

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer **MARLIN PARKER, unmarried, and PAMELA S. PARKER, unmarried**  
Address: P.O. Box 2522, Kailua-Kona, HI 96745 (Marlin Parker)  
P.O. Box 40, Holualoa, HI 96725 (Pamela S. Parker)

Project Name (\*): **KALOKO ORCHARDS**  
Project Address: Kaloko, North Kona, HI 96740

Registration No. 5065  
(Partial Conversion)

Effective date: July 3, 2003  
Expiration date: August 3, 2004

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes. 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:** 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.  
(yellow)

**FINAL:** The developer has legally created a condominium and has filed complete information with the Commission.  
(white)  
 No prior reports have been issued.  
 This report supersedes all prior public reports.  
 This report must be read together with \_\_\_\_\_

**SUPPLEMENTARY:** This report updates information contained in the:  
(pink)  
 Preliminary Public Report dated: \_\_\_\_\_  
 Final Public Report dated: \_\_\_\_\_  
 Supplementary Public Report dated: \_\_\_\_\_

And  Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_  
 This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

(\*) Exactly as named in the Declaration  
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.  
FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203

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

Required and attached to this report as Exhibit "G"       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 is **not** a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

1. This public report does **not** constitute an 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.

THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS OR OTHER STRUCTURES THAT MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. PRIOR TO PURCHASE, THE PROSPECTIVE PURCHASER IS ADVISED TO REVIEW THIS CONDOMINIUM PROJECT WITH THE RESPECTIVE HAWAII COUNTY PLANNING AND BUILDING DEPARTMENTS TO RECEIVE THE MOST RECENT DIRECTIVES CONCERNING DEVELOPMENT, REPLACEMENT, EXPANSION, OR CONSTRUCTION OF ANY TYPE OF STRUCTURE FOR THIS CONDOMINIUM PROJECT IN THE FUTURE. THERE IS ONE RESIDENTIAL STRUCTURE AND ONE GREENHOUSE ON THE PROPERTY AT THIS TIME.

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 owner/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 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 they 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 a 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 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: MARLIN PARKER Phone (808) 325-7138  
PAMELA S. PARKER Phone (808) 937-7089  
Name\* (Business)

Business Address: P.O. Box 2522, Kailua-Kona, HI 96745 (Marlin Parker)  
P.O. Box 40, Holualoa, HI 96725 (Pamela S. Parker)

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\*: None Selected. See page 20. Phone: \_\_\_\_\_  
Name (Business)  
\_\_\_\_\_  
Business Address

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 329-6666  
Name (Business)  
75-170 Hualalai Road, Suite No. C-210  
Kailua-Kona, HI 96740  
Business Address

General Contractor\*: Gary E. Chesnut (as to Unit 2) Phone: (808) 334-0540  
Name (Business)  
P. O. Box 2126  
Kailua-Kona, HI 96740  
Business Address

Condominium Managing Agent\*: Self-managed by the Assoc. Of Apt. Owners Phone: \_\_\_\_\_  
Name (Business)

Attorney for Developer: Wallace H. Gallup, Jr. Phone: (808) 329-5014  
Name (Business)  
75-5591 Palani Road, Suite 3007  
Kailua-Kona, Hawaii 96740  
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 the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances Document No. 2001-019333  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court Document Number \_\_\_\_\_

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

Amendment to Declaration of Condominium Property Regime and Condominium Map No. 3219 dated February 17, 2003, recorded as Document No. 2003-061476.

- 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. 3219  
 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]:

Amendment to Declaration of Condominium Property Regime and Condominium Map No. 3219 dated February 17, 2003, recorded as Document No. 2003-061476.

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

The Bylaws for this condominium are:

Proposed  
 Recorded - Bureau of Conveyances Document No. 2001-019334  
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>N/A</u>

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

2. **Developer:**

- No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.
- Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

Fee Simple: Individual apartments and the common elements, which includes the underlying land, will be in fee simple.

Leasehold or Sub-leasehold: Individual apartments and the common elements, which includes the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     Monthly                     Quarterly  
                                  Semi-Annually             Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  Month

Year.

For Sub-leaseholds:

Buyer's sublease may be canceled if the master lease between the sub-lessor and fee owner is:  
 Canceled                     Foreclosed

As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

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

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

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provisions.

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable.     Monthly                     Quarterly  
                                  Semi-Annually             Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  Month  Year.

[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: 73-4672 Kahualani Road, Kailua-Kona, HI 96740 Tax Map Key: (3) 7-3-024-040  
(TMK)

[ ] Address [ ] TMK is expected to change because N/A

Land Area 3.050 [ ] square feet [x] acre(s) Zoning: A-3a

Fee Owner: MARLIN PARKER, unmarried, and PAMELA S. PARKER, unmarried  
Name

Address: P.O. Box 2522, Kailua-Kona, HI 96745 (Marlin)  
P.O. Box 40, Holualoa, HI 96725 (Pamela)

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: 3 Floors Per Building Unit 1 has 2 floors  
Unit 2 has 1 floor  
 Exhibit "A" contains further explanations.

3. Principal Construction Material:  
 Concrete  Hollow Tile  Wood  
 Other Glass and Other related building materials

4. Permitted Uses 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	<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

\*NOTE: The subject property is within the State Land Use Agricultural District and is zoned Agricultural by the County of Hawaii. "Farm Dwellings" and other structures appropriate to agricultural usage are permitted, subject to certain guidelines of Chapter 25 of the Hawaii County Code.

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 By-Laws, Article V, Section 5.3 (9)  
 Number of Occupants: \_\_\_\_\_  
 Other: \_\_\_\_\_

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 (Unit 1) Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area(sf)*</u>	<u>Net Other Area(sf)</u>	<u>(Identify)</u>
<u>Unit 1</u>	<u>1</u>	<u>3/3</u>	<u>3,028</u>	<u>1,128</u> <u>576</u>	<u>Lanai</u> <u>Garage</u>
<u>Unit 2</u>	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>39.1</u>	<u>Greenhouse</u>
Total Number of Apartments			<u>2</u>		

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

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

Boundaries of Each Apartment:

See Exhibit "A" attached hereto.

Permitted Alterations to Apartments:

As noted in Section XVI of the Declaration, individual unit owners may, at their sole discretion and at their own expense, remodel, expand or otherwise alter their unit, provided said alterations are done in complete accordance with all applicable building ordinances, codes, rules, regulations and other requirements in force at the time said alterations are made. All alterations shall be completed expeditiously and in the manner set forth in said Section XVI.

Apartments designated for Owner-Occupants Only: N/A

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 \_\_\_\_\_ elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 4

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for each unit)	<u>2*</u>	<u>2**</u>	_____	_____	_____	_____	<u>4</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	<u>4</u>		<u>0</u>		<u>0</u>		<u>4</u>

\*Unit 1 has a 2-car garage. \*\*Unit 2 has ample space for 2 open regular parking stalls within Unit 2's limited common element land area.

Buyers are encouraged to find out which stalls will be available for their use.

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities.

There are no recreational or common facilities.

Swimming pool                       Storage Area                       Recreation Area

Laundry Area                       Tennis Court                       Trash Chute/Enclosure(s)

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):

See Exhibit "G".

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   "B"  .

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 may use them, as described in the Declaration are:

described in Exhibit "C".

as follows:

NOTE: Land area appurtenant to each unit is not a legally subdivided lot.

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. 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 "B".

as follows:

- E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit "F" describes the encumbrances against the title contained in the title report dated February 3, 2003, and issued by Title Guaranty Escrow Services, Inc.

Blanket Liens:

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

[ ] 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. Buyer's interest will be affected only 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>
Mortgages	Buyer's interest will be canceled and full deposit will be returned to Buyer, less escrow cancellation fee.

**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 Estimated Completion Date:**

Unit 1 was initially completed on or about March 30, 1987, with the latest additions to Unit 1 being completed on April 10, 2002. Unit 2 , greenhouse, was completed on or about February 3, 2003.

**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):

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 fees may vary depending on the services provided.

Exhibit "G" contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change). \* Developer discloses that no reserve study was done in accordance with Section 514A-83.6 HRS, and replacement reserve rules, Subchapter 6, Title 126, Chapter 107, Hawaii Administrative Rules, as amended.

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 \* Hawaii Association of Realtors' form of Deposit Receipt, Offer & Acceptance contract will be used at time of sale.  
Exhibit "D" contains a summary of the pertinent provisions of the sales contract.\*
- Escrow Agreement dated January 25, 2003.  
Exhibit "E" contains a summary of the pertinent provisions of the escrow contract.
- 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 buyers. 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, 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 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 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 given 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.
  - 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 which are summarized in Exhibit "H"

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. 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, Hawaii 96809, at a nominal cost.

This Public Report is Registration No. 5065 filed with the Real Estate Commission on April 4, 2003.

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) Disclosure re: Selection of Real Estate Broker: This public report shall not bind a purchaser to the sale of any apartment until (1) the Co-Developers first submit to the Real Estate Commission a duly executed disclosure abstract identifying the designated sales agent, and a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, and (2) gives a copy of said disclosure abstract to the purchaser together with a copy of the Public Report. Note: Pursuant to §§16-99-3 (g) and 16-99-11(d) Hawaii Administrative Rules ("HAR"), prospective purchasers are hereby advised that Developer Pamela S. Parker (RB 17554) is a current and active Hawaii-licensed real estate broker, Developer Marlin Parker (RS 38365) is an inactive Hawaii-licensed real estate agent and pursuant to §16-99-11(c) HAR, "no licensee shall advertise "For Sale by Owner... "

2) Construction of Additional Improvements: As noted in Exhibit "A" of this Public Report, as well as in Section II of the Declaration, the owner of a condominium unit is permitted to construct additional improvements on said unit's limited common element land areas are allowed by applicable law. In the event that the owner of a unit makes additions to existing improvements and/or constructs any other new improvement(s), it will not be necessary to obtain a Supplementary Public Report for the Project; PROVIDED, HOWEVER, that the Declaration and Condominium Map are appropriately amended to reflect said addition(s), and that copies of said amended documents are provided to prospective purchasers.

3) Disclosure re: Replacement Reserves Study: Mandatory reserves assessments and collection in effect beginning 1994 budget year. The Developers have not had a reserves study done in accordance with Hawaii Revised Statutes Section 514A-83.6 and Hawaii Administrative Rules, Chapter 107, as amended, in that there are no common elements in this project which are going to be maintained by the Association, as reflected in Exhibit "G".

4) 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 Hawaii County Planning Department is requiring applicants for building permits on such lands to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling Notice reads as follows:

**FARM DWELLING NOTICE**

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

*This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".*

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

*Penalty for violation of Section 205-4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000.00. 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 have been given a copy*

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

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

Applicants for a building permit for an additional farm dwelling on land zoned for agriculture (any dwelling after the first farm dwelling) are required to comply with the provisions of Chapter 25, Article 6, Division 3 of the Hawaii County Code, as amended, and Rule 13 of Planning Department Rules, as amended. A brief summary of some of their provisions may be found on Exhibit "K". A copy of the County of Hawaii Planning Department Additional Farm Dwelling Agreement form is attached as Exhibit "L".

5) Disclosure re: Deeds from the Developer: The Developer has conveyed or will be conveying Unit 1 by way of Apartment Deed to Marlin Parker, and Unit 2 to Pamela S. Parker, each of whom will then own each Unit separately. Accordingly, at such time as Unit 1 is sold by Marlin Parker in the future, a sales contract will be entered into only by Marlin Parker, and a Deed will be issued only by Marlin Parker, and likewise when Pamela S. Parker sells Unit 2 in the future, a sales contract and Deed will be issued only by Pamela S. Parker.

6) As noted in Exhibit "B" of this Public Report, the owner of a condominium unit is permitted to construct additional improvements on said unit's limited common element land area as are allowed by applicable law. In the event that the owner of a unit makes additions to existing improvements and/or constructs any other new improvement(s), it will not be necessary to obtain a Supplementary Public Report for the Project; PROVIDED, HOWEVER, that the Declaration and Condominium Map are appropriately amended to reflect said addition(s), and that copies of said amended documents are provided to prospective purchasers.

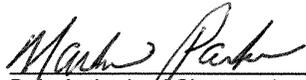
7) An Additional Farm Dwelling Agreement dated November 7, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-230984, was issued, a copy of which is attached hereto as Exhibit K, and it is the intent of the Developer that the owner of the Unit 2 apartment will be entitled to build a farm dwelling on the limited common element appurtenant to Unit 2 pursuant to said Farm Dwelling Agreement. Purchasers of Unit 2 should familiarize themselves with the terms and provisions contained in Exhibit K which must be complied with in order to remain in good standing under this Farm Dwelling Agreement.

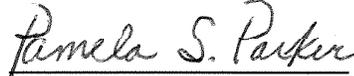
8) Under the Party Wall Agreement listed in Exhibit "F" to this Public Report owners of Lots 7H and 7G have granted each other mutual perpetual non-exclusive easements to maintain the existing stonewall that runs along the common boundary of Lot 7H and 7G as described therein as a party wall and have agreed that the owners of Lots 7H and 7G are obligated to share the use and enjoyment of that party wall, shall share equally in the expenses incurred in repairing and maintaining the existing stonewall and shall by way of endorsement to each owner's liability or homeowner's insurance policy, specifically insure such owner's interest in the party wall against personal injury and property damage, with coverage limits of not less than those set forth in such existing policies.

- 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-1.6] (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.

**MARLIN PARKER AND PAMELA S. PARKER**

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

	<u>6/23/03</u>
Duly Authorized Signatory* MARLIN PARKER, Developer	Date

	<u>6/23/03</u>
Duly Authorized Signatory* PAMELA S. PARKER, Developer	Date

Distribution:

Department of Finance, County of Hawaii

Planning Department, County of Hawaii

\*Must be signed for a: corporation by and 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"

INDIVIDUAL UNIT DESCRIPTIONS

The Declaration of Condominium Property Regime and plans submitted by the Developer indicate that KALOKO ORCHARDS is a fee simple condominium project consisting of a total of two condominium units, each unit comprised of a separate structure or structures. The units are described as follows:

- (a) "Unit 1" consists of the following: (1) a separate two-story wood-frame single-family residence, without basement, containing three bedrooms, three bathrooms, living room, dining area, breakfast nook, kitchen, recreation/study room with wet bar, laundry room, two lanais and a detached two-car garage. "Unit 1" contains a net interior living area of approximately 3028 square feet, a net lanai floor area of 1128 square feet and a net garage floor area of 576 square feet, and (2) any and all other future improvements which may be constructed on the limited common element land area appurtenant to said unit by the owner thereof. Specifically, in addition to said existing improvements, the owner thereof is permitted to build other improvements as allowed by applicable law, provided that said improvements comply with the provisions of this Declaration and all applicable building codes and zoning ordinances. The right to secure the building permit(s) for and to construct said future improvements vests solely with the owner of said unit, and the costs and expenses of any such future construction shall be borne solely by the owner of said unit.
  
- (b) "Unit 2" consists of the following: (1) a separate wood-frame greenhouse structure, without basement, containing a net floor area of approximately 39.1 square feet; and (2) any and all other future improvements which may be constructed on the land area appurtenant to said unit by the owner thereof. Specifically, in addition to said greenhouse structure, the owner thereof is permitted to build other improvements as allowed by applicable law, provided that said improvements comply with the provisions of this Declaration and all applicable building codes and zoning ordinances. The right to secure the building permit(s) for and to construct said future improvements vests solely with the owner of said unit, and the costs and expenses of any such future construction shall be borne solely by the owner of said unit.

END EXHIBIT "A"

EXHIBIT "B"

COMMON ELEMENTS

One freehold estate is designated of all the remaining portions of the Project, herein referred to as "common elements", and include the limited common elements hereinafter described in "Exhibit "C". Said common elements include specifically, but are not limited to, the following:

- (a) The land in fee simple, subject to the provisions of Section IV of the Declaration, as amended;
- (b) All ducts, pumps, pipes, wires, conduits or other utility lines running over, under or through any unit or any limited common element appurtenant thereto which are utilized by or serve more than one unit, and other central and appurtenant installations for common services, if any, including but not limited to water, power, light, gas, sewage, irrigation, telephone and television cable;
- (c) Any and all other elements, installations and/or facilities rationally in common use or necessary to the existence, maintenance and safety of the Project, or normally in common use.

The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided in Section IV of the Declaration or except as provided in the Condominium Property Act. Any such partition or division shall be subject to the prior consent thereto by the holder(s) of all mortgage(s) of any condominium unit(s) which are filed of record.

COMMON INTEREST

Each unit and its owner(s) shall have appurtenant thereto an undivided one-half (1/2) fractional interest (50.0 percentage interest) in the common elements of the Project, for all purposes including voting, said interest being referred to as the "common interest".

END EXHIBIT "B"

EXHIBIT "C"

LIMITED COMMON ELEMENTS

Certain parts of the common elements, herein referred to as the "limited common elements", are hereby designated and set aside for the exclusive use of one or more units, and such unit(s) shall have appurtenant thereto perpetual and exclusive rights for the use of such limited common elements, subject to any easements as may be provided for in Section VI of the Declaration. The limited common elements so set aside and reserved are as follows:

- (a) That certain land area upon and around which "Unit 1" is located, shown and designated on the Condominium Map and being approximately 2.178 acres in area, is deemed a limited common element appurtenant to and for the exclusive use of "Unit 1". Said land area does not constitute a subdivided lot as defined by the applicable county zoning code, but does delineate the extent of the limited common element.
- (b) That certain land area upon and around which "Unit 2" is located, shown and designated on the Condominium Map and being approximately 0.872 acre in area, is deemed a limited common element appurtenant to and for the exclusive use of "Unit 2". Said land area does not constitute a subdivided lot as defined by the applicable county zoning code, but does delineate the extent of the limited common element.
- (c) The water meter and water line which is attached to Unit 1 shall be considered to be a limited common element appurtenant to Unit 1 and the owner of Unit 1 shall be solely responsible for its repair and maintenance and for payment for such water as flows through that water meter.
- (d) The water meter and water line which is attached to Unit 2 shall be considered to be a limited common element appurtenant to Unit 2 and the owner of Unit 2 shall be solely responsible for its repair and maintenance and for payment for such water as flows through that water meter.
- (e) All other common elements of the Project which are rationally related to less than all of the units of the Project shall be limited to the use of such unit(s) to which their use is rationally related and shall be deemed limited common elements.

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

END EXHIBIT "C"

EXHIBIT "D"

SUMMARY OF PERTINENT PROVISIONS OF THE SALES CONTRACT

No sales of the condominium units are immediately contemplated. However, the Developer plans to use the Hawaii Association of Realtors' standard form of Deposit, Receipt, Offer and Acceptance (DROA) as the intended sales contract for the Project when and if sales later commence.

The sales contract contains the purchase price, description and location of the condominium unit and other terms and conditions under which a Buyer will agree to buy a condominium unit in the Project. Among other things, the sales contract (DROA):

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Buyer will pay the purchase price.
2. Identifies the escrow agent and states that Buyer's deposit will be held in escrow until the sales contract is closed or cancelled.
3. Requires that Buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
4. Provides the following remedies, in the event of default under the sales contract by Buyer:
  - a. Seller may bring an action against Buyer for breach of contract;
  - b. Seller may retain Buyer's deposit(s);
  - c. Buyer shall be responsible for expenses incurred.

Provides the following remedies, in the event of default under the sales contract by Seller:

- a. Buyer may bring an action against Seller for breach of contract;
- b. Buyer may bring an action compelling Seller to perform under contract;
- c. Seller shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

5. Allocation of payment of closing costs.

The sales contract contains various other provisions which Buyer should become acquainted with.

Upon examination, the Developer represents that the proposed Sales Contract (DROA) is found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended. It is incumbent upon the purchaser and prospective purchaser that he reads the Sales Contract (DROA) with care.

END EXHIBIT "D"

EXHIBIT "E"

SUMMARY OF ESCROW ARRANGEMENTS

The Developer does not plan to offer the condominium units for sale immediately. However, an Escrow Agreement dated January 25, 2003, has been submitted by the Developer, identifying Title Guaranty Escrow Services, Inc., a Hawaii corporation, as Escrow for the Project. This Agreement shall take effect when the Developer commences sales. The Escrow Agreement establishes how proceeds from the sale of condominium units and all sums received from any source are placed in escrow, as well as the methods of disbursements of said funds.

The Escrow Agreement provides that a Purchaser shall be entitled to a refund of his funds, and Escrow shall pay said funds to Purchaser, without interest and less cancellation fee and costs, if Purchaser shall in writing request refund of his funds and (1) Escrow receives a written request from Developer to return to Purchaser the funds of such Purchaser; or (2) Developer notifies Escrow of Developer's intent to cancel or rescind the sales contract; or (3) Purchaser has exercised his right to cancel or rescind the sales contract pursuant to Section 514A-62 or 514A-63 of the Hawaii Revised Statutes; or (4) meets one of the conditions provided for in Section VI(e) of the Escrow Agreement. Except for a cancellation under Section VI(e) of the Escrow Agreement, Escrow will be entitled to deduct a cancellation fee from Purchaser's funds. Said cancellation fee shall be in the minimum of \$25.00, but in no event shall exceed the agreed-upon escrow fee provided for in said Escrow Agreement, the exact amount to be commensurate with the amount of work completed at the time of cancellation.

The Escrow Agreement also provides that a Purchaser shall be entitled to a refund of his funds (less fees as provided therein), if any one of the following events shall have occurred; (1) no sales contract is offered to a Purchaser who was placed on the Developer's reservation list of owner-occupant applicants; or (2) the Purchaser has been unable to obtain adequate financing, or a commitment for adequate financing, for his unit within thirty (3) days following the end of the ten (10) calendar-day period during which the Developer is limited to selling to owner-occupants; or (3) the Purchaser desires to cancel the contract on account of hardship circumstances such as those set forth in Section 514A-104(1), Hawaii Revised Statutes; or (4) the Purchaser indicates an intent not to become an owner-occupant of such unit.

The Escrow Agreement also provides that no disbursement of a Purchaser's funds shall be made until: (1) a Final Public Report has been issued on the Project, and a copy provided to Purchaser; (2) the requirements of Sections 514A-62 and 514A-63 of the Hawaii Revised Statutes shall have been met; and (3) the Developer shall have given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract.

Finally the Escrow Agreement provides that in the event that Purchaser defaults under the terms of the sales contract, all proceeds collected from Purchaser may be treated as liquidated damages and retained by Developer.

Upon examination, the Developer represents that the Escrow Agreement is found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended. It is incumbent upon the purchaser and prospective purchaser that he reads with care the Escrow Agreement.

END EXHIBIT "E"

EXHIBIT "F"

ENCUMBRANCES AGAINST TITLE

1. For information regarding real property taxes as may be due and owing, reference is made to the Director of Finance, County of Hawaii.\*  
  
\*NOTE: The premises covered herein may be subject to possible rollback or retroactive property taxes.
2. Easement, 50 feet wide, for roadway and utility purposes over a portion of Lot 7-F, besides other land, in favor of the WATER COMMISSION OF THE COUNTY OF HAWAII, as granted by instrument dated October 20, 1981, recorded in Liber 15943 at Page 167.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
INSTRUMENT: DECLARATION  
  
DATED: November 6, 1981  
RECORDED: Liber 16139, Page 773
4. GRANT dated September 23, 1985, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18982, Page 123.
5. GRANT dated February 19, 1986, recorded in said Bureau in Liber 19386, Page 392.
6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
INSTRUMENT: AGREEMENT  
  
DATED: February 17, 1987  
RECORDED: Liber 20400, Page 402  
PARTIES: MARLIN PARKER and PLANNING DEPARTMENT OF THE COUNTY OF HAWAII  
RE: Improvements
7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
INSTRUMENT: PARTY WALL AGREEMENT  
  
DATED: October 6, 2000  
RECORDED: Document No. 2001-001038  
PARTIES: JOHNNIE R. CREAN and LINDA A. CREAN, Trustees of the Lancelot Trust dated March 15, 1996, and MARLIN PARKER and PAMELA S. PARKER, husband and wife
8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
INSTRUMENT: DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "KALOKO ORCHARDS" CONDOMINIUM PROJECT  
  
DATED: January 15, 2001  
RECORDED: Document No. 2001-019333  
MAP: 3219 and any amendments thereto
9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
INSTRUMENT: BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
  
DATED: January 15, 2001  
RECORDED: Document No. 2001-019334

10. MORTGAGE dated July 26, 2001, recorded in said Bureau as Document No. 2001-120092.
11. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
INSTRUMENT: ADDITIONAL FARM DWELLING AGREEMENT  
  
DATED: November 7, 2002  
RECORDED: Document No. 2002-230984  
PARTIES: MARLIN PARKER and PAM PARKER, and the COUNTY OF HAWAII
12. AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME AND CONDOMINIUM MAP NO. 3219 dated February 17, 2003, recorded in said Bureau as Document No. 2003-061476.

END EXHIBIT "F"

EXHIBIT "G"

DISCLOSURE ABSTRACT

KALOKO ORCHARDS  
Condominium Project

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*Pursuant to Section 514A-61, Hawaii Revised Statutes  
Condominium Property Act*

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**Developer**

MARLIN PARKER  
P. O. Box 2522  
Kailua-Kona, HI 96745  
Phone (808) 325-7138

PAMELA S. PARKER  
P.O. Box 40  
Holualoa, HI 96725  
Phone (808) 937-7089

**Project Manager**

Project is to be self-managed

**Estimated Maintenance Fee Assessments and Disbursements**

MAINTENANCE FEES: The regular maintenance and repair of each condominium unit, including all utility charges, is the sole responsibility of each respective unit owner. There are no common services and/or expenses which will require regular monthly assessments. Developer discloses that no reserve study was done in accordance with Section 514A-83.6, Hawaii Revised Statutes, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

INDIVIDUAL INSURANCE: Section 514A-86, Hawaii Revised Statutes, requires that fire insurance be purchased to cover the improvements portion of the Project. Developer anticipates that the Association will elect to obtain separate policies for each individual condominium unit pursuant to Section XIV(c) of the Declaration. As such, the premiums on said policies will be the individual responsibility of each unit owner rather than common expenses of the Project. Purchasers should be aware that premiums for said fire insurance vary widely depending upon the extent of the improvements on the property, the coverage desired, and the insurance company used. Developer's best estimate regarding the cost of said coverage for Unit 1 is approximately \$1,100.00 per year, and Unit 2 is approximately \$1,100.00 per year. Said estimates were prepared in accordance with generally accepted accounting principles.

**Use of Condominium Units**

The units comprising the Project may be occupied and/or used only for those purposes permitted by applicable land use laws and zoning ordinances. There is no commercial development in the Project.

**Warranties**

Purchasers should be aware that the "condominium units" of the Project are comprised of existing structures. Said buildings have unavoidably undergone a certain amount of "wear and tear" commensurate with their age. Accordingly, purchasers should not expect the unit they desire to buy to be in "like-new" condition. NO WARRANTIES FOR FITNESS OF USE OR MERCHANTABILITY OR ANY OTHER KIND ARE MADE AS TO THE INDIVIDUAL CONDOMINIUM UNITS OR THE COMMON ELEMENTS OF THE PROJECT. PURCHASERS ARE ADVISED TO CONDUCT THEIR OWN INSPECTION OF THE UNIT THEY DESIRE TO BUY. THE UNITS ARE SOLD "AS IS".

**Structural Components and Mechanical & Electrical installations**

Based on a report prepared by an independent registered architect, it is the Developer's opinion that all structural components and mechanical and electrical installations material to the use and enjoyment of the individual condominium units appear to be sound and in satisfactory working condition. However, NO REPRESENTATIONS OF ANY KIND ARE MADE AS TO THE EXPECTED USEFUL LIFE, IF ANY, OF THE STRUCTURAL COMPONENTS AND MECHANICAL AND ELECTRICAL INSTALLATIONS MATERIAL TO THE USE AND ENJOYMENT OF THE CONDOMINIUM UNIT(S).

**Code Violations**

To the best of the knowledge, information and belief of the undersigned, there are no outstanding notices of uncured violations of the building code or other municipal regulations of the County of Hawaii.

Dated: January 25, 2003.

  
MARLIN PARKER

  
PAMELA S. PARKER

Developer

END EXHIBIT "G"

EXHIBIT "H"

SUMMARY OF DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR "KALOKO ORCHARDS"

The "KALOKO ORCHARDS" condominium project is subject to those certain covenants, conditions and restrictions for the "Kaloko Orchards" subdivision ("CCRs") of which the this condominium project is a part, which, among other things, in summary provides as follows:

1. Before any building, garage, wall or fence is erected or maintained upon said property or any alteration made thereto, a duplicate set of plans and specifications relating to said construction work shall be submitted to a committee to be known as the ARCHITECTURAL COMMITTEE. Such committee shall consist of the following persons: John W. Godfrey, Sr., and John Godfrey, Jr., P.O. Box 1922, Kailua-Kona, Hawaii, and Clarise McCarty, P.O. Box 1688, Kailua-Kona, Hawaii. The Developer, its successors and assigns shall have full power to make appointments from time to time, to fill any vacancy in the membership of said Committee and any two (2) members of said Committee shall have the right of removal of the other member of said committee at any time.
2. No structure of any kind shall be erected upon any lot within the subdivision until the plans therefor, and location of said structure on the lot or lots have been approved in writing by at least two (2) members of said Committee. One set of such plans will be kept by the Architectural Committee.
3. All of said lots shall be used for single family residence and agricultural purposes.
4. Every residence shall have a minimum of a 2-car garage or a 2-car carport.
5. NO DWELLING shall be erected upon said lots which contain less than 1200 square feet of ground floor space, exclusive of porches, lanai and garages.
6. MATERIALS. All materials used in the construction of any improvements upon any portion of the land shall be new materials except when used architectural decorative or structural materials are used to enhance the appearance of the building.
7. ROOFS. No unpainted metal roofing material shall be allowed of any type except copper. Cedar shakes, cedar shingles or clay tiles shall be among other approved materials.
8. ROADWAY AND UTILITY EASEMENTS. Roadway easements have been established across each parcel. Maintenance of such roadways shall be required at some future date. The purchaser of each of the above-described lots shall be required to become a member of a Hawaii non-profit community association upon the election to create such an association upon the vote of two-thirds (2/3) of the lot owners for the purposes of maintaining the roadways. Any assessment imposed against any lot as provided in such community association shall constitute a lien upon each such lot in favor of said association and such lien may be enforced by suit for money judgment or may be foreclosed by said association in the same manner as a real estate mortgage may be foreclosed, as set forth in Chapter 667 and Section 501-118, of Hawaii Revised Statutes as the same is now or may hereafter be amended; provided that no action shall be brought to foreclose such lien unless ninety (90) days written notice thereof shall be mailed to the delinquent member of said association. The Developer of its successors and assigns shall be responsible for the payment of assessments on lots which have not been sold, or which are not under contract of sale, by them to third parties.

END EXHIBIT "H"

## EXHIBIT I

### Farm Dwelling Agreement

*Notice – the following is presented for informational purposes only. It is not intended to be legal advice, and it is not exhaustive of the subject. Anyone whose plans may be affected or limited by the Hawaii County Zoning Code or the Planning Commission Rules is urged to (1) consult their attorney, (2) consult with the County of Hawaii Planning Department, or (3) otherwise obtain a complete understanding on how the County of Hawaii Zoning Code, Building Code and the Planning Commission Rules may affect their plans for development.*

### Farm Dwelling Agreement

A party seeking a building permit for the second dwelling on the project must enter into a Farm Dwelling Agreement with the Planning Director of the County of Hawaii. The agreement is supplied by the County of Hawaii Planning Department, and you are urged to obtain a copy of the agreement and read it before you commit yourself to purchasing this condominium apartment. In addition to signing the Farm Dwelling Agreement the landowner or lessee is required to provide:

- a. A notarized affidavit that the additional dwelling(s) shall be used for farm related purposes.
- b. Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
- c. Written authorization of the landowner if the request is filed by the lessee
- d. The landowner or lessee shall submit an agricultural development and use program, farm plan, or other evidence of the applicant's continual agricultural productivity or farming operation within the County. Such plan shall also show how the farm dwelling(s) will be utilized for farm-related purposes. To verify the applicant's engagement in any agricultural productivity or farming operation, the following evidences may be submitted:
  1. State of Hawaii Department of Taxation's Gross Income License.
  2. Approved agricultural dedication from the County of Hawaii Department of Finance, Real Property Tax Division.
  3. Receipts of income received from sale of agricultural products.

The County of Hawaii Zoning Code and the Planning Commission Rules may amend and other or additional requirements or limitations may be placed on your ability to build a dwelling on the subject property.

END EXHIBIT I

**EXHIBIT J**

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AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: (OWNERS OF RECORD)**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3)**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this (DATE), by and between (OWNERS OF RECORD), herein called the "First Party," whose mailing address is (ADDRESS), and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) (TMK NUMBER) situated within the State Land Use Agricultural district and zoned Agricultural (A-a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct one additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to person(s) involved in the agricultural or farm-related activity on the property. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. This agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document as Exhibit "A".

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

\_\_\_\_\_  
(NAME), Legal Owner

\_\_\_\_\_  
(NAME), Legal Owner

SECOND PARTY:

\_\_\_\_\_  
(NAME), Planning Director  
County of Hawaii Planning Department



STATE OF HAWAII        )  
                                  ) SS  
COUNTY OF HAWAII    )

On this \_\_\_\_ day of \_\_\_\_\_, 2003 before me personally appeared (NAME), to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said (NAME) acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

\_\_\_\_\_  
Notary Public, State of Hawaii

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

## Additional Farm Dwelling Agreement Instructions

Attached is the Additional Farm Dwelling Agreement form for your approved application. It is important that you follow these instructions in the completion of the form. Failure to complete and submit a properly completed agreement form to the Planning Department for recordation with the Bureau of Conveyances may cause your Additional Farm Dwelling Agreement to be rejected by the Bureau and delay approval of your application for a building permit for the additional farm dwelling. Building permit applications for additional farm dwellings will not be approved by the Planning Department until the AFDA form and the required submittals specified below have been returned to the Planning Department. You may make as many copies of the AFDA document for your records as necessary. A copy of the final recordation page will be available from the Planning Department when received back from the Bureau of Conveyances upon request.

1. All persons in the "First Party" must sign before a Public Notary in the appropriate location on the signature page (Page 5). Photocopies of this page may be made and sent to any persons listed on the page whose notarized signatures are required and then attached to the agreement document along with the original signature page. Facsimiles or FAX copies of signatures will not be accepted.

**Note: All signatures must be the same as the typed name. Therefore, if John L. Doe is the name typed the signature must also be John L. Doe. Signing John Doe or Jonathan L. Doe will cause the agreement document to be rejected by the Bureau of Conveyances for recordation purposes.**

2. Enclose a check or money order in the amount of \$25.00, made out to the Director of Finance, for the Bureau of Conveyance recordation fee.
3. Return the **original** completed AFDA document with all required signatures and the recordation fee payment to the Planning Department for the Director's signature and submittal to the Bureau of Conveyances for recordation.

END EXHIBIT J

**EXHIBIT K**

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES  
DATE DEC 20 2002 TIME 1200  
DOCUMENT NO. 2002-230984

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AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: MARLIN PARKER and PAM PARKER**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 7-3-024:040**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 7<sup>th</sup> day of November, 2002, by and between MARLIN PARKER and PAM PARKER, herein called the "First Party," whose mailing address is P.O. Box 2522, Kailua-Kona, Hawaii 96745, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 7-3-024:040 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct one additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to person(s) involved in the agricultural or farm-related activity on the property. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. This agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document as Exhibit "A".

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

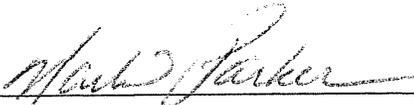
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

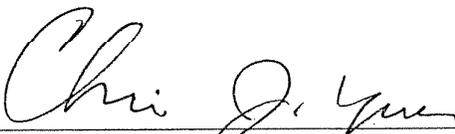
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

  
\_\_\_\_\_  
Marlin Parker, Legal Owner

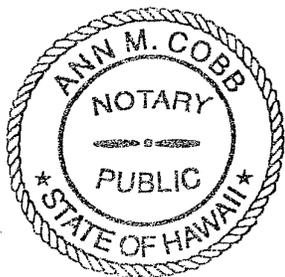
  
\_\_\_\_\_  
Pam Parker, Legal Owner

SECOND PARTY:

  
\_\_\_\_\_  
Christopher J. Yuen, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 20th day of November, 2002 before me personally appeared MARLIN PARKER and PAM PARKER to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.



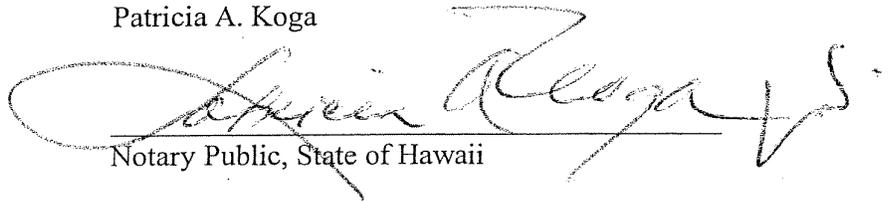
Ann M. Cobb  
Notary Public, State of HAWAII

My commission expires: 03/03/06

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 13<sup>th</sup> day of December 2002 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said Christopher J. Yuen acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

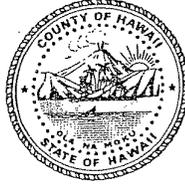
Patricia A. Koga



Notary Public, State of Hawaii

My commission expires: 12/17/2006

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

November 13, 2002

Marlin and Pam Parker  
P.O. Box 2522  
Kailua-Kona, Hawaii 96745

Dear Mr. & Mrs. Parker:

**Additional Farm Dwelling Agreement**  
**Applicants: Marlin Parker and Pam Parker**  
**Land Owners: Marlin Parker and Pam Parker**  
**Tax Map Key: (3) 7-3-024:040**

Pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for an additional farm dwelling on the subject property. Your submittals included the following information:

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the enclosed Additional Farm Dwelling Agreement to be submitted for recordation with the Bureau of Conveyances.
2. Name and address of the landowner(s) or lessee(s), if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
3. Written authorization of the landowner(s) if the lessee filed the request.

Exhibit A

4. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing and proposed income producing agricultural activities:
  - (a) Ongoing agricultural activities include the following:
    - i. Approximately 1½ acres of the subject property is planted with 60 mature avocado trees; and
    - ii. Approximately 40,000 square feet of the subject property is planted with a mixed variety of fruits including, banana, cherry, lemon, lime, mango, grapefruit, pineapple, orange, tangerine, tangelo, pomelo, and macadamia nuts.
  - (b) Proposed agricultural activities include the following:
    - i. The construction of a greenhouse for the cultivation of various herbs and vegetables including, but not limited to, lettuce, tomatoes, and carrots;
    - ii. The planting of approximately an additional 40 pineapple plants; and
    - iii. The planting of approximately 12 additional citrus trees of mixed variety.
5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

Findings:

1. In Chapter 205, Hawaii Revised Statutes (HRS), the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. A **farm dwelling** as defined in Section 205-4.5, Chapter 205, HRS, **means a single family dwelling located on and used in connection with a farm,** including clusters of single family farm dwellings permitted within agricultural parks developed by the State, or **where agricultural activity provides income to the family occupying the dwelling.** (emphasis added)

2. The subject lot was created by subdivision (SUB 5283) approved on August 2, 1985, which, pursuant to HRS §205-4.5(b), requires that the first dwelling on the lot be used as a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30039801), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is income producing agricultural activity and the income is being taxed.
4. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply (Letter dated October 28, 2002):

“We have reviewed the subject application and have the following comments and conditions.

For your information, an existing service lateral for a 5/8-inch meter is available to this property and is adequate for only one dwelling at 600 gallons per day. This application is proposing an additional detached dwelling, so the installation of a separate 5/8-inch meter by the applicant is required in accordance with Department regulations. Water is available from the 4-inch waterline in Kahualani Drive.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting the following conditions:

1. Installation by the Department of Water Supply of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 600 gallons per day.
2. Installation of two backflow preventers (reduced pressure type) by a licensed contractor on the applicant's property just after each of the meters. The installation and assembly of the backflow preventers must be inspected and approved by the Department before the water meter can be installed. The backflow preventers shall be operated and maintained by the customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.

3. Remittance of the following charges, which are subject to change, to our Customer Service Section:

a. Facilities Charge (One 2 <sup>nd</sup> service at \$4,350.00 each)	\$4,350.00
b. Capital Assessment Fee	500.00
c. Service Lateral Installation Charge (Install one meter on Kahualani Drive, a County road)	<u>2,250.00</u>
<b>Total (Subject to Change)</b>	<b>\$7,100.00</b>

Should there be any questions, please call our Water Resources and Planning Branch at 961-8070.”

(b) Real Property Tax Office (Memorandum dated October 14, 2002):

“Property is receiving full agricultural use value.

Real Property taxes are paid through December 31, 2002.”

(c) Department of Health (Memorandum dated October 14, 2002):

“The subject lots are located in the Critical Wastewater Disposal Area where cesspools are not allowed because of water pollution concerns. Any development on these lots would require all wastewater be disposed into a Septic Tank System.”

Decision:

In view of the above, your request to construct a second farm dwelling is approved subject to the following conditions:

1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.

Marlin and Pam Parker

Page 5

November 13, 2002

2. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling. The enclosed Additional Farm Dwelling Agreement must be returned to the Planning Department with the appropriate notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed Additional Farm Dwelling Agreement Instructions. The Planning Department will not approve a building permit application for the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.
3. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25, Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
4. Your Additional Farm Dwelling Agreement has been approved based partially on proposed agricultural activity as summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) years of approval of the building permit for the additional farm dwelling. The Second Party (County of Hawaii Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by First Party.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before November 7, 2004 may cause the Director to initiate proceedings to invalidate the AFDA.

Marlin and Pam Parker  
Page 6  
November 13, 2002

Should you have questions or require further information, please feel free to contact Larry Brown of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

LMB:cps  
P:\WPWIN60\Larry\FDA\Parker 7-3-24-40 apvl.doc

Enclosure: AFDA document  
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department – Kona

END EXHIBIT K

Exhibit A