-4:39

Address  TMK is expected to change because CPR numbers will be added to the current TMK number.

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Land Area: 5.23  square feet  acre(s)      Zoning: State: Agricultural; County: Open

Fee Owner: Dorsey F. Darwin and Laurie R. Darwin  
PO Box 262 Kilauea, HI.96754

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

**C. Buildings and Other Improvements:**

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

2. Number of Buildings:   2   Floors Per Building:   1    
 Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

Concrete     Hollow Tile     Wood  
 Other: Shade cloth

4. Permitted Uses by Zoning:

	No. of Apts	Use Permitted by Zoning	
<input checked="" type="checkbox"/> Residential	<u>  1  </u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mixed Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other: Animal Shelter	<u>  1  </u>	<input checked="" 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 use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

- Pets: Animals and pets are limited as provided in the Bylaws.
- Number of Occupants: \_\_\_\_\_
- Other: \_\_\_\_\_
- 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)*	Gross Other Area (sf)	Identify
<u>Unit A</u>	<u>1</u>	<u>3/2</u>	<u>2,281</u>	<u>557</u>	<u>Carport/open deck/covered deck</u>
<u>Unit B</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>36</u>	<u>Animal shelter</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total number of Apartments: 2

\*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 Alteration to Apartments:

See Exhibit F and Exhibit J. Prospective purchasers should review all encumbrances against title, paying particular attention to possible prohibitions on the alteration or construction of buildings that may be detailed in the Declaration of Restrictive Covenants and Conditions For Lots 44-B-1, 44-B-2 & 44-B-3 (Portion of Grant 7551) Kapaa Homesteads (First Series) as recorded in the State of Hawaii Bureau of Conveyances, dated June 5, 1985, Book 18710, Page 95. Purchasers should also review any prohibitions, limitations or restrictions on Alterations to the apartments that might be imposed by the 100-year flood fringe line and any prohibitions, limitations or restrictions on the construction of new apartments that might exist as a result of the Open and Agricultural zoning designations referenced on page 9 of this report.

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: 4

		<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
		<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	Unit A	<u>1</u>	<u>1</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>2</u>
	Unit B	<u>    </u>	<u>2</u>	<u>    </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>4</u>	<u>    </u>	<u>0</u>	<u>    </u>	<u>0</u>	<u>    </u>	<u>4</u>

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

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

- There are no violations.                       Violations will not be cured.
- Violations and cost to cure are listed below.                       Violations will be cured by \_\_\_\_\_  
(Date)

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

Unit A is in satisfactory condition and has an expected life in excess of 10 years.

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 lawfully at one time but which does not now conform to present zoning requirements:

	Conforming	Non-Conforming	Illegal
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     "E"    .

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit “E”.

as follows:

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

3. **Common Interests:** 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 \_\_\_\_\_.

as follows:

Each unit shall have appurtenant thereto an undivided one-half (1/2) 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 fractional common interest for each unit is determined by assigning a ½ fractional interest to each of the two (2) units irrespective of the actual land areas contained in the limited common elements appurtenant to 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 or your purchase and ownership of an apartment in the project.

Exhibit “F” describes the encumbrances against the title contained in the title report dated June 20, 2001

and issued by Security Title Corporation.

Blanket Liens:

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

[ ] 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	Buyer's interest will be terminated and Buyer may be entitled to a refund of deposit, less escrow cancellation 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:

None: Units are sold "as is".

2. Appliances:

N/A

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

Unit A was constructed in 1938

Unit B construction was completed on November 23, 1998

**H. Project Phases:**

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

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



## V. MISCELLANEOUS

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

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit "B" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated July 12, 2001  
Exhibit "D" 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 deliver, 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.

3. 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, 3<sup>rd</sup> 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. 4713 filed with the Real Estate Commission on August 8, 2001.

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:

1. The Developer has not conducted a reserve study in accordance with § 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.
2. The use of hazardous material is restricted except as provided in the Declaration and all hazardous materials laws.

Lead Warning Statement

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

3. This project is subject to an Elevation Agreement and the elevation of the property is such that it cannot be assured of a dependable water supply or of adequate service.
4. This Project, more particularly Unit A, is subject to the Declaration of Restrictive Covenants and Conditions For Lots 44-B-1, 44-B-2 & 44-B-3 (Portion of Grant 7551) Kapaa Homesteads (First Series) as recorded in the State of Hawaii Bureau of Conveyances, dated June 5, 1985, Book 18710, Page 95, which runs with the land, and as such, restrictions on the Alteration or Improvement of Unit A may be restricted or prohibited.
5. Unit B does not have a cesspool. Construction of a Farm Dwelling Unit on Unit B will require an Individual Waste Water System approved by the Department of Health, County of Kauai. The approximate cost is \$7,000.
6. **The project is subject to a 100-year flood fringe area and it is estimated that once every 100 years, the area from the river extending to the 100-year flood fringe area will be inundated or flooded with water. The owners of Unit A may not be permitted to build any new buildings within the 100-year flood fringe area and any buildings currently existing within the flood fringe area may be inundated by water once every 100 years. Unit A may be completely inundated by water. Unit B may be partially inundated by water. The**

**existing building on Unit A may be damaged by flood water, however, the exact damages cannot be estimated at this time.**

7. The National Flood Program Requirements are applicable to all land that is subject to flooding.
8. The Property is classified and zoned "Agricultural". County ordinance and the Hawaii Land Use laws allow only the construction of farm dwellings on such lands. A farm dwelling is a single family dwelling that is located on or used in connection with a farm or if the agricultural activity provides income to the family occupying the dwelling. More than one farm dwelling may be allowed on a parcel of land if (a) a farm dwelling agreement is executed for each additional farm dwelling which requires that the dwelling be used for farm-related purposes and (b) the applicant for the permit submits an agricultural development and use program farm program or other evidence of the applicant's continual agricultural productivity or farming operations in the County of Hawaii and such plan shows how the farm dwelling will be utilized for farm related purposes.

Buyers are advised that the developer makes no representations or warranties with respect to (i) the improvements that are or will be allowed on the real property, (ii) the uses that are allowed or required for real property located in an "Agricultural" land use classification or (iii) the restrictions, requirements or conditions that may be imposed by any governmental entity with respect to the proposed uses of the real property and/or the apartments or the proposed construction of improvements thereon or therein. Prospective buyers are advised to verify the legality of and the requirements for the buyer's intended use of the apartment and the land with the County of Kauai.

9. Residential Dwellings within State Land Use Agricultural Districts

Purchasers should be aware that the State Land Use Commission issued a Declaratory Ruling in December 1994, regarding the construction of residential dwellings on properties located within the State Land Use Agricultural District. In response to said ruling, the Kauai County Planning Department is requiring applicants for building permits on such lands to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling Notice reads as follows:

FARM DWELLING NOTICE

To: Applicants for Building Permits on Land in State Land Use Agricultural District.

This is to inform you that Chapter 205, Hawaii Revised Statutes, 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."

Farm Dwelling is defined in 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

dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.”

Penalty for violation of Section 205.4.5, Hawaii Revised Statutes, 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 violation.

I acknowledge that I have read the above  
and have been given a copy.

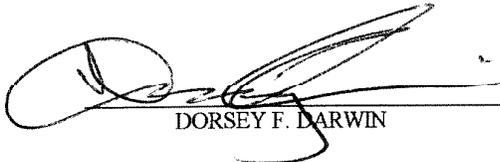
\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Applicant

10. Units A and B have direct vehicular access to Kahuna Road.
11. Open zoning in a state designated agricultural area allows only one residence. However, an Additional Dwelling Unit is allowed via the County approval of an “Additional Dwelling Unit Permit” (ADU). An ADU Permit, No. 93-4-592 was issued by the County on December 22, 1993. Noted in the Condominium Public Report, Page: 11.

- 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.

DORSEY F. DARWIN and LAURIE R. DARWIN  
Name of Owner/Developer

  
\_\_\_\_\_  
DORSEY F. DARWIN

7-11-01  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
LAURIE R. DARWIN

7/11/01  
\_\_\_\_\_  
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 B**

### **SUMMARY OF SALES CONTRACT AND RESERVATION AGREEMENT**

The DOUBLE D-2 CONDOMINIUM Sales Contract and Reservation Agreement, including the terms and conditions attached thereto as Article II (the "contract"), contains, the price and other terms and conditions under which a Buyer will agree to buy a unit in the Project. Among other provisions, (which may be modified or otherwise limited by provisions not summarized), the contract states:

1. The purchase price, method of payment of the purchase price to the escrow agent and any additional sums that must be paid in connection with the purchase of the unit.
2. Whether, at the time of execution of the contract, an effective date for a final public report has been issued.
3. That the Buyer has received and read a public report, whether preliminary or final for the Project prior to signing the contract.
4. That the Developer makes no representations regarding the rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.
5. Buyer agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow Agreement.
6. Seller may extend the closing date by 31 days or 31 days beyond the date of receipt by Seller of the Final Public Report on this project, whichever is later.
7. Requirements relating to the Buyer's financing of the purchase of a unit.
8. That the unit and the Project are subject to various other legal documents that the Buyer should examine and that the Developer may change these documents under certain circumstances.
9. Buyer will be acquiring the unit subject to all encumbrances, restrictions, covenants and conditions on the Project, including but not limited to:
  - a. The Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance recorded in the State of Hawaii Bureau of Conveyances Liber 18528 Page 729 and Exhibit B attached thereto;
  - b. The Declaration of Restrictive Covenants and Conditions for Lots 44-B-1, 44-B-2 & 44-B-3 (Portion of Grant 7551) Kapaa Homesteads (First Series) as

recorded in the State of Hawaii Bureau of Conveyances, dated June 5, 1985,  
Book 18710, Page 95

- c. The Elevation Agreement dated December 14, 1993 and recorded in the State of Hawaii Bureau of Conveyances as Document Number: 93-216469
  - d. The 100-year Flood Fringe Line affecting a portion of the land herein described, as per Survey Map of Masami Murakami, Registered Land Surveyor No.938, Kapaa, Hawaii.
10. That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.
  11. That a deed conveying clear title will be given at closing, subject to certain obligations.
  12. The Buyer agrees to give future easements if reasonably required for the project.
  13. The Buyer will accept the Unit "AS-IS", including, but not limited to, the assumption of all risks regarding any potential hazardous materials on the property or property adjoining or in the vicinity, including liability for suits by third parties. Seller is, however, unaware of any such materials, chemicals or conditions on the property.
  14. If the Buyer defaults:
    - a. The contract may, at the Seller's option, be terminated by written notice to the Buyer; and
    - b. 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
    - c. The Buyer 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.

Furthermore, 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 the contract.

**SPECIAL NOTICE: THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE CONTRACT. WHILE A BUYER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE BUYER'S RIGHTS AND OBLIGATIONS, THE BUYER MUST REFER TO THE BUYER'S CONTRACT TO DETERMINE THE BUYER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY**

CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONTRACT, THE CONTRACT WILL CONTROL NOT THIS SUMMARY.

**END OF EXHIBIT B**

**EXHIBIT C**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS  
FOR DOUBLE D-2 CONDOMINIUM**

Qty	Apt. No.	Area of Limited Common Element	No. of BR/BATH	Approx. Net Living Area (Sq.Ft.)	Approx. Carport/Decks Animal Shelter Area (Sq.Ft.)	% of Common Interest
1	A	1.750 acres	3/2	2,281	557	50%
1	B	3.482 acres	0	0	36	50%

Unit A consists of a single story, single-family residence. It is made up of 2,281 square feet of living area with a living room, dining/kitchen room, a recreation room, three bedrooms and two bathrooms, laundry, storage and weight room. It has an attached carport that is 220 square feet, 120 square feet of covered deck and 217 square feet of open deck. It is constructed of wood and is located on a 1.750 acres limited common element.

Unit B consists of an animal shelter, with three sides enclosed with shade cloth, a shade cloth roof supported on four poles with an earthen floor, with a total of 36 square feet. It is situated on a 3.482 acres limited common element.

The common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration of condominium Property Regime, each unit owner may use his unit, alter or add to it in any manner he deems desirable, so long as it is permitted by law and the Declaration of Protective Covenants and Building Rules. If adjoining unit owners desire to alter and/or transfer portions of their respective units, they can do so by the filing of an amendment to the Condominium Map and the Declaration of Condominium Property Regime together with their respective signatures. See Exhibit I for cautionary comments from the County of Kauai Planning Department.

**END OF EXHIBIT C**

## **EXHIBIT D**

### **SUMMARY OF PORTIONS OF ESCROW AGREEMENT**

The Escrow Agreement (“Agreement”) between **Security Title Corporation** (the “Escrow”) and **Dorsey F. Darwin and Laurie R. Darwin**, (the “Seller”) contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow. If the Buyer is an owner-occupant, the buyer shall deliver an affidavit in the approved form, to escrow.
2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.
3. Escrow will not release from the trust fund and disburse Buyer’s funds at closing, unless: (a) the Real Estate commission has issued a Final Report on the Project and the Buyer has acknowledged receipt of the same, (b) Seller has delivered a written opinion to Escrow stating that Sections 514A-62, 514A-63 or 521-38, Hawaii Revised Statutes, as amended, if applicable, have been complied with, (c) Seller has given escrow a written waiver of any option reserved in any sales contract to cancel said sales contract, (d) Seller has delivered to Escrow, a certificate from Seller’s architect stating that the project is in compliance with the Federal Fair Housing Amendments Act of 1988, (e) If it is intended that the sale of a unit will be made to Buyers as owner-occupants, the required affidavits of the buyers must be reaffirmed and delivered to Escrow with proof of the date of receipt by the buyer of the final public report, upon receipt of the final public report by the Buyer or no later than closing of escrow for the unit.
4. Escrow will return deposited sums to the buyer without interest if: (a) Seller and buyer give Escrow written notice to return the funds to Buyer, (b) If there is a right to cancellation and refund of moneys under the sales contract or otherwise and Seller has notified Escrow of his/her exercise of said right, (c) If Buyer’s funds were obtained prior to the issuance of the Final Report and Buyer has exercised buyer’s right to cancel the contract, (d) The Buyer has exercised the Buyer’s right to rescind the contract under Section 514A-63, Hawaii Revised Statutes, as amended or (e) The Seller of Buyer has requested in writing, that the funds be returned to Buyer and one of the following has occurred: (I) No sales contract has been offered to the prospective owner-

occupant within six months of the issuance of the first public report or public lottery or (ii) the prospective owner-occupant has requested to be removed from the final reservation list, or (iii) the prospective owner-occupant has elected not to execute the sales contract or (iv) the prospective owner-occupant has not obtained adequate financing within the required period of time. Thereafter, in the event of a cancellation as a matter of agreement of right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, and all other costs incurred in connection with the Escrow, not less than \$25.00.

5. If Buyer does not claim any returned funds within sixty (60) days after receiving adequate notice, Escrow shall deposit the funds into a special account, in a bank under the name of Seller as trustee for the benefit of such purchaser. Escrow's duties with respect to such funds shall thereafter be released.
6. Escrow will arrange for and supervise the signing of all documents that are to be signed subsequent to and contemplated by the sales contract and shall promptly and diligently close the transaction.
7. Seller may close any or all sales at different times and Escrow agrees to cooperate with Seller to facilitate its performance of such partial closings.
8. If all documents necessary to effect each sales transaction are accurate and in no way defective, Escrow shall, within five (5) business days (exclusive of the day of closing) file and record the documents necessary to effect the transfer of legal title to the purchaser. If the documents are defective, Escrow shall file the documents within five (5) business days after learning that the reason that prevented their filing or recording no longer exists.
9. If purchaser fails to make the required payments to Escrow in a timely manner, Escrow shall notify Seller of purchaser's failure. If the contract has been terminated, Seller shall provide, in writing, certification of such termination. Upon written request by Seller thereafter, Escrow shall return all funds to Seller, less the cancellation fee, along with any partially executed documents. The buyer's funds shall be treated as liquidated damages and shall be returned to Seller as herein specified.
10. Escrow is relieved from all liability for acting in accordance with the terms herein, unless otherwise notified to the contrary by the Seller or purchaser. If any dispute involving Escrow should arise, Escrow may take no action but instead may await settlement by the appropriate legal proceeding or may file a suit for adjudication and shall thereafter be fully released and discharged from further obligations with respect to the moneys deposited. Seller and purchaser shall indemnify and hold Escrow harmless.

11. Where a material house bond guarantees completion of construction of improvement of unit(s), no sale of any such unit shall be closed until 45 days after publication of notice of completion of all construction on any affected unit(s) unless: (a) cash sums equivalent to the bond is retained in escrow for the 45 day period, (b) an indemnity and title policy are executed by a title company to the purchaser, and (c) a surety bond is posted with the Real Estate commission.
12. The Escrow Agreement shall be binding and may only be terminated by either party upon fifteen (15) days written notice to the other. This Agreement shall be interpreted under Hawaii Law, which shall control in all instances.
13. Escrow shall provide Seller with semi-monthly report covering the status of each sales contract in escrow and if certification is received, bill each purchaser for payments due under the sales contract.
14. As Escrow's compensation for its performance under this Agreement, Escrow will receive \$ \_\_\_<sup>1</sup> for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon schedule rate.

**SPECIAL NOTE: THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE AGREEMENT, ONE MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OF DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.**

**END OF EXHIBIT D**

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<sup>1</sup> \*\*Per Security Title Corporation's Rate Schedule and purchase price of Unit

**EXHIBIT E**

**Common elements of the Project**

The common elements of the project are:

- (a) Land in fee simple
- (b) An un-recorded Easement "A" in favor of Unit "A" for vehicular and pedestrian access purposes Area = 406 square feet.
- (c) All future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone;
- (d) Any and all other elements and facilities in common use or necessary to the existence, upkeep and safety of the Project.

**Limited common Elements of the Project**

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

- (a) That certain land area upon and around which **Units A and B** are located, shown and designated on the condominium Map and the table below, are deemed a limited common element appurtenant to and for the exclusive use of each respective unit.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
A	1.750 acres
B	3.482 acres

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

**END OF EXHIBIT E**

## EXHIBIT F

### 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. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. A 13-foot wide future road widening setback line as per Survey Map of Masami Murakami, Registered Land Surveyor No.938, Kapaa, Hawaii.
4. A 100-year Flood Fringe Line affecting a portion of the land herein described, as per Survey Map of Masami Murakami, Registered Land Surveyor No.938, Kapaa, Hawaii.
5. The terms and provisions, including the failure to comply with any covenants, conditions, restrictions, reservations or obligations of that certain Waiver and Indemnity Agreement dated November 15, 1974, made by and between Frances N. Frazier, "Applicant(s)" and The County of Kauai, a political subdivision of the State of Hawaii recorded in the Bureau of Conveyances of the State of Hawaii Book 10247 Page 296, to which reference is hereby made.
6. The terms and provisions, including the failure to comply with any covenants, conditions, restrictions, reservations or obligations of that certain Waiver and Indemnity Agreement dated March 22, 1976, made by and between Frances N. Frazier, "Applicant", and the County of Kauai, a political subdivision of the State of Hawaii recorded in the Bureau of Conveyances of the State of Hawaii in Book 11309 Page 390, to which reference is hereby made.
7. The terms and provisions, including the failure to comply with any covenants, conditions, restrictions, reservations or obligations of that certain Agreement dated March 28, 1985, made by and between Hawaii 4-0 Partners, a Hawaii Limited Partnership, "Subdivider" and the County of Kauai Planning Commission "Commission", recorded in the Bureau of Conveyances of the State of Hawaii in Book 18528 Page 729, to which reference is hereby made.
8. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in:

#### DECLARATION OF RESTRICTIVE COVENANTS

Dated: June 5, 1985  
Book: 18710  
Page: 95

To which reference is hereby made, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c)

9. Terms and Conditions of that certain:

NOTICE OF DEDICATION

Owner(s)	Laurie & Dorsey Darwin
Dated:	December 16, 1991
Effective Date:	January 1, 1992
Document No:	92-012707
Term:	Ten (10) years

10. The terms and provisions, including the failure to comply with any covenants conditions, restrictions, reservations or obligations of that certain Road Widening Reserve Agreement dated June 2, 1992, made by and between Dorsey F. Darwin & Laurie R. Darwin, "Applicant", and the County of Kauai, Planning Department, "Department", recorded in the Bureau of Conveyances of the State of Hawaii as Document No.92-119688, to which reference is hereby made.
11. The terms and provisions, including the failure to comply with any covenants, conditions, restrictions, reservations or obligations of that certain Elevation Agreement dated December 14, 1993, made by and between Dorsey F. and Laurie R. Darwin and Department of Water, County of Kauai, recorded in the Bureau of Conveyances of the State of Hawaii as Documents No.93-216469, to which reference is hereby made.

12. MORTGAGE

Mortgagor:	Dorsey F. Darwin and Laurie R. Darwin, husband and wife, as Tenants by the Entirety.
Mortgagee:	U.S. Financial Mortgage Corp., a Hawaii corporation
Dated:	May 13, 1996
Recordcd:	May 21, 1996
Document No:	96-070236
To Secure:	\$262,500.00 and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to

The foregoing Mortgage was assigned by the following:

Assignor: U.S. Financial Mortgage Corp., a Hawaii corporation  
Assignee: Countrywide Home Loans, Inc., a New York corporation  
Dated: May 28, 1996  
Document No. 96-106281

13. Bylaws of the Association of Unit Owners of Double D-2 Condominium dated July 2, 2001 and recorded in said Bureau as Document No. 2001-106660.
14. Declaration of Condominium Property Regime of Double D-2 Condominium dated July 2, 2001 and recorded in said Bureau as Document No.2001-106659.
15. First Amendment to Declaration of Condominium Property Regime of Double D-2 Condominium dated November 15, 2001 and recorded in said Bureau as Document No.2001-196112.
16. Condominium Map recorded as Map No. 3302

**END OF EXHIBIT F**

**EXHIBIT G**

**DISCLOSURE ABSTRACT FOR  
DOUBLE D-2 CONDOMINIUM**

Pursuant to Hawaii Revised Statutes, Section 514A-61, the developer of **DOUBLE D-2 CONDOMINIUM** makes the following disclosures:

1. The developer of the project is **DORSEY F. DARWIN and LAURIE R. DARWIN** whose mailing address is PO Box 262 Kilauea, Hawaii 96754
2. See Exhibit H for the projected annual maintenance fees. The developer hereby certifies that the estimations have been based on generally accepted accounting principles.
3. No warranty will apply to any individual. There are **two** existing structures on the property and no warranty will be made regarding these buildings.
4. No condominium units will be used for both hotel and residential use.
5. There will be no commercial use except those activities permitted by the Kauai County Comprehensive Zoning Ordinance.
6. Mandatory reserves assessment and collection in effect beginning 1994 budget year. Developer discloses that no reserve study was done in accordance with Chapter 514A-83.6 HRS, and replacement reserves rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Dated: 7-11-, 2001

  
**DORSEY F. DARWIN**

  
**LAURIE R. DARWIN**

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**RECEIPT**

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

Purchaser(s)

\_\_\_\_\_

**EXHIBIT H**

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

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
Unit A	\$70.83 x 12 = \$850
Unit B	\$70.83 x 12 = \$850

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

**Estimate of Maintenance Fee Disbursements:**

Monthly x 12 months = Yearly Total

Utilities and Services

Air Conditioning

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

Management

Management Fee

Payroll and Payroll Taxes

Insurance	Unit A	\$45.83 x 12	= \$550.00
	Unit B	\$45.83 x 12	= \$550.00
Reserves(*)			
Taxes and Government Assessments			
	Unit A	\$25.00 x 12	= \$300.00
	Unit B	\$25.00 x 12	= \$300.00
Audit Fees			
Other			
	<u>TOTAL</u>		<u>= \$1,700.00</u>

We, DORSEY F. DARWIN and LAURIE R. DARWIN, the developer for the Double D-2 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.

  
DORSEY F. DARWIN

12/3/01  
Date

  
LAURIE R. DARWIN

12/3/01  
Date

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

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

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



DATE: July 20, 2001

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

From: Dee M. Crowell, Planning Director

Subject: Certification of Inspection of Existing Buildings

**PROJECT NAME:** DOUBLE D-2 CONDOMINIUM PROJECT  
**TAX MAP KEY:** (4) 4-6-4:39

The developer of the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai. (Section 515A-40 (b), (1), Hawaii Revised statutes. Subject to the disclosures and waivers (item "e" below) specified herein, we certify the following:

- a. The developer has contracted engineer Peter N. Taylor to certify that the existing buildings on the proposed project referred to as Double D-2 Condominium Unit A and Unit B are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by the department.
- b. There were no variances approved for the subject property.
- c. The parcel does not contain any outstanding nonconforming uses or structures as a result of the adoption or amendments of any ordinances or codes.
- d. There are no notices of violation of County Building or zoning codes outstanding according to our records.

Senior Condominium Specialist

Page 2

July 20, 2001

e. **WAIVER**

The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under Subsection 515A-40, (b), (1), Hawaii Revised Statutes.

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

cc: Helene Taylor

END OF EXHIBIT I

## EXHIBIT J

### SUMMARY OF DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS

The DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS FOR LOTS 44-B-1, 44-B-2 & 44-B-3 (Portion of Grant 7551) KAPAA HOMESTEADS (First Series) as recorded in the State of Hawaii Bureau of Conveyances, dated June 5, 1985, Book 18710, Page 95 (the "Declaration") contains, among other provisions, the following:

1. No structure in the project shall be built between the County of Kauai road widening set back line and Kahuna road;
2. Construction of all buildings within the Project shall be limited to the area north of the 100 year flood fringe line;
3. The occupancy and possession of the Project is subject to the terms of the Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance recorded in the State of Hawaii Bureau of Conveyances Liber 18528 Page 729 and Exhibit B attached thereto. The restrictions run with the land until such time as the land is reclassified to a Land Use District other than "Agricultural" and restrict uses of the Project.
4. Vehicular access from the Project onto Piliamoo Road is restricted until said Road is paved in accordance with the standards of the County of Kauai.
5. No unit or portion of the Project shall be used as a dumping ground for rubbish, trash, garbage or other waste and shall be kept free from debris by the owner. Failure to do so will allow the Developer of the agricultural subdivision, or any other owner, to clean the property at the expense of its owner.
6. No illegal, noxious or offensive activity shall be carried out upon the Project nor shall anything be done thereon that may be or become an annoyance or nuisance to the other owners. This does not limit the terms of the Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance recorded in the State of Hawaii Bureau of Conveyances Liber 18528 Page 729.
7. Each owner accepting title to a unit of the Project acknowledges and agrees that his/her unit may be periodically affected by surrounding agricultural activities and accepts the possibility and agrees to hold harmless the Developer of the agricultural subdivision, any other owner and their lessees, tenants, licensees and occupants of other units or other

lots within the subdivision from any responsibility for elimination or abatement thereof.

- 8 Each of the covenants, conditions and restrictions of the Declaration of Restrictive Covenants and Conditions for Lots 44-B-1, 44-B-2 & 44-B-3 (Portion of Grant 7551) Kapaa Homesteads (First Series) shall run with the land and a number of legal remedies may be pursued to enforce such. The prevailing party in an enforcement action shall be entitled to recover its costs and reasonable attorneys fees as determined by the court.

**SPECIAL NOTICE: THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHASUTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS. WHILE A BUYER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE RESTRICTIVE COVENANTS AND CONDITIONS ON THE PROJECT, THE BUYER MUST REFER TO THE DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS FOR LOTS 44-B-1, 44-B-2 & 44-B-3 (Portion of Grant 7551) KAPAA HOMESTEADS (First Series) AS RECORDED IN THE STATE OF HAWAII BUREAU OF CONVEYANCES, DATED JUNE 5, 1985, BOOK 18710, PAGE 95 TO DETERMINE THE ACTUAL COVENANTS AND CONDITIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE DECLARATION, THE DECLARATION WILL CONTROL NOT THIS SUMMARY.**

**END OF EXHIBIT J**