

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer KEALIA MAKAI HOLDINGS, LLC
132 West Maui Street
Address Aspen, Colorado 81611
Project Name (\*): Kealia Kai 11
Address: Kealia, Kauai, Hawaii

Registration No. 5138 Effective date: July 18, 2003
Expiration date: August 18, 2004

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
X FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] No prior reports have been issued.
[ ] This report supersedes all prior public reports.
[ ] This report must be read together with
SUPPLEMENTARY: (pink) This report updates information contained in the:
[ ] Preliminary Public Report dated:
[ ] Final Public Report dated:
[ ] Supplementary Public Report dated:
And
[ ] Supersedes all prior public reports.
[ ] Must be read together with
[ ] This report reactivates the public report(s) which expired on

(\* ) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

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     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. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. The Purchaser should consult with the appropriate County agencies to determine whether the Purchaser may build a residential dwelling unit, or any other type of structure, on the property.

1. There are presently NO RESIDENTIAL STRUCTURES ON THE PROPERTY. The only buildings on the property are agricultural shade sheds, each of which may be defined as an "apartment" under the condominium property act.
2. This public report does **not** constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and is **not** a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.
4. Facilities and improvements normally associated with County-approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

**I. PERSONS CONNECTED WITH THE PROJECT**

Developer: KEALIA MAKAI HOLDINGS, LLC Phone: (970) 920-2112 ext. 2800  
 Name\* (Business)  
132 West Maui Street  
Aspen, Colorado 81611  
 Business Address

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):

The sole member of Kealia Makai Holdings, LLC, a Delaware limited liability company,  
is Cornerstone Hawaii Holdings, LLC, a Colorado limited liability company

Real Estate Broker\*: Sleeping Giant Realty, Inc. Phone: (808) 245-8831  
 Name (Business)  
4480 Ahukini Road  
Lihue, Hawaii 96766  
 Business Address

Escrow Old Republic Title & Escrow of Hawaii Phone: (808) 566-0100  
 Name (Business)  
733 Bishop Street, Suite 2700  
Honolulu, Hawaii 96813  
 Business Address  
 Attn: Connie McTeer

General Contractor\*: JM Pacific Construction, LLC Phone: (808) 822-3243  
 Name (Business)  
P. O. Box 539  
 Business Address  
Anahola, HI 96703

Condominium Managing Agent\*: Self-managed by Association of Unit Owners Phone: \_\_\_\_\_  
 Name (Business)  
 Business Address

Attorney for Developer: Randall F. Sakumoto, Esq.  
Joel D. Kam, Esq.  
McCorriston Miller Mukai MacKinnon LLP Phone: (808) 529-7300  
 Name (Business)  
P. O. Box 2800  
Honolulu, Hawaii 96803-2800  
 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. 2003-120300  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

N/A

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. 3599  
 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]:

N/A

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. 2003-120301  
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]:

N/A

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

\* Note: The Association has the power to adopt house rules, but none have yet been adopted.

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:

The Developer reserves the right to change the Declaration and Condominium Map as provided for in Section M. of the Declaration, and further the Developer reserves the right to change the Bylaws as provided for in Section 13.6 of the Bylaws.



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: Kealia, Kauai, Hawaii Tax Map Key (TMK): (4) 4-7-7-11

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

Land Area: 11.278  square feet  Acre(s) Zoning: SLUC - Agricultural;  
CZO - Open/Agriculture

Fee Owner: KEALIA MAKAI HOLDINGS, LLC  
 Name  
132 West Main Street  
 Address  
Aspen, Colorado 81611  
(970) 920-2112 ext. 2800  
 Phone

Lessor: N/A  
 Name  
 Address

**C. Buildings and Other Improvements:**

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

2. Number of Buildings: 2 Floors Per Building: 1

Exhibit "A" contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other Steel posts and screen

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<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 Kauai. "Farm Dwellings" and other structures appropriate to agricultural usage are permitted, subject to certain guidelines. See the disclosures on Page 20 of this Final Public Report and Exhibit " ", Farm Dwelling requirements.

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: Animals and pets are limited as provided in Section 13.1 of the Bylaws.

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

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

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0                      Stairways: 0                      Trash Chutes: 0

<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>
Unit 11-A	<u>1</u>	<u>0/0</u>	_____	<u>20</u>	<u>Shade Shed</u>
Unit 11-B	<u>1</u>	<u>0/0</u>	_____	<u>100</u>	<u>Viewing Pltfm.</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 2

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

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

Boundaries of Each Apartment:

See Exhibit "A"

Permitted Alterations to Apartments:

See Exhibit "B"

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has N/A\* elected to provide the information in a published announcement or advertisement.

\* Pursuant to section 514A-108(c), HRS, the requirements of section 514A-102, HRS do not apply to condominium projects consisting of two or fewer apartments.



11. Conformance to Present Zoning Code

- a.  No variances to zoning code have been granted.  
 Variance(s) to zoning code was/were granted as follows:

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

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

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

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

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

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

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

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

- described in Exhibit     "C"    .  
 as follows:

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

There are no limited common elements in this project.

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

described in Exhibit "D".

as follows:

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

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

as follows:

Each unit shall have appurtenant thereto an undivided one-half (1/2) interest in all common elements of the property, and the same proportionate share in all common profits and common expenses of the property (except as may be otherwise provided in the Bylaws) and for all other purposes, including voting. The fractional common interest for each unit is determined by assigning a 1/2 fractional interest to each of the two (2) units irrespective of the actual land areas contained in the limited common elements appurtenant to each unit.

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

Exhibit "E" describes the encumbrances against the title contained in the title report dated June 16, 2003 and issued by Old Republic Title & Escrow of Hawaii.

**Blanket Liens:**

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

[ ] There are no blanket liens affecting title to the individual apartments.

[X] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>
First Mortgage	Buyer's interest would be terminated if lien is foreclosed. In such case, however, developer would be required to return Buyer's deposit with Interest.
Second Mortgage	Buyer's interest would be terminated if lien is foreclosed. In such case, however, developer would be required to return Buyer's deposit with Interest.

Each condominium apartment will be released from the lien the First Mortgage and Second Mortgage at or prior to closing.

**F. Construction Warranties:**

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

1. Building and Other Improvements:

None: Units are sold "as is".

2. Appliances:

N/A

1

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

The construction of Units 11-A and 11-B was approximately completed in March 16, 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):



## V. MISCELLANEOUS

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

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit "G" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated June 9, 2003  
Exhibit "H" contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

### B. Buyer's Right to Cancel Sales Contract:

#### 1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been issued an effective Date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners, as amended.
- D) House Rules, if any.
- E) Condominium Map, as amended.
- F) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other: Declaration of Covenants, Conditions and Restrictions for Kealia Makai, as amended, Public Offering Statement – Kealia Kai Subdivision; Bylaws of Kealia Kai Owners Association; Kealia Kai Landscape Master Plan; Kealia Kai Design Criteria and Standards.

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, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 5138 filed with the Real Estate Commission on June 19, 2003.

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C. **Additional Information Not Covered Above**

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

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

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

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

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

2. The use of hazardous material is restricted except as provided under Article H of the Declaration and all hazardous materials laws.
3. Under Section O of the Declaration, the Developer has reserved the right to grant certain easements as set forth below:

"1. **Easements Through Common Elements.** Declarant reserves the right, for a period of five (5) years after the date of this Declaration, to designate, grant, lease, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements for any reasonable purpose. This includes but is not limited to:

"(a) An easement for pedestrian access purposes in favor of and appurtenant to Lot 12 of the Kealia Kai Subdivision, TMK No. (4) 4-7-7-12, over and across Easement P-1 as shown on the Condominium Map.

"(b) Any purpose necessary to the operation, care, upkeep, maintenance or repair of any Unit, the Common Elements, or any Limited Common Element.

"(c) Any easements for utilities of for any public purpose, including, by way of example and not limitation, beach access, pedestrian walkways, stairs, ramps, paths, trails, bikeways, or other passageways, or restroom facilities.

"2. **Consent of Other Persons; Power of Attorney.** Declarant may use its reserved rights under this Section O without the necessity of obtaining the consent, joinder or approval of any other person, and without having to give notice to any other person including the Association, any Unit owner, or any other interested person. Notwithstanding the foregoing, each owner shall, promptly after being asked to do so, join in, consent to, sign and notarize, if necessary, all documents, and take all other actions which Declarant, in its sole and absolute discretion, determines to be necessary or convenient to the use of Declarant's reserved rights under this Section O. Furthermore,

by acquiring a Unit or any other interest in the Project, each owner appoints Declarant as such owner's attorney-in-fact to join in, consent to, sign and notarize, if necessary, deliver and record all documents, and to take all other actions on his or her behalf necessary for Declarant to exercise Declarant's reserved rights hereunder. This power of attorney appointment is permanent, coupled with an interest, irrevocable, and durable, and will not be affected by any disability of the owner or any other interested person who gives it. This power of attorney includes full power of substitution, meaning that Declarant may allow another person to act on its behalf as a substitute attorney-in-fact, and is a "special power of attorney" limited to those actions and matters authorized herein."

- 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.

KEALIA MAKAI HOLDINGS, LLC

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

By: CORNERSTONE HAWAII HOLDINGS, LLC

By:  \_\_\_\_\_  
Duly Authorized Signatory\*

June 9, 2003  
\_\_\_\_\_  
Date

Thomas D. McCloskey, Jr., Manager

\_\_\_\_\_  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Kauai \_\_\_\_\_

Planning Department, County of Kauai \_\_\_\_\_

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

## **EXHIBIT "A"**

### **DESCRIPTION OF BUILDINGS**

The project consists of one (1) agricultural shade shed of principally steel post and screen construction, without a basement or a foundation, and one (1) viewing platform constructed principally of 4' x 4' and 2' x 6' lumber anchored to cement footers with Simpson Strong-Ties. Each structure (herein called "unit") is shown on the Condominium Map.

The approximate interior net floor area of unit 11-A is 20 square feet and is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls. Unit 11-B has no walls, and an approximate floor area of 100 square feet.

Each unit includes, but is not limited to, all improvements (with the exception of Common Elements as defined herein) constructed within the area of the Limited Common Element appurtenant to such unit. Each unit shall not include any pipes, shafts, wires, conduits or other utility or service lines running through such unit which are utilized for or serve more than one unit, the same being deemed common elements as hereinafter provided.

End of EXHIBIT "A"

## **EXHIBIT "B"**

### **ALTERATION OF PROJECT**

1. Provided that the unit owner satisfies the applicable terms and conditions of the Project Documents and obtains all of the necessary governmental permits, each unit owner has the right at his sole option at any time and from time to time, without the consent and/or approval of the owner of any other unit or any other persons or entity, to improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon or within the yard areas or other limited common elements or easements appurtenant to his unit (collectively, the foregoing are referred to as "alterations").

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

3. Any alteration of the plans of a unit are subject to the following conditions:

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

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

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

(d) The owner of the altered unit shall have the right to utilize, relocate, realign and/or develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services. Provided, however, that no such work shall cause any unreasonable interruption in the service of such utilities to any other part of the Project, nor shall it unreasonably interfere with any other unit owner's use or enjoyment of his unit or yard area.

4. Under current laws, the Project is entitled to construct one (1) Guest House. The right to construct said Guest House is reserved to the owner of Unit 11-A. Said right may be assigned by the owner of Unit 11-A to any other unit owner within the Project at any time. All provisions of the Comprehensive Zoning Ordinance and any other laws, ordinances or regulations which are applicable shall be observed by the unit owner to which the right to build a Guest House applies. The unit owner shall also consult with the appropriate County and/or State agencies regarding all applicable laws or regulations prior to construction.

End of EXHIBIT "B"

**EXHIBIT "C"**  
**COMMON ELEMENTS**

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

1. The land described in Exhibit "A" attached to the Declaration in fee simple.
2. All central and appurtenant installations for common services, including power, light, water, telephone and sewer.
3. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance and safety, or normally in common use.
4. The Driveway Common Element as shown on the Condominium Map.
5. The Beach Trail Common Element as shown on the Condominium Map.

End of EXHIBIT "C"

**EXHIBIT "D"**

**LIMITED COMMON ELEMENTS**

Yard Area 11-A: Yard Area 11-A consists of the land area under and surrounding Unit 11-A, contains approximately 4.769 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 11-A for the support of the building and other improvements comprising Unit 11-A, and for the purposes described in the Project Documents.

Yard Area 11-B: Yard Area 11-B consists of the land area under and surrounding Unit 11-B contains approximately 5.777 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit 11-B for the support of the building and other improvements comprising Unit 11-B, and for the purposes described in the Project Documents.

End of EXHIBIT "D"

EXHIBIT "E"

1. REAL PROPERTY TAXES County of Kauai reference is made to Kauai County Finance Department.
2. Title to all minerals and metallic mines reserved to the State of Hawaii.
3. DESIGNATION OF EASEMENT "IW-2"  
For : Irrigation purposes  
Shown : in CERTIFICATION OF LICENSED PROFESSIONAL LAND SURVEYOR dated ---, recorded as Document No. 2000-117191
4. DESIGNATION OF EASEMENT "E-3" (as described in EXHIBIT "A")  
For : Electrical purposes  
Shown : in CERTIFICATION OF LICENSED PROFESSIONAL LAND SURVEYOR dated ---, recorded as Document No. 2000-117191
5. DESIGNATION OF EASEMENT "D-4" (as described in EXHIBIT "A")  
For : Drainage purposes  
Shown : in CERTIFICATION OF LICENSED PROFESSIONAL LAND SURVEYOR dated ---, recorded as Document No. 2000-117191
6. DESIGNATION OF EASEMENT "D-6" (as described in EXHIBIT "A")  
For : Drainage purposes  
Shown : in CERTIFICATION OF LICENSED PROFESSIONAL LAND SURVEYOR dated ---, recorded as Document No. 2000-117191
7. Flood lines as shown on the subdivision map. There shall be no new structures permitted within the floodway; new structures shall be setback from the floodway line. Obstructing the flow of drainage within the Building Setback Line and Drainageway, as shown in CERTIFICATION OF LICENSED PROFESSIONAL LAND SURVEYOR recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-117191, is prohibited.
8. View Corridor Setback Line as shown on the subdivision map of Parcel 6 being portions of R.P. 5680, L.C. Aw. 11216, Apana 6 to M. Kekauonohi and Grant 3158 to E. Krull as approved by the Planning Commission of the County of Kauai on July 13, 2000.
9. A Base Setback Line as shown on the subdivision map of Parcel 6 being portions of R.P. 5680, L.C. Aw. 11216, Apana 6 to

M. Kekauonohi and Grant 3158 to E. Krull as approved by the Planning Commission of the County of Kauai on July 13, 2000.

10. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KEALIA MAKAI SUBDIVISION, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

Dated : March 21st, 2000  
Recorded : in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-042906

Said Declaration was amended by the following instruments:

DATED:	DOCUMENT NO.:
October 11, 2000	2000-146274
June 6, 2001	2001-088134
June 25, 2001	2001-103384
June 25, 2001	2001-105863
--/--/--	2001-129045
February 26, 2002	2002-045915
--/--/--	2003-035433

11. Mortgage to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof

Amount : \$15,500,000.00  
Mortgagor: KEALIA MAKAI HOLDINGS, LLC, a Delaware limited liability company  
Mortgagee : BANK OF AMERICA, N.A., a national banking association  
Dated : September 15th, 2000  
Recorded : in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-133335

AMENDMENT thereof by instrument:

Dated : September 15th, 2002  
Recorded : November 26th, 2002 in the Bureau of Conveyances, State of Hawaii, as Document No. 2002-210166  
Re : Terms

12. WAIVER AND INDEMNITY AGREEMENT

Dated : September 20th, 2000

Recorded : in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-138673

By and

Between : KEALIA MAKAI HOLDINGS, LLC, a Delaware limited liability company ("Developer") and the DEPARTMENT OF WATER, COUNTY OF KAUAI

13. Financing Statement (UCC-1) as follows:

Debtor : KEALIA MAKAI HOLDINGS, LLC  
Secured Party : BANK OF AMERICA, N.A.  
Recorded : October 4th, 2000, in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-139570

14. WAIVER AND INDEMNITY AGREEMENT

Dated : May 12th, 2000  
Recorded : in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-017427

By and

Between : COUNTY OF KAUAI, a political subdivision of the State of Hawaii, by and through its Department of Public Works and KEALIA MAKAI HOLDINGS, LLC, a Delaware limited liability company

15. GRANT OF EASEMENT

Dated : June 26th, 2001  
Recorded : in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-097106  
In favor of : KEALIA IRRIGATION COMPANY, INC., a Hawaii non-profit corporation ("Irrigation Company"), CORNERSTONE HAWAII HOLDINGS LLC, a Colorado limited liability company ("CHH"), KEALIA MAKAI OWNERS ASSOCIATION, a Hawaii non-profit corporation ("KMOA"), and KEALIA PLANTATION COMPANY, LLC, a California limited liability company ("KPC")

16. Mortgage to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof

Amount : \$10,000,000.00  
Mortgagor : KEALIA MAKAI HOLDINGS, LLC, a Delaware limited liability company  
Mortgagee : BANK OF AMERICA, N.A., a national banking association  
Dated : November 5th, 2001

Recorded : in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-182361

17. LANDSCAPE MAINTENANCE AND OCCUPANCY AGREEMENT

Recorded : June 28th, 2002 in the Bureau of Conveyances, State of Hawaii, as Document No. 2002-114866

By and

Between : KEALIA MAKAI HOLDINGS, LLC, a Delaware limited liability company, and the COUNTY OF KAUAI PLANNING DEPARTMENT

18. The effect(s), if any, of the following:

WAIVER AND RELEASE AGREEMENT

Dated : August 30th, 2002

Recorded : September 16th, 2002 in the Bureau of Conveyances, State of Hawaii, as Document No. 2002-163149

By and

Between : COUNTY OF KAUAI, the DEPARTMENT OF WATER, and the BOARD OF WATER SUPPLY and KEALIA KAI, LLC

19. This Report does not offer or include any coverage against matters relating to the exercise of Native Hawaiian customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural or religious purposes, and access, water and gathering rights, as reserved, existing or established under the Constitution, law and usage of the State of Hawaii, except to the extent that a notice of same affecting the land has been recorded in the public records at date of policy and is not excepted in Schedule B, and the Company will not pay any loss or damage, costs, attorneys' fees or expenses which arise by reason of such matters.

To obtain information on such matters, please contact: your legal counsel on Native Hawaiian rights.

20. Any discrepancy or change in area based upon the fact that the boundary between Lot 11 and Lot 13 "...follows along a centerline of the stream."

21. Condominium Map No. 3599, filed in the Bureau of Conveyances, State of Hawaii.

22. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, easements and by laws set forth in the Declaration of Condominium Property Regime, but

omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons dated June 5th, 2003, recorded June 16th, 2003 in the Bureau of Conveyances, State of Hawaii, as Document No. 2003-120300.

Liens and charges for upkeep and maintenance as provided in the above mentioned Covenants, Conditions and Restrictions, if any, where no notice thereof appears on record.

For information regarding the current status of said liens and/or assessments

Contact : ASSOCIATION OF APARTMENT OWNERS OF KEALIA KAI 11

23. By-Laws of the Association of Apartment Owners of Kealia Kai 11, dated March 17th, 2003, recorded June 16th, 2003 in the Bureau of Conveyances, State of Hawaii, as Document No. 2003-120301.

24. An easement for pedestrian access purpose in favor of and appurtenant to Lot 12, over and across Easement P-1 as shown on the Condominium Map and in Declaration of Condominium Property Regime of Kealia Kai 11 dated June 5, 2003, recorded as Document No. 2003-120300.

**EXHIBIT "F"**

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

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>		
Unit 11-A	\$547.00	x 12 =	\$6,564
Unit 11-B	\$547.00	x 12 =	\$6,564

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

**Estimate of Maintenance Fee Disbursements:**

Monthly x 12 months = Yearly Total

Utilities and Services

Air Conditioning

Electricity

common elements only

common elements and apartments

Elevator

Gas

common elements only

common elements and apartments

Refuse Collection

Telephone

Water and Sewer

\$41 x 12 =

\$492

Maintenance, Repairs and Supplies

Building

Grounds

\$421 x 12 =

\$5,052

Management

Management Fee

Payroll and Payroll Taxes

Office Expenses

Insurance

\$25 x 12 =

\$300

Reserves(\*)

Taxes and Government Assessments

\$98 x 12 =

\$1,176

Audit Fees

Other

\$509 x 12 =

\$6,108

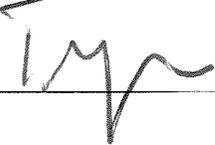
TOTAL

\$1,094 x 12 =

\$13,128

KEALIA MAKAI HOLDINGS, LLC, the developer for the Kealia Kai 11 project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

By



June 9, 2003

Date

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

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

End of EXHIBIT "F"

NOTE: The Project has shared utilities which are common elements, and thus may require replacement.

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

## EXHIBIT G

### SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

Copies of the specimen Deposit Receipt and Contract of Sale ("Sales Contract") and Escrow Agreement for Kealia Kai 11 CPR Sales ("Escrow Agreement") have been submitted as part of the Registration. Purchasers should read these documents with care. The Sales Contract determines the time for and the amount of payments on the purchase price, and for the payment of all closing costs. The Sales Contract is a legally binding agreement between the Buyer and Seller. Under the Sales Contract, the Buyer promises to buy the Unit from the Seller, and the Seller promises to sell the Unit to the Buyer, under certain terms and conditions. The purpose of this summary is to provide the Buyer with an overview of the important terms and conditions of the Sales Contract. This summary, however, does not summarize all of the terms and conditions of the Sales Contract, only the ones which the Seller believes are most important. Moreover, the Seller cannot predict which terms might be important to each and every Buyer. Therefore, each Buyer should read the entire Sales Contract with care before signing it, and should not rely solely upon this summary in order to understand his or her rights and obligations under the Sales Contract.

Among other important provisions, the Sales Contract specifies the Unit of the Project to be purchased by the Buyer. The Sales Contract also specifies the amount and time for payment of the purchase price, closing costs, and financing terms for any amounts of the purchase price which are financed by the Buyer. In addition, the Sales Contract also provides that:

1. The Escrow Agent may not close until the "closing conditions" stated in the Escrow Agreement have been met.
2. Interest earned on buyer's funds belong to the Seller.
3. Buyers must pay the Cash Balance shown in Section II.A.2 of the Sales Contract when required by the Sales Contract.
4. If Buyer defaults, the Seller can (a) cancel the Sales Contract, or (b) enforce it, or (c) do anything else permitted by the contract or by law. If the Seller decides to cancel, then it may keep all amounts paid by the Buyer. If the event of a dispute, the losing party must pay the winner's cost and expenses, including legal fees.
5. Things not written in the Sales Contract are not part of the agreement, no matter what anyone says.
6. Any lawsuit or other legal proceedings will be handled in Hawaii and without a jury.
7. The Seller is making no warranties. Everything is being sold "as is".

End of EXHIBIT "G"

## EXHIBIT H

### SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement For Kealia Kai 11 CPR Unit Sales is dated June 9, 2003 (the "Escrow Agreement") and identifies Old Republic Title & Escrow of Hawaii as the Escrow Agent. When you sign your Sales Contract, you also adopt the Escrow Agreement, just as if you had signed it yourself. Each purchaser should read the Escrow Agreement. The Escrow Agreement establishes how the purchaser's funds are placed into escrow, as well as the retention and disbursement of these funds. The Escrow Agreement also contains the Seller's and your instructions for the handling of your Funds, Notes and Loan Documents, and for Closing your purchase.

Some of the key provisions of the Escrow Agreement may be summarized as follows:

1. **RELEASE OF BUYER'S FUNDS.** No matter what else the contract documents say, the Escrow Agent may not release your Funds, Notes or Loan Documents to the Seller or a sales agent, or to someone else for the benefit of the Seller or a sales agent, until the last of these events occurs:

A. The Hawaii Real Estate Commission has issued an effective date for a Final Condominium Public Report on the Project.

B. The Escrow Agent has received a copy of a receipt for the Hawaii Disclosure Statement signed by you.

C. Your Sales Contract "has become binding, and the requirements of sections 514A-40, 514A-39.5 and 514A-63 have been met" as that phrase is used in the Hawaii Condominium Property Act.

D. Your Seven-Day Cancellation Period has expired.

E. If and only if (i) your Sales Contract was made before the date when the Hawaii Real Estate Commission issues an effective date for a Final Condominium Public Report, and (ii) the Hawaii Real Estate Commission does not issue an effective date for a Final Condominium Public Report by the date on which the Contingent Final Public Report expires, then these conditions must be met:

(1) The Seller has given you written notice, by certified mail, that you have the right to rescind because the Real Estate Commission did not issue an effective date for a Final Public Report by the date on which the Contingent Final Public Report expired, and

(2) Both you and the Seller sign documents giving up (in legal terms, "waiving") your rights to rescind.

F. The Escrow Agent has not received from you a valid notice of cancellation sent or delivered before the end of the Seven-Day Cancellation Period.

G. The Escrow Agent receives a sworn statement from the Seller stating, among other things, that the Seller has not received a valid notice of cancellation from you.

H. If the offer and sale is made partly outside of Hawaii, each of these additional requirements is met:

(1) The Escrow Agent has received a copy of a receipt for all necessary Condominium Public Report(s) signed by you.

(2) Your 30-day right to cancel the Sales Contract under Section 514A-62 of the Condominium Property Act (the "Condominium Cancellation Period") has ended and the Escrow Agent has not received from you a valid notice of cancellation sent or delivered before the end of the Condominium Cancellation Period.

**2. CLOSING DATE.** The Sales Contract establishes the closing date for the sale of the property.

**3. CLOSING CONDITIONS.** The Escrow Agent will close the sale on the closing date if all of the "closing conditions" listed in the Escrow Agreement (including the following, among others) have happened:

A. The Escrow Agent has not received a valid notice of cancellation from the Seller or from you; and

B. The Escrow Agent has received all necessary closing documents and money; and

C. All mortgages having to do with the purchase can be filed or recorded, following the lender's instructions; and

D. All necessary releases can be filed so that the unit can be conveyed free and clear of all blanket liens in accordance with the condominium law.

**4. FUNDS IN ESCROW.** The Escrow Agreement provides that any interest earned on Funds in escrow belong to the Seller.

**5. REFUNDS.** The Escrow Agent will refund your Funds (without interest unless the Sales Contract provides otherwise) under the terms and conditions provided in the Sales Contract.

**6. CANCELLATION BECAUSE THE BUYER DEFAULTS.** If you default and the Seller cancels your Sales Contract then your Funds will be delivered as provided in your Sales Contract. If the Sales Contract provides that your Funds are to be paid to the Seller as liquidated damages, then before doing so the Escrow Agent must give you notice, by registered or certified mail, stating that the Seller has declared that you are in default. If the Escrow Agent receives an objection from you within fifteen (15) days after sending the notice to you, then the Escrow Agent may deposit your Funds in court. Otherwise, the Escrow Agent may pay your Funds to the Seller.

**7. PROTECTION OF THE ESCROW AGENT.** The Escrow Agreement contains various protections for the Escrow Agent such as the following:

A. If there is any dispute or conflicting claims, the Escrow Agent may deposit your Funds with a court, which would then resolve the dispute or conflict.

B. Both the Seller and you agree to protect and pay (or, in legal terms, "indemnify") the Escrow Agent for losses it suffers as a result of performing its duties. But this indemnity does not include losses due to the Escrow Agent's negligence or misconduct.

End of EXHIBIT "H"



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED:

Applicant(s)

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

APPROVED AS TO FORM  
AND LEGALITY:

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

STATE OF HAWAII        )  
                              ) ss.  
COUNTY OF KAUAI        )

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

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

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

Notary Public, State of Hawaii

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

STATE OF HAWAII        )  
                              ) ss.  
COUNTY OF KAUAI        )

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

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

Notary Public, State of Hawaii

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

MARYANNE W. KUSAKA  
MAYOR



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

PLANNING DEPARTMENT

INSTRUCTIONS FOR COMPLETING  
FARM DWELLING AGREEMENTS

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

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

Instructions for Completing Farm Dwelling Agreements  
Page Two

10. Recording fees for all documents recorded in the Regular System, including Uniform Commercial Code documents, will be a flat rate of **\$25.00** per document. Check should be made payable to the **Bureau of Conveyances**.
11. Attach check to three (3) completed sets of the Farm Dwelling Agreement and return them to the Planning Department.
12. The Planning Department will obtain the signatures of the **PLANNING DIRECTOR** and **COUNTY ATTORNEY**, process your building permit, and record the Agreement with the Bureau of Conveyances.
13. After recordation by the Bureau of Conveyances, the Planning Department will send an executed copy to the mailing address provided by you on page 1 for your files.
14. Do **NOT** fill in date (page 3).

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

05/21/99

MARYANNE W. KUSAKA  
MAYOR



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

CHECKLIST FOR FARM DWELLING AGREEMENTS

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

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

("Y"/"N")

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

Verified by:

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

\_\_\_\_\_  
signature

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

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

FARM DWELLING AGREEMENT

THIS AGREEMENT made and entered into by and between \_\_\_\_\_,  
 whose mailing address is \_\_\_\_\_,  
 \_\_\_\_\_,

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

W I T N E S S E T H

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED:

Applicant (s)

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

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

APPROVED AS TO FORM  
AND LEGALITY:

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

STATE OF HAWAII        )  
                                  ) ss.  
COUNTY OF KAUAI     )

On this day of \_\_\_\_\_, before me  
personally appeared \_\_\_\_\_  
\_\_\_\_\_ to  
me known to be the persons described in and who executed the  
foregoing instrument, and acknowledged that \_\_\_\_\_ executed the  
same as \_\_\_\_\_ free act and deed.

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

Notary Public, State of Hawaii

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

STATE OF HAWAII        )  
                              ) ss.  
COUNTY OF KAUAI     )

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

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

Notary Public, State of Hawaii

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MARYANNE W. KUSAKA  
MAYOR



DEE M. CROWELL  
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05/21/99

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Verified by:

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

\_\_\_\_\_ signature

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