

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer Andrew J. Smith and Jill Schrader Smith
Address P.O. Box 1287, Kilauea, Kauai, Hawaii 96754

Project Name(*): MALULANI AGRICULTURAL CONDOMINIUM
Address: Lot 4 Kalihiwai Ridge Phase II, Kahilihoho Road, Kilauea, Kauai, Hawaii

Registration No. 4850 Effective date: June 25, 2002
Expiration date: July 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.

X FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] No prior reports have been issued.
[] This report supersedes all prior public records.
[] 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 re-activates 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-30 286/986/189/1190/892/0197/0800

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 Report:

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 wished 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

1. There are county restrictions on the number of residential dwelling units or other structures which may be built upon the property. A prospective purchaser is advised to review this condominium project with the respective county planning offices to receive the most recent directives concerning development, replacement, expansion, or construction of any type of structure for the condominium project in the future. There are no residential structures on the property at this time.

This is a **CONDOMINIUM PROJECT**, not a subdivision. It does not involve the sale of individual subdivided lots. The land 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's land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

2. There are presently two shade sheds on the property, each of which may be defined as an "apartment" or "unit" under the Condominium Property Act.

3. This project is within a State Land Use Agricultural District. Please see page 20 of this report for special requirements for residential dwellings within these districts.

4. 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.

5. 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.

6. **This public report was done by the developer and not an attorney.** The prospective purchaser is cautioned to carefully review the condominium documents referenced in this public report for further information with regard to the foregoing.

TABLE OF CONTENTS

	Page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Reports	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	5
Developer	
Attorney for Developer	
General Contractor	
Real Estate Broker	
Escrow Company	
Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyers Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A: ENCUMBRANCES AGAINST TITLE	
EXHIBIT B: MAINTENANCE FEES	
EXHIBIT C: SALES CONTRACT SUMMARY	
EXHIBIT D: ESCROW AGREEMENT SUMMARY	
EXHIBIT E: SPECIAL POWER OF ATTORNEY	
EXHIBIT F: FARM DWELLING AGREEMENT, Instructions and Forms	
EXHIBIT G: CZO SECTION 8-8.5 AND 8-8.6, re: Open District	
EXHIBIT H: DECLARATION OF COMPLIANCE	

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 officer, or 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 PROJECTS

Developer: Andrew J. Smith and Jill Schrader Smith Phone: (808)828-0327
Name* (Business)

P.O. Box 1287,
Business Address

Kilauea, Kauai, 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

Real Estate Broker*: Wai'oli Properties,, Inc. Phone: (808) 822-0222
Name (Business)

1353 Kuhio Hwy., Kapaa, Kauai, Hawaii 96746
Business Address

Escrow: Fidelity National Title Insurance Company, Inc. Phone: (808) 536-0404
Name (Business)

201 Merchant St., Suite 2100, Honolulu, HI 96813
Business Address

General Contractor*: N/A Phone: _____
Name (Business)

Business Address

Condominium Managing Agent*: Self Management by the Association of Apartment Owners Phone: _____
Name (Business)

Business Address

Attorney for Developer: None. This report prepared by the developer, pro se Phone: (808) 828-0327
Name (Business)

Business Address

* 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 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 interest, and other information relating to the condominium project.

The Declaration for this condominium is:

Proposed
 Recorded - Bureau of Conveyances: Document No. 2002-071297
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]:

NOTE: CC&Rs for the Malulani Agricultural Condominium were recorded April 25, 2002 in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-071299

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. 3424
 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 apartment project. They provide for the manner in which the Board of Directors and 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. 2002-071298
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 govern 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> </u>	<u>{N/A}</u>

*The percentages for individual condominium projects may be more than 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:

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee simple: Individual apartments and common elements, which include the underlying land, will be in fee simple.
- Leasehold or sub-leasehold: Individual apartments and common elements, which include the underlying land will be leasehold.

Leases for the individual apartment at 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 a sublease even if the master lease is canceled or foreclosed.

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

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

Exhibits _____ 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 advise of an attorney.

There are 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 a lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: Lot 4 Kalihiwai Ridge Phase II Kahilihohlo Rd. Tax Map Key (TMK): (4) 5-02-22:04

Kilauea, Kauai, HI 96746

Address TMK is expected to change because Street Address has not been assigned; the County may assign new TMK numbers once the CPR is final.

Land Area: 10.0 square feet acre(s) Zoning: Ag /Open

Fee Owner: Andrew J. Smith and Jill Schrader Smith
 Name
P.O. Box 1287
 Address
Kilauea, Kauai, 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 Unit A & B: 1
 Exhibit _____ contains further explanations.

3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other PVC Plastic tubing and screening

4. Uses Permitted by Zoning:

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

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

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

- Pets: Bylaws Section E-2
- Number of Occupants: _____
- Other: Malulani CC&R's Section 1
- There are no special use restrictions.

6 Interior (fill in appropriate numbers):

Elevators: _____ Stairway: _____ Trash Chutes: _____

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
Unit A	1	0	_____	16	Shed
Unit B	1	0	_____	16	Shed
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

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:

The exterior surfaces of the structure and the description of the limited common elements as set forth in the Condominium Map.

Permitted alterations to apartments:

Apartments may be altered in accordance with the Declaration, the Bylaws, the CC&R's, the Kalihiwai Ridge Phase II Environmental Design Rules and Guidelines, the Building Code, Zoning, and all relevant County of Kauai and State of Hawaii ordinances and regulations.

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.

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 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 designed 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 _____.

as follows:

- a. Land area of 0.490 acres shown as Common Element on the Condominium Map to provide for a common driveway for ingress and egress, landscaping, drainage, and all common or shared installations for underground utilities and services including electricity, water, telephone, and cable.
- b. The land in fee simple.
- c. All other parts of the Project existing or which may in the future be created by the Association for the common use or necessary for the existence, maintenance and safety of the Project.

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved 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 _____.

as follows:

*The land area under and surrounding each permitted structure as shown and delineated on the Condominium Map:

Unit A: one-story, 16 sq. ft. shade shed on 5.196 acres

Unit B: one-story, 16 sq. ft. shade shed on 4.314 acres

*Note: Land areas referenced herein 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 his project, as described in the Declaration, are:

described in Exhibit _____.

as follows:

Unit A: 50% appurtenant common interest

Unit B: 50% appurtenant common interest

- E. Encumbrances Against Title: An encumbrance is a claim against or 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 A describes the encumbrances against title contained in the title report dated April 25, 2002

and issued by Fidelity National Title Insurance Company

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 may lose rights to purchase Unit, but would be entitled to return of all deposits, less escrow cancellation fee, if default and foreclosure occur before conveyance. However, should the Buyer's deposit be disbursed by Escrow and the lien be foreclosed prior to conveyance to Buyer, Buyer may not be able to recover any deposits.

F. Construction Warranties:

Warranties for individual apartments and 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:**

Shade shed, Unit A, as per Architect's Certification March 18, 2002
Shade shed, Unit B, as per Architect's Certification March 18, 2002

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 C contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated March 10 & 13, 2002
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 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 buyers use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds the 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 report 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 Covenants, Conditions and Restrictions, "Malulani" Agricultural Condominium Project as Document No 2002-07 1299; Kalihiwai Ridge Community Association

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. 4850 filed with the Real Estate Commission on May 13, 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**

Developer will execute a **Special Power of Attorney (Exhibit E)** upon sale of a Unit to assist Unit buyers to acquire building permits for farm dwellings.

Each Unit owner is responsible to maintain the view plane designated for the benefit of each Unit as shown on the Condominium Map.

Unit B owner may create and maintain berms and landscaping in a ten-foot wide strip of land on Unit A running from the west end of the Common Element to the west end of the Unit B building site, and Unit A shall allow access for establishing and maintaining said strip of land. The purchaser should read the requirements created by the **Project CC&Rs. See Section 6 of the Project package.**

The County of Kauai may restrict what percentage of the Unit may be covered by driveways and construction, whether or not delineated as "Building Sites." The County of Kauai may require that the access road or driveway on the common element conform to certain specifications regarding grading and construction.

Purchaser should be aware that there is no public sewer system available, which requires the project to comply with the requirements of Chapter 11-62, HAR, "Wastewater Systems." The purchasers of each unit would bear the cost of designing and installing the wastewater system as part of their construction costs. Any prospective purchaser should verify requirements with the County of Kauai and seek design and installation estimates prior to proceeding.

The Project is located within Kalihiwai Ridge Phase II, which Community Association's governing Bylaws allow assessments against Lot owners. Each unit has a financial obligation for assessment and maintenance fees for the Kalihiwai Ridge Community Association. The association will bill those fees individually to each unit. Also, the Association's "Environmental Design Rules and Guidelines", and Protective Covenants, Conditions and Restrictions will impact an owner building improvements on the Project. **See Section 15 of the Project package.**

Residential Dwellings within State Land Use Agricultural District: 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" which 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." **See EXHIBIT F** which includes The Farm Dwelling Notice, County of Kauai "Instructions For Completing Farm Dwelling Agreements", "Checklist for Farm Dwelling Agreements", "Farm Dwelling Agreement" and CPR owners' authorization form.

A portion of both units of the Project is located within an area designated as the Open Zoning District ("O") by the County of Kauai. The Comprehensive Zoning Ordinance for the County of Kauai, CHAPTER 8 Article 8, regulates the amount of Land Coverage for this zone. Accordingly, each unit of the Condominium is allocated 50% of the allowable Land Coverage as regulated by Article 8. In other words, each unit may not exceed 50% of the total allowable land coverage for the entire parcel of land located within the Open District. Note: the areas designated as Building Sites on the Map appear to be wholly within the Open District. **See EXHIBIT G** for portions of the law related to the Open Zoning District and Land Coverage.

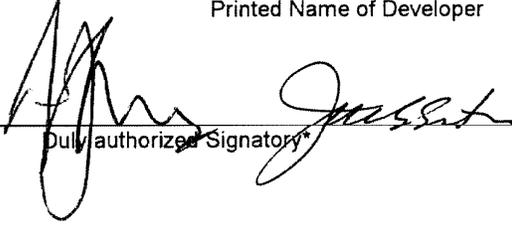
Pursuant to section 467-2(1), HRS and section 16-99-11(b), HAR, no licensee shall advertise "For Sale by Owner," "For Rent by Owner", "For Lease by Owner", or "For Exchange by Owner". One of the developers, Andrew J. Smith, RS59400, is an active Hawaii licensed real estate salesperson.

- 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 this 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.

Andrew J. Smith and Jill Schrader Smith

Printed Name of Developer

By:



Duly authorized Signatory*

MAY 6, 2002

Date

Andrew J. Smith and Jill Schrader Smith

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 9LLC) by the manager or member; and for an individual by the individual.*

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. An agreement, upon and subject to all of the provisions contained therein.

By and Between: State of Hawaii, and C. Brewer and Company, Limited
Dated: March 16, 1977
Recorded: in the Bureau of Conveyances of the State of Hawaii, Book
12110, Page 330, use of the land for agricultural purposes.

4. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Declaration

Dated: October 3, 1988
Recorded: in the Bureau of Conveyances of the State of Hawaii, Book
22452, Page 429.

The foregoing Declaration was amended by the following:

Recorded: in the Bureau of Conveyances of the State of Hawaii,
Document No. 90-104733.

Recorded: November 13, 1991, in the Bureau of Conveyances of the
State of Hawaii, Document No. 91-155979

Recorded: March 2, 1994, in the Bureau of Conveyances of the State of
Hawaii, Document No.94-037305

Recorded: December 13, 1999, in the Bureau of Conveyances of the
State of Hawaii, Document No 99-196189

5. Unrecorded Kalihiwai Ridge Environmental Design Rules and Guidelines pursuant to Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge dated October 12, 1988.

ITEMS (Continued)

6. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Declaration

Dated: July 16, 1991
Recorded: July 22, 1991, in the Bureau of Conveyances of the State of Hawaii, Document No. 91-097979.

The foregoing Declaration was amended by the following:

Recorded: December 5, 1991, in the Bureau of Conveyances of the State of Hawaii, Document No. 91-166866.

Recorded: December 22, 1994, in the Bureau of Conveyances of the State of Hawaii, Document No. 94-210073.

7. Agreement to incorporate Agricultural Restrictions into instruments of Conveyance, upon and subject to all of the provisions contained therein.

By and Between: C. Brewer Properties, Inc., and the County of Kauai Planning Department

Dated: November 7, 1991

Recorded: November 13, 1991, in the Bureau of Conveyances of the State of Hawaii, Document No. 91-155967.

8. Indemnity Agreement, upon and subject to all of the provisions contained therein.

By and Between: C. Brewer Properties, Inc., a Hawaii corporation, and the Department of Public Works of the County of Kauai

Dated: September 23, 1991

Recorded: November 19, 1991, in the Bureau of Conveyances of the State of Hawaii, Document No. 91-164222.

9. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:

Deed

Dated: December 11, 1991

Recorded: December 16, 1991, in the Bureau of Conveyances of the State of Hawaii, Document No. 91-172781.

10. Grant of Conservation Easement dated September 17, 1993, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-105500.

11. **A mortgage** to secure an indebtedness as shown below, and any other obligations secured thereby
- Amount:* \$536,200.00
Dated: January 5, 2001
Loan No.: 20047735
Mortgagor: Andrew J. Smith and Jill S. Smith, husband and wife
Mortgagee: American Savings Bank, F.S.B., a federal savings bank which is organized and existing under the laws of the United States of America
Recorded: January 10, 2001, in the Bureau of Conveyances of the State of Hawaii, Document No. 2001-003577.
12. Condominium Map No. 3424, recorded in the Bureau of Conveyances of the State of Hawaii.
13. Covenants, conditions, and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in the following:
- Declaration of Condominium Property Regime of MALULANI AGRICULTURAL CONDOMINIUM
- Dated:* April 2, 2002
Recorded: April 25, 2002, in the Bureau of Conveyances of the State of Hawaii, Document No. 2002-071297.
14. By-Laws of the Association of Apartment Owners of MALULANI AGRICULTURAL CONDOMINIUM, dated April 2, 2002, recorded April 25, 2002, in the Bureau of Conveyances of the State of Hawaii, Document No. 2002-071298.
15. Covenants, conditions and restrictions (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the following:
- Covenants, Conditions and Restrictions Malulani Agricultural Condominium
- Dated:* April 2, 2002
Recorded: April 25, 2002, in the Bureau of Conveyances of the State of Hawaii, Document No. 2002-071299.

END OF ITEMS

END OF EXHIBIT "A"

EXHIBIT B

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	\$100 \$1200
Unit B	\$100 \$1200

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:

NOTE: The developer has NOT conducted a reserve study in accordance with 514A-83.6, HRS

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	\$150	\$1800

Management

Management Fee
 Payroll and Payroll Taxes
 Office Expenses

Insurance	\$ 20	\$ 240
-----------	-------	--------

Reserves(*)	\$ 30	\$ 360
-------------	-------	--------

Taxes and Government Assessments

Audit Fees

Other

Total	\$200	\$2400
-------	-------	--------

I, Andrew J. Smith and Jill Schrader Smith, as agent and employed by N/A the condominium managing agent or the developer, for the MALULANI AGRICULTURAL 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.

 Signature

 Date

MAY 6, 2002

(*) 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 "C"

SUMMARY OF SALES CONTRACT

1. Seller shall furnish Buyer EVIDENCE OF SELLER'S MARKETABLE TITLE to the interest being conveyed to the Buyer. If Seller fails to deliver title as provided, Buyer has the option to terminate the agreement and have any of Buyer's deposits returned, without excluding any other remedies available to Buyer. Buyer will receive an Owner's standard coverage policy of title insurance at closing issued in the amount of the sales price, for which Seller shall pay 60% of the premium charged, and Buyer shall pay 40% of such premium.
2. RISK OF LOSS shall pass to Buyer upon transfer of title or upon occupancy, whichever occurs first.
3. In the event of DEFAULT BY EITHER PARTY, then either party may bring an action of breach of contract against the other and seek specific performance; the defaulting party shall be responsible for any costs incurred. In the event of a dispute between the parties, the Sales Contract provides for non-binding MEDIATION between the parties followed by BINDING ARBITRATION if mediation is unsuccessful.
4. SELLER'S DISCLOSURE STATEMENT to be provided by Seller using the Board of Realtor's current and standard form for such disclosure, and to provide additional disclosure for any newly discovered material facts which become known during the escrow process.
5. DOCUMENTS to be provided by Seller with receipt acknowledged by Buyer:
 - (a) Final Public Report,
 - (b) Declaration of Condominium Property Regime,
 - (c) Bylaws of the Association,
 - (d) Malulani Agricultural Condominium CC&R's
 - (e) Condominium Map,
 - (f) Escrow Agreement, and any other documents required by Chapter 514A State of Hawaii Revised Statutes.
 - (g) Receipt for Public Report and Notice of Right to Cancel: the Buyer shall have the RIGHT TO CANCEL the contract up to thirty (30) days after receipt of documents unless such right is waived in writing by the Buyer..
6. TIME IS OF THE ESSENCE in this contract, unless specified otherwise in the DROA. To extend the Scheduled Closing Date, both parties must agree in writing.
7. SELLER'S AND BUYER'S BROKERS advise their clients to consult their respective attorneys, accountants, and other professionals regarding the transaction. Buyer and Seller acknowledge that they are not relying on the Brokers for such information, and that the Brokers shall not be held liable in the event of the Buyer's or Seller's failure to perform pursuant to the contract.

Note: The above summary explains only a few of the terms and provisions contained in the Sales Contract. The Buyer should refer to the full Sales Contract to determine actual rights and obligations.

EXHIBIT "D"
SUMMARY OF ESCROW AGREEMENT

THE FULL ESCROW AGREEMENT SHOULD BE REFERRED TO FOR A FULL EXPLANATION OF THE RIGHTS AND OBLIGATIONS OF THE PARTIES, AND THE FULL ESCROW AGREEMENT, NOT THIS SUMMARY, SHALL GOVERN ANY CONFLICT BETWEEN THE TWO DOCUMENTS.

The Escrow Agreement between FIDELITY NATIONAL TITLE & ESCROW OF HAWAII, INC. ("Escrow") and ANDREW J. SMITH AND JILL SCHRADER SMITH contains the following provisions, among others, which may be modified or otherwise limited by provisions not here summarized:

1. Whenever a fully executed Sales Contract is made on the MALULANI CONDOMINIUM PROJECT, the Sales Contract shall be entered into escrow; the Sales Contract shall direct that all payments be made to escrow, deposited in an account for the Project, and disbursed from Escrow as directed by the Sales Contract and the Escrow.
2. No disbursements shall be made by Escrow to Seller until: (a) 48 hours have elapsed since Buyer's receipt of the Project's Final Public Report; (b) Buyer has waived the right to cancel the Sales Contract by signing; (c) Seller has notified Escrow that all other requirements of Hawaii Revised Statutes Sections 514A-39 and 514A-63 have been met.
3. Escrow shall refund Buyer's funds, less a cancellation fee, if (a) less than 48 hours have elapsed since buyer received a true copy of the Project's Final Public Report and Buyer makes written request to cancel the escrow; (b) Buyer exercises a right to cancel as provided under Hawaii Revised Statutes, Chapter 514A; or (c) after Buyer's having signed the waiver of his right to cancel in accordance with 514A-62, Hawaii Revised Statutes, there shall be material change in the Project entitling Buyer to cancel the Sales Contract pursuant to Section 514-A-63, Hawaii Revised Statutes
4. If a purchaser defaults on the Sales Contract, all deposits previously placed in Escrow will be forfeited by purchaser and Escrow may release such funds, minus cancellation fees, to Developer.
5. Upon closing, Escrow shall deliver an Apartment Deed to Buyer, disburse funds to Seller, and record all documents as is customary in the Bureau of Conveyances of the State of Hawaii.
6. Escrow shall have no responsibility for the validity or sufficiency of any CPR documents generated by Seller. Escrow shall not be called upon to resolve any disputes arising between Buyer and Seller.
7. Escrow shall be entitled to compensation for services at a standard schedule rate and as provided by the Sales Contract.

END OF EXHIBIT "D"

EXHIBIT "F"

Page 1 of 10

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 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 \$5,000.00. 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 \$5,000.00 for any additional violation.

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

Signature of Applicant

Signature of Witness

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

INSTRUCTIONS FOR COMPLETING
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 acknowledgement. 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. A subdivision map will NOT be acceptable. Attach one copy with each set of the Farm Dwelling Agreement.
8. 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 "B".
9. 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.

Instructions for Completing Farm Dwelling Agreements
Page Two

10. Recording fees for all documents recorded in the Regular System, including Uniform Commercial Code documents, will be a flat rate of \$25.00 per document. Check should be made payable to the Bureau of Conveyances.
11. Attach check to three (3) completed sets of the Farm Dwelling Agreement and return them to the Planning Department.
12. 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.
13. 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.
14. Do NOT fill in date (page 3).

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

05/21/99

ARYANNE W. KUSAKA
MAYOR



EXHIBIT "F"

Page 4 of 10

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

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

PLANNING DEPARTMENT

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: _____

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail (X) Pickup () To:	
County of Kauai Planning Department 4444 Rice Street, Suite 473 Lihue, Kauai, Hawaii 96766	

FARM DWELLING AGREEMENT

THIS AGREEMENT made and entered into by and between

whose mailing address is _____

hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI PLANNING DEPARTMENT, whose business and mailing address is 4444 Rice Street, Suite 473, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT",

W I T N E S S E T H

WHEREAS, the APPLICANT(S) warrant and represent that they are the _____ of

that certain parcel of land, Tax Map Key No. _____, more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the APPLICANT(S) certify that they are authorized by the owner(s) to process the necessary permits and documents as shown in Exhibit "B" which is attached 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, 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;

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).

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
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: _____

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: _____

TO: County of Kauai
Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

RE: TMK: _____
UNIT: _____
C.P.R. _____

I (We) Hereby authorize _____ to apply for a zoning
(Name of Applicant's)
permit to construct _____
(Describe project)
and to obtain a Farm Dwelling Agreement if required by the Planning Department.

_____	_____	Owner of CPR Unit _____
	Date	
_____	_____	Owner of CPR Unit _____
	Date	
_____	_____	Owner of CPR Unit _____
	Date	
_____	_____	Owner of CPR Unit _____
	Date	

End of Exhibit "F"

EXHIBIT "G"

KAUAI COUNTY COMPREHENSIVE ZONING ORDINANCE SECTION 8-8.5 AND 8-8.6 REGARDING OPEN ZONING DISTRICT ("O") RESTRICTIONS

Sec. 8-8.5 Development Standards For Construction And Use Within An Open District.

(a) Land Coverage:

(1) The amount of land coverage created, including buildings and pavement, shall not exceed ten per cent (10%) of the lot or parcel area.

(2) No existing structure, use or improvement shall be increased in size, or any new structure, use or improvement undertaken so as to exceed the ten per cent (10%) land coverage limitation.

(3) At least three thousand (3,000) square feet of land coverage shall be permissible on any parcel of record existing prior to or on September 1, 1972.

(b) Residential Densities. Except as otherwise provided in this Article, no more than one (1) single family detached dwelling unit per three (3) acres of land shall be permitted when the parcel is located within an area designated "Urban" or "Rural" by the State Land Use Commission, and no more than one (1) single family detached dwelling unit per five (5) acres of land shall be permitted when the parcel is located within an area designated as "Agriculture" by the State Land Use Commission, provided that the provisions of this Article shall not prohibit the construction or maintenance of one (1) single family detached dwelling with necessary associated land coverage on any legal parcel or lot existing prior to or on September 1, 1972.

(1) Where the parcel is located within an area designated "Urban" by the State Land Use Commission, one (1) single family detached dwelling unit per one (1) acre of land shall be permissible if the existing average slope of the parcel is no greater than ten percent (10%).

Sec. 8-8.6 Calculation Of Densities And Land Coverage.

(a) The area in connection with which the permissible densities shall be calculated shall consist of that lot or lots, or parcel owned or controlled by the applicant designated in the permit application as part of the land development for which the permit is sought.

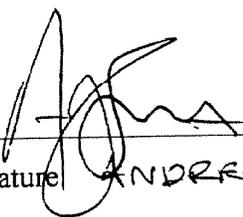
(b) When an area is included in the Open District because it is within the Constraint District, the precise boundary of the Open District shall be established to reflect the physical or ecological considerations upon which the particular Constraint District is based, regardless of lot or parcel boundaries. In those cases, that portion of the lot or parcel included in Open District may be included in any calculation of permitted densities and land coverage to be carried out on that portion of the parcel that is not within the Open District, provided that the total amount of density and land coverage shall be no more than one and one-half (1-1/2) that which would be permissible if the Open District portion of the lot or parcel was excluded from the calculation. (Ord. No. 164, August 17, 1972; Sec. 8-8.6, R.C.O. 1976)

End of Exhibit "G"

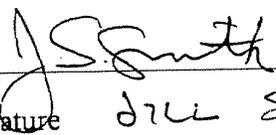
EXHIBIT "H"

We the developers declare that the project is compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project.

As of December 8, 2001, the County of Kauai no longer requires building permits for projects under 100 square feet. The structures constructed on the project are under 100 square feet, not requiring building permits. The structures were completed by the Owner on March 18, 2002. All structures are paid for in full. Notices of completion are not required, since there were no building permits required, and the structures were fabricated by the Owner, and the costs are all paid in full.

X 
Signature ANDREW SMITH

5/28/02
Date

X 
Signature JILL SMITH

5/28/02
Date

End of Exhibit "H"