

**CONDOMINIUM PUBLIC REPORT**

Prepared &  
Issued by:

Developer VIRGINIA A. RAPOZO, Trustee of that certain unrecorded declaration of trust known as the Virginia A. Rapozo Living Trust Agreement and Declaration, dated September 15, 1989  
Address P.O. Box 405, Kalaheo, Hawaii 96741

Project Name(\*): KIKALA RESIDENCE  
Address: 4841 Kikala Road, Kalaheo, Hawaii 96741

Registration No. 4822  
(Conversion)

Effective date: April 2, 2002  
Expiration date: May 2, 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:**  
**(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.*

FORM: RECO-33 286/986/189/1190/892/0197/1098/0800

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

Required and attached to this report       Not Required - disclosures covered in this report.

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL ATTENTION**

This is a **CONDOMINIUM PROJECT**, not a subdivision. It does not involve the sale of individual subdivided lots. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and 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.

1. This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency, nor does it ensure that all applicable County codes, ordinances and subdivision requirements have been complied with.

2. Facilities and improvements normally associated with county approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

3. The land may be subject to rollback real property taxes. The failure of an owner to observe restrictions on the use of the land may cancel the County dedication and special real property tax assessment. Please refer to the Director of Finance, County of Kauai for further information.

**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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## **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: VIRGINIA A. RAPOZO, Trustee of that certain unrecorded declaration of trust known as the Virginia A. Rapozo Living Trust Agreement and Declaration, dated September 15, 1989 Name\* P.O. Box 405 Business Address Kalaheo, Hawaii 96741 Phone: (808) 332-8160 (Business)

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\*: Debbie Joy Floria Name 5118 Hoona Road Business Address Koloa, Hawaii 96756 Phone: (808) 635-3640 (Business)

Escrow: First Hawaii Title Corporation Name 3016 Umi Street, Suite 208 Business Address Lihue, Hawaii 96766 Phone: (808) 245-1608 (Business)

General Contractor\*: Name Business Address Phone: (Business)

Condominium Managing Agent\*: Self managed by the Association of Name Apartment Owners Business Address Phone: (Business)

Attorney for Developer: Rush Moore Craven Sutton Morry & Beh Name 737 Bishop Street, Suite 2400 Business Address Honolulu, Hawaii 96813 Phone: (808) 521-0400 (Business)

\* 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. 2002-023975  
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  
 Recorded - Bureau of Conveyances Condo Map No. 3399  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

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

The Bylaws for this condominium are:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2002-023976  
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 interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>Majority of Board of Directors</u>

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

2. **Developer:**

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

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

1. To record the architect's "as built" certificate pursuant to Section 514A-12, Hawaii Revised Statutes, as amended.

2. To amend the Declaration to make changes to the Project and the Project drawings and/or specifications; provided that such changes do not violate applicable laws and codes and do not constitute a material change to any apartment not owned by the Declarant.

3. To amend the Declaration and the By-Laws to (i) satisfy any VA or FHA requirements which the Declarant deems necessary or convenient, and (ii) such extent and with such language as may be requested by the FHA, VA, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of an apartment in the Project.



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: 4841 Kikala Road Tax Map Key (TMK): (4) 2-4-005-137  
Kalaheo, Hawaii 96741

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

Land Area: 1.019  square feet  acre (s) Zoning: Agricultural

Fee Owner: VIRGINIA A. RAPOZO, Trustee of that certain unrecorded declaration of trust known as the Virginia A. Rapozo Living Trust Agreement and Declaration, dated September 15, 1989  
Name  
P.O. Box 405  
Address  
Kalaheo, Hawaii 96741

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 (Unit A)  
 Other metal (Unit B)
4. Uses Permitted by Zoning

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	_____	<input checked="" type="checkbox"/> Yes*	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix 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 checked="" type="checkbox"/> Agricultural	<u>2</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other:	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

\* May require approval of County of Kauai.

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: See Section 5.04(i) of the By-Laws

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

Other: Uses permitted by applicable zoning and land use laws and ordinances

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)
<u>A</u>	<u>1</u>	<u>3/1</u>	<u>1,200</u>	<u>358</u>	<u>deck</u>
<u>B</u>	<u>1</u>	<u>0</u>	_____	<u>432</u>	<u>carport</u>
_____	_____	_____	_____	<u>20</u>	<u>storage shed</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:

Each apartment is a separate building and the boundaries of each apartment consists of the exterior surfaces of the perimeter walls, roofs and eaves and the bottom surfaces of the foundations, floors and/or footings of each apartment, as applicable.

Permitted Alterations to Apartments:

See Exhibit "A".

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.

Exempted by Section 514A-108(c), HRS, for project with two or fewer apartments.

7. Parking Stalls:

Total Parking Stalls: See Exhibit "B"

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned	<u>2</u>	_____	_____	_____	_____	_____	<u>2</u>
Unit A							
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	<u>2</u>	_____	<u>0</u>	_____	<u>0</u>	_____	<u>2</u>

\*Unit B has ample area within its limited common area for parking purposes.

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 "B" contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool                       Storage Area                       Recreation Area

Laundry Area                       Tennis Court                       Trash Chute/Enclosure(s)

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

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

There are no violations                       Violations will not be cured.

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

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

Based upon the architect's inspection and report dated June 19, 2001, the apartments of the Project appear to be in satisfactory condition for their stated age and appear to be in sound condition. The plumbing and electrical systems of Unit A are functioning and in good condition. The architect stated that the apparent useful life of the apartments, provided they are properly maintained, is 15 years for Unit A and 2 years for Unit B. The Developer makes no representation or warranty about the expected useful life of the structural components of the Project.

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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

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

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

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

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit     "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.

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

described in Exhibit "C".

as follows:

NOTE: Land areas referenced are not legally subdivided lots.

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

described in Exhibit \_\_\_\_\_.

as follows:

Unit A: 50%

Unit B: 50%

- 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 "D" describes the encumbrances against the title contained in the title report dated January 14, 2002 and issued by First Hawaii 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.

[ 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.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>
---------------------	--

F. **Construction Warranties:**

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

1. Building and Other Improvements:

None.

2. Appliances:

None.

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

The following is the approximate completion date for each apartment:

Unit A: 1977  
Storage Shed Unit B: 2001

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 affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

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

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

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

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

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

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

- C. **Utility Charges for Apartments:**

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

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

## V. MISCELLANEOUS

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

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit "F" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated January 24, 2002.  
Exhibit "G" 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 documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other \_\_\_\_\_

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

This Public Report is a part of Registration No. 4822 filed with the Real Estate Commission on March 5, 2002.

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. **Cesspool**

Unit A is presently served by a cesspool located in the Private Yard area that is a limited common element appurtenant to Unit A. Unit B presently has no provision for sewage disposal and the owner of Unit B will have to make all arrangements for sewage disposal.

2. **"As Is" Condition**

The Developer did not construct any of the apartments or other improvements of the Project. The apartments in the Project are being sold and will be transferred in their current "AS IS, WHERE IS" condition with "ALL FAULTS". This means that the Developer makes no promises, representations or warranties regarding the physical condition of the apartments or the Project and that the Developer will not correct any defects in any apartment, the Project, or anything installed or contained therein.

3. **Farm Dwellings**

Section 6.6 of the Declaration states the following:

The land of the Project is currently zoned agricultural. In certain cases, Hawaii Revised Statutes Chapter 205 may require that the apartments of the Project qualify and be used as farm dwellings. If one or more of the apartments of the Project must qualify as a farm dwelling, then the affected apartment 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 Hawaii Revised Statutes Chapter 205. The apartment owner desiring the farm dwelling shall be responsible for maintaining the requisite level of agricultural activity. If the owners of both apartments of the Project are required to maintain agricultural activity, then each apartment owner in the Project shall bear an equal burden, proportionate to the common interest appurtenant to the owner's apartment, for the costs 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 apartments within the Project, which costs may be a part of the common expenses of the Project.

4. **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."

- 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.

VIRGINIA A. RAPOZO, Trustee of that certain unrecorded declaration of trust known as  
the Virginia A. Rapozo Living Trust Agreement and Declaration, dated September 15, 1989  
 Printed Name of Developer

By: Virginia A. Rapozo      Mar 21 2009  
 Duly Authorized Signatory      Date

VIRGINIA A. RAPOZO  
 VIRGINIA A. RAPOZO, Trustee as aforesaid  
 Printed Name & Title of Person Signing Above

Distribution:  
 Department of Finance, County of Kauai  
 Planning Department, County of Kauai

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

## EXHIBIT "A"

### PERMITTED ALTERATIONS TO APARTMENTS

Section 15 of the Declaration contains the following provisions regarding alterations to the apartments:

Provided that the apartment owner complies with the provisions of this Declaration and the By-Laws and all applicable law, and obtains all necessary governmental approvals and permits, each apartment owner shall have the right at any time and from time to time, without the approval or consent of the Association or any other apartment owner, to construct, improve, renovate, remodel, restore or replace his apartment or any building, structure or improvement comprising his apartment, including without limitation the construction of any additional building, structure or improvement different in any material respect from the Condominium Map. Each apartment owner shall record in the Bureau of Conveyances an amendment to this Declaration together with a complete set of floor plans of his apartment as so altered, certified as built by a registered architect or professional engineer, to fully and accurately depict the alterations to his apartment. Notwithstanding any provision in this Declaration to the contrary, the amendment to this Declaration shall be executed only by the apartment owner and shall require only the written approval thereof, including the apartment owner's plans therefor, by the Eligible Holders of mortgages covering such apartment (if the mortgagees require such approval). All existing apartment owners and all future apartment owners and their mortgagees, by accepting an interest in an apartment, consent to all such alterations and agree to give and shall be deemed to have given the apartment owner of the altered apartment a power of attorney to execute an amendment to this Declaration solely for the purpose of describing the alterations to such apartment in this Declaration so that the owner of the altered apartment shall hereafter have a power of attorney from all the other apartment owners to execute such amendment to this Declaration. This power of attorney shall be deemed coupled with each owner's interest in his apartment (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 apartments in the Project (other than the apartment owner applying for the governmental permit) to sign the necessary governmental permit application or related documents, then all of the other apartment owners shall be required to sign any such permit applications or related documents as may be necessary to allow an apartment owner to obtain the governmental permit authorized by this paragraph.

Non-material additions to the common elements, including, without limitation, the installation of solar energy devices as defined by Section 514A-89, Hawaii Revised Statutes, as amended, shall require approval only by the apartment owners having the right to use the affected common elements. For so long as a statutory definition of "non-material structural additions to the common elements" shall be prescribed by Section 514A-89 of the Act, as it may be amended from time to time or by any substitute or successor statute, said statutory definition shall be applied in interpreting the foregoing sentence.

EXHIBIT "B"

PARKING STALLS

Unit A includes a carport with two parking spaces.

Unit B has no assigned parking spaces, but vehicles can be parked on the appurtenant Private Yard.

## EXHIBIT "C"

### COMMON ELEMENTS

#### Common Elements

The common elements of the Project include the following:

1. The land of the Project;
2. All yards, grounds, landscaping and fences or walls, if any;
3. All pipes, cesspools, wires, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any; and
4. Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.

#### Limited Common Elements

The common elements of the Project include the following:

1. The Private Yards under and surrounding each of the apartments, including without limitation any driveways or parking areas, as shown on the Condominium Map, and any trees, shall be appurtenant to the respective apartments, but excluding any water line, sewer line or drain line located on, in or under such Private Yards which serve more than the common elements or one apartment;
2. The water lines, sewer lines or drain lines, if any, located in or under the Private Yard of an apartment which serve only that apartment shall be appurtenant to such apartment;
3. The cesspool located in or under the Private Yard of Unit A shall be appurtenant to Unit A; and
4. One (1) mailbox shall be appurtenant to and for the exclusive use of each apartment.

EXHIBIT "D"

ENCUMBRANCES AGAINST TITLE

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions as contained in Land Patent Grant Number 10,326, dated October 11, 1935, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (i) is exempt under Chapter 42, Section 3607 of the United States Code, or (ii) relates to handicap but does not discriminate against handicapped persons.
3. Setback (13 feet wide) for future road widening along Kikala Road, as shown on survey prepared by Cesar C. Portugal, Registered Professional Surveyor, dated April 12, 1976, as shown on map attached to Affidavit dated January 19, 1977, recorded in said Bureau of Conveyances in Liber 11993, Page 326.
4. A 10-foot wide waterline easement in favor of Lot 44-F-1-B as delineated on survey prepared by Cesar C. Portugal, Registered Professional Surveyor, dated April 12, 1976, as shown on map attached to Affidavit dated January 19, 1977, recorded in said Bureau of Conveyances in Liber 11993, Page 326.
5. Grant in favor of Citizens Utilities Company, a Delaware corporation, and GTE Hawaiian Telephone Company Incorporated (now known as Verizon Hawaii, Inc.), a Hawaii corporation, by instrument dated September 8, 1981, recorded in said Bureau of Conveyances in Liber 15851, Page 1, granting an easement for utility and incidental purposes.
6. Unrecorded declaration of trust known as the Virginia A. Rapozo Living Trust Agreement and Declaration, dated September 15, 1989.
7. Declaration of Condominium Property Regime of Kikala Residence dated January 24, 2002, recorded in said Bureau of Conveyances as Document No. 2002-023975.
8. Condominium Map No. 3399 filed in said Bureau of Conveyances.
9. By-Laws of the Association of Apartment Owners of Kikala Residence dated January 24, 2002, recorded in said Bureau of Conveyances as Document No. 2002-023976.

E  
EXHIBIT \_\_\_\_\_

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

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>				
A	\$0	x	12	=	\$0
B	\$0	x	12	=	\$0

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



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, in arriving at the figure for "Reserves".

## EXHIBIT "F"

### SUMMARY OF SALES CONTRACT

A copy of the form of Condominium Reservation Agreement, Deposit Receipt and Sales Agreement ("Sales Contract") has been submitted to the Real Estate Commission and is available for inspection at the Broker's office. The following is a summary of some of the provisions of the Sales Contract. ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ THE SALES CONTRACT IN FULL SINCE THIS SUMMARY IS NOT INTENDED TO BE A COMPLETE DESCRIPTION OF THE PROVISIONS OF THE SALES CONTRACT.

1. Section G.3 of the Sales Contract provides as follows:

"As Is" Condition; Warranties. The Project is a conversion of existing buildings constructed in 1977 (Unit A) and 2001 (Unit B). The Apartment and the Common Elements are being sold and will be transferred in their current "AS IS, WHERE IS" condition with "ALL FAULTS". This means that Seller will not correct any defects in the Apartment, the Project or anything installed or contained therein. Buyer acknowledges that Buyer has inspected the Apartment and the Project. Buyer also acknowledges that Buyer has received and read a copy of the Final Public Report for the Project and all the exhibits attached to it.

It is expressly understood and agreed by and between Seller and Buyer that SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE APARTMENT, CONSUMER PRODUCTS INSTALLED THEREIN, THE PROJECT OR ANYTHING INSTALLED THEREIN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS OF THE APARTMENT FOR A PARTICULAR USE OR PURPOSE OR FOR SUFFICIENCY OF DESIGN.

2. Buyer agrees that all payments required by the Sales Contract will be deposited with Escrow and that all checks will be made payable to Escrow. Buyer also agrees that any money that Buyer deposits with Escrow may be deposited together with other buyers' money in a federally insured interest bearing account, and that Escrow may distribute the money in this account according to an Escrow Agreement between Developer and Escrow. Buyer also agrees that all the interest earned from the funds deposited by buyers will be credited to Developer.

In case Buyer is late in making payments to Escrow, the late payment will bear interest at the rate of one percent (1%) per month until paid.

3. All taxes, assessments, and charges of any kind assessable against the Apartment or the land of the Project will be prorated as of the Closing Date. This means that Buyer will have to pay Buyer's share of these taxes and assessments at the Closing Date. In addition, Buyer will be responsible for paying all closing costs in connection with the purchase of the Apartment, including all costs related to any mortgages, all notary fees, recording fees, escrow fees, title insurance, conveyance taxes and fees, and preparation of the Apartment Deed to Buyer.

4. Buyer may not assign Buyer's rights under the Sales Contract without the prior written consent of Developer. Under no circumstances may Buyer assign Buyer's rights to the agreement after the Preclosing or the Closing Date. If Buyer attempts to assign the agreement without Developer's written consent, Buyer shall be in default under the Sales Contract.

5. The Developer may, at its option, preclose the sale of Apartments by requiring the Buyer to deliver all documents necessary for closing and certain funds to Escrow up to sixty (60) days prior to the closing date. Buyer will have ten (10) days notice of such preclosing. Buyer must deposit all funds other than the proceeds of Buyer's first mortgage loan or the balance of the purchase price for a cash sale with Escrow, including the advanced payment for a maintenance assessment fund. Buyer must also sign all documents required for closing.

6. Buyer shall not be able to occupy the Apartment until the Closing Date for the sale of the Apartment. Developer or Escrow will notify Buyer of when the Closing Date will take place. Buyer will not be able to take occupancy until all payments required by the Sales Contract have been made. Keys will not be issued for the Apartment unless all payments have been made. If Buyer attempts to take occupancy of the Apartment prior to the Closing Date, then Buyer will be in default of the Sales Contract, and Developer has the right to remove Buyer from the Apartment using any lawful means.

7. By signing the Sales Contract, Buyer represents that Buyer is financially capable of paying the purchase price for the Apartment. Buyer also represents that any financial data he has given Developer is accurate. If Buyer does not notify Developer that Buyer's financial situation has changed as of the Closing Date, Developer will assume that the information Developer has is accurate. If the Developer discovers that any important financial data provided to Developer is not accurate and Buyer failed to notify Developer of this inaccuracy, Developer has the right to cancel the Sales Contract.

If Buyer intends to finance the purchase of an Apartment, Buyer must apply for financing and inform Developer of the name and address of the lending institution within five (5) days of Developer's acceptance of the Sales Contract or, if the Sales Contract is a reservation, from the Effective Date of the Sales Contract. Buyer agrees to do everything possible and/or necessary to successfully obtain the loan. Within fifty-five (55) days of Developer's acceptance of the Sales Contract or, if the Sales Contract is a reservation, from the Effective Date of the Sales Contract, Buyer must deliver to Developer a written, unqualified loan commitment that is reasonably acceptable to Developer signed by the lending institution agreeing to make the loan to Buyer.

If Buyer tries in good faith and with diligent effort to obtain financing but is unsuccessful in doing so, then either Developer or Buyer may cancel the Sales Contract upon written notice to the other party. If the Sales Contract is cancelled in this manner, Buyer is entitled to a refund from Escrow of Buyer's money, without interest and minus any costs incurred by Developer, Escrow, or any lending institution in processing the Sales Contract or the Buyer's loan application(s).

If Buyer does not apply for and do everything possible and/or necessary to successfully obtain the loan, then Developer may cancel the Sales Contract upon written notice to Buyer and Developer may keep all money previously paid by Buyer and any interest earned.

If Buyer is making a cash purchase of an Apartment, Buyer must provide proof to Developer within ten (10) days after Developer accepts the Sales Contract that Buyer is financially capable of

making all payments under the Sales Contract. Developer has the option to terminate the Sales Contract if Developer determines at any time that Buyer is unable to make the required payments. If the Sales Contract is cancelled in this manner, Buyer is entitled to a refund from Escrow of Buyer's money, without interest and less escrow charges, the cost of any credit reports and all other costs incurred by Developer. Developer will give Buyer notice of any such cancellation.

8. If Buyer defaults, Developer may cancel the Sales Contract by notifying Buyer in writing. If the cancellation occurs after the Effective Date of the Sales Contract, the Developer may keep any amounts previously paid by Buyer as liquidated damages to compensate Developer for its damages. In addition, Developer may also pursue any other legal remedy for Buyer's default.

If Developer defaults after the Effective Date of the Sales Contract, Buyer's only remedy is to cancel the Sales Contract and have all of Buyer's money refunded.

9. By entering into the Sales Contract, Buyer acknowledges that Buyer has never received any information of representations from Developer or any of Developer's agents regarding rental income from the Apartment or other economic or tax benefits that Buyer may receive from ownership of the Apartment. The Buyer further agrees that he or she will not participate in any rental pool for the renting of the Apartment. Buyer may be required to sign documents which satisfy the Developer that no such representations have been made.

10. Paragraph G.4 of the Sales Contract makes the following disclosure:

Agricultural Zoning. The Land is zoned agricultural. In certain cases, Hawaii Revised Statutes Chapter 205 may require that the apartments of the Project qualify and be used as farm dwellings. If one or more of the apartments of the Project must qualify as a farm dwelling, then the affected apartment 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 Hawaii Revised Statutes Chapter 205. The apartment owner desiring the farm dwelling shall be responsible for maintaining the requisite level of agricultural activity. If the owners of both apartments of the Project are required to maintain agricultural activity, then each apartment owner in the Project shall bear an equal burden, proportionate to the common interest appurtenant to the owner's apartment, for the costs 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 apartments within the Project, which costs may be a part of the common expenses of the Project.

11. Paragraph G.8 of the Sales Contract makes the following disclosure:

Disclosure about Project. Buyer acknowledges that Seller has disclosed to Buyer that Unit A is served by a cesspool that is located in the Private Yard that is a limited common element appurtenant to Unit A, and that Unit B currently has no provision for sewage disposal.

EXHIBIT "G"

SUMMARY OF ESCROW AGREEMENT

A copy of the Escrow Agreement between the Developer and First Hawaii Title Corporation ("Escrow"), has been submitted to the Real Estate Commission and is available for inspection at the Developer's office. The following is a summary of some of the provisions of the Escrow Agreement.

NOTE: ALL BUYERS AND PROSPECTIVE BUYERS SHOULD READ THE ESCROW AGREEMENT AND ALL AMENDMENTS IN FULL AS THIS SUMMARY DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS IN THE ESCROW AGREEMENT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE ESCROW AGREEMENT, AND DOES NOT ALTER OR AMEND THE ESCROW AGREEMENT IN ANY MANNER.

1. A signed copy of each sales contract for an Apartment in the Project must be given to Escrow.
2. All money received by the Developer from buyers under sales contracts for apartments in the Project must be given to Escrow. Escrow, in accordance with written instructions from the Developer, shall deposit all money so received in accounts at a federally insured bank, savings and loan association or other financial institution which pays interest on deposits. Any interest earned on funds deposited into Escrow will accrue to the credit of the Developer unless otherwise provided.
3. Escrow may not make any disbursements of funds until the following conditions have been met:
  - (a) The Real Estate Commission shall have issued an issuance date for a Final Condominium Public Report covering the Project; and
  - (b) Seller or Seller's attorney shall have delivered a written opinion to Escrow stating that the requirements of Sections 514A-62 and 514A-63, Hawaii Revised Statutes, as amended, have been met; and
  - (c) Seller shall have given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract.
4. A buyer shall be entitled to a refund if any of the following occurs:
  - (a) Seller and the buyer shall have requested Escrow in writing to return to the buyer the funds of the buyer held hereunder by Escrow; or
  - (b) Seller shall have notified Escrow of Seller's exercise of any option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Seller; or

(c) With respect to a buyer whose funds were obtained prior to the issuance of the Final Condominium Public Report, the buyer has exercised the buyer's right to cancel the contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or

(d) A buyer has exercised buyer's right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

Escrow shall pay any refund to the buyer without interest less a reasonable escrow cancellation fee. However, no escrow cancellation fee will be deducted from refunds to individuals on the Developer's owner-occupant reservation list to whom no Sales Contract was ever offered.

5. If a buyer fails to claim a refund for a cancelled sales contract, Escrow shall deposit the refund in a special account in a bank or other depository selected by Escrow, in the name of the Developer as trustee for the benefit of the buyer. Escrow will then attempt to notify the buyer about the refund.

6. If a buyer is to make a payment under a sales contract directly to Escrow, Escrow shall promptly give the buyer notice of the amount and due date of the payment. If the buyer fails to make a payment to Escrow in a timely manner, Escrow will notify Developer. If the Developer subsequently notifies Escrow in writing that Developer has terminated the sales contract and provides Escrow with copies of all notices of termination sent to the buyer, Escrow will then treat any funds the buyer has already paid as though they belong to the Developer. Upon written request by the Developer, Escrow will pay all such sums to Developer minus any escrow cancellation fee.

## EXHIBIT "H"



MARYANNE W. KUSAKA  
MAYOR

DEE M. CROWELL  
PLANNING DIRECTOR  
SHEILAH N. MIYAKE  
DEPUTY PLANNING DIRECTOR  
TELEPHONE (808) 241-6677  
FAX (808) 241-6699

### PLANNING DEPARTMENT

#### INSTRUCTION FOR COMPLETING AG. CONDO. FARM DWELLING AGREEMENTS

PLEASE NOTE: The Planning Department must record all Farm Dwelling Agreements with the Bureau of Conveyances. Therefore, it is very important that you follow these instructions to avoid unnecessary delays.

1. Please READ the entire Agreement and these instructions carefully.
2. All information on blank lines must be typewritten.
3. All individual names in instruments presented for recordation shall be typewritten or stamped BENEATH all signatures. No discrepancy in any name shall exist between the printed name, as it appears in the BODY of the instrument and NOTARY'S certificate of acknowledgment. All signatures must be NOTARIZED.
4. Each page must be 8-1/2" x 11" in size. Make a total of three (3) sets of the Agreement.
5. If the instrument contains more than one page, it shall be stapled once in the upper left corner and shall not have a cover or backer attached.
6. The Registrar shall not record any instrument that will not reproduce legibly, under photographic or electrostatic methods.
7. EXHIBIT "A", as noted on the first page of the Agreement, shall be the legal description of the property (metes and bounds), which can be found with the deed of your property, or property description of the entire property and not the individual condominium unit. A subdivision map will NOT be acceptable. Attach one copy with each set of the Farm Dwelling Agreement.
8. EXHIBIT "B" is either the description of the condominium unit or a map identifying the condominium unit.
9. Should there be several interests (owners) to the property or a power of attorney agreement, a written statement which authorizes the applicant to process the necessary permits and to obtain a Farm Dwelling Agreement must also be signed, notarized, and attached to each agreement and be identified as EXHIBIT "C".

Instructions for Completing Ag. Condo Farm Dwelling Agreements  
Page Two

10. Documents must include original signatures and be single-sided sheets of written text. No paper or materials can be secured or attached to a page in any manner that may conceal any written text.
11. Recording fees for all documents recorded in the Regular System, including Uniform Commercial Code documents, will be at a flat rate of \$25.00 per document. Check should be made payable to the Bureau of Conveyances.
12. Attach check to three (3) completed sets of the Farm Dwelling Agreement and return them to the Planning Department,
13. The Planning Department will obtain the signatures of the PLANNING DIRECTOR and COUNTY ATTORNEY, process your building permit, and record the Agreement with the Bureau of Conveyances.
14. After recordation by the Bureau of Conveyances, the Planning Department will send an executed copy to the mailing address provided by you on Page 1 for your files.
15. Do NOT fill in date (page 4).

Please call the Planning Department at 241-6677 should you have any questions. Mahalo.

05/21/99

ARYANNE W. KUSAKA  
MAYOR



PLANNING DEPARTMENT

DEE M. CROWELL  
PLANNING DIRECTOR  
SHEILAH N. MIYAKE  
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 241-6677  
FAX (808) 241-6699

CHECKLIST FOR FARM DWELLING AGREEMENTS

The Planning Department will not execute any Farm Dwelling Agreements unless the following is verified by the applicant or applicant's authorized representative.

Please mark each item with a "Y" (yes) or "N" (no), whether the following items were verified with a deed recorded at the Bureau of Conveyances, Real Property Tax records or other source. Please indicate the source of information.

("Y"/"N")

- \_\_\_\_\_ 1. Is (are) the person(s) listed on the document the owner/authorized agent of the subject property?  
Source: \_\_\_\_\_
- \_\_\_\_\_ 2. Is the Tax Map Key number for the parcel correct?  
Source: \_\_\_\_\_
- \_\_\_\_\_ 3. Is the address of the applicant correct?  
Source: \_\_\_\_\_
- \_\_\_\_\_ 4. Are the typed names and initials of the owners exactly the same as the signed names and initials throughout the document?

Verified by:

\_\_\_\_\_  
print name

\_\_\_\_\_  
signature

Date: \_\_\_\_\_



WHEREAS, this document pertains only to \_\_\_\_\_  
as shown in Exhibit "B" and made a 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 residence 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  
Agriculture 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;

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).

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 principal place of business is 4444 Rice Street, Suite 473, 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.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the \_\_\_\_\_ day of \_\_\_\_\_,

APPROVED:

Applicant(s)

\_\_\_\_\_  
Planning Director  
County of Kauai  
Planning Department

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
County Attorney

STATE OF HAWAII            )  
                                  ) ss.  
COUNTY OF KAUAI         )

On this day of \_\_\_\_\_, before me  
appeared \_\_\_\_\_ to me personally known,  
who being by me duly sworn, did say that he is \_\_\_\_\_  
\_\_\_\_\_ of the PLANNING  
DEPARTMENT of the COUNTY OF KAUAI; and that said instrument was  
executed on behalf of said PLANNING DEPARTMENT; and that said  
\_\_\_\_\_ acknowledged that he executed the  
same as his free act and deed of the PLANNING DEPARTMENT of the  
COUNTY OF KAUAI. Said Department has no seal.

\_\_\_\_\_  
\_\_\_\_\_

Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

STATE OF HAWAII        )  
                              ) ss.  
COUNTY OF KAUAI     )

On this day of \_\_\_\_\_, before me  
personally appeared \_\_\_\_\_

\_\_\_\_\_ to  
me known to be the persons described in and who executed the  
foregoing instrument, and acknowledged that \_\_\_\_\_ executed the  
same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
\_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_