

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by:

Developer Amy F. Conroy, Britt Tusher, and Sherry Roberts Tusher  
Address 74-4975 Kealakaa Street, Kailua-Kona, HI 96740

Project Name (\*): **HANAI A KA MALAMA LOT K CONDOMINIUM PROJECT**

Address: Papaakoko, District of North Kona, Island and County of Hawaii, State of Hawaii

Registration No. 5297  
(conversion)

Effective date: March 12, 2004

Expiration date: April 12, 2005

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: The developer may not as yet have created the condominium but has filed with  
(yellow) the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.

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

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

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

(\*) Exactly as named in the Declaration

*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.*

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

**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. 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. 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.
  - a. Further improvement of the property is also subject to the requirements of the Hawaii County Comprehensive Zoning Ordinance specifically as it relates to "ohana" additional dwelling units.
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 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.

Special Attention Cont.

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

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: Amy F. Conroy, Britt Tuscher, and Sherry Roberts Tusher Phone: 808-329-1960  
Name\* (Business)  
74-4975 Kealakaa Street  
Business Address  
Kailua-Kona, HI 96740

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

Escrow\*: First Hawaii Title Corporation Phone (808)329-8227  
75-5722 Kuakini Highway, Ste210  
Kailua-Kona, Hawaii 96740

General Contractor\*: \_\_\_\_\_ Phone: N/A

Condominium Managing Agent\*: Project will be self managed by the Association Phone (808) 329-1960  
Of Apartment Owners  
Name (Business)

Attorney for Developer\*: Wendelin L. Campbell Phone (808)882-4404  
P.O. Box 459  
Kamuela, Hawaii 96743

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. 2001-048028  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instrument: First Amendment to Declaration of Condominium Property Regime of Brenden Condominium Project recorded as October 17, 2001, as Document No. 2001-163284.

**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. 3239  
 Filed - Land Court Condo Map No. \_\_\_\_\_

**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. 2001-048029  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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 include the underlying land, will be in fee simple.

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

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

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

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

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit \_ contains a schedule of the lease rent for each apartment per:  Month  Year For Sub-leaseholds:

Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:

Canceled  Foreclosed

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

Individual Apartments in Fee Simple: Common Interest in the Underlying Land 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 provision(s).

Lease Term Expires: Rent Renegotiation Date(s):

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit contains a schedule of the lease rent for each apartment per:  Month  Year

Other:

### **IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or 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: Papaakoko, District of North Kona, Island and County of Hawaii, State of Hawaii

Tax Map Key (TMK): 3<sup>rd</sup> Division 7-4-7:74  
 Address  TMK is expected to change because

Land Area: 1.002  square feet  acre(s)

Zoning: A-1a

Fee Owner:

Name Amy F. Conroy, Britt Tuscher, and Sherry Roberts Tuscher

Address 74-4975 Kealakaa Street, Kailua-Kona, HI 96740

Lessor:

Name N/A

Address \_\_\_\_\_

**C. Buildings and Other Improvements:**

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

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

- 3. Principal Construction Material:
- Concrete  Hollow Tile  Wood
- Other Shadecloth

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 checked="" type="checkbox"/> Ohana	<u>1*</u>	<input checked="" 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>1*</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 (shed)	_____	<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: Pets are permitted, pursuant to Article V, section 5.3(9) of the Bylaws

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

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

There are no special use restrictions. \_\_\_\_\_

6. **Interior** (fill in appropriate numbers):

7.

Elevators: 0 Stairways: 1 each unit Trash Chutes: 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
Unit 1	<u>1</u>	<u>3/3</u>	<u>1526</u>	<u>300/714</u>	<u>lanai/carport</u>
Unit 2	<u>1</u>	<u>2/2</u>	<u>960</u>	<u>576/16/672</u>	<u>lanai/porch/storage</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.

\*\* To be demolished.

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 Exhibits A&C

Permitted Alterations to Apartments:

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>Covered</u> <u>Open</u>	<u>Compact</u> <u>Covered</u> <u>Open</u>	<u>Tandem</u> <u>Covered</u> <u>Open</u>	TOTAL
Assigned (for each unit)	<u>2</u> <u>2</u>	_____	_____	<u>4</u>
	(Unit 1) (Unit 2)			
Guest	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____
Other:	_____	_____	_____	_____
Total Covered & Open:	<u>4</u>	<u>0</u>	<u>0</u>	<u>4</u>

Each apartment will have the exclusive use of at 2 least parking stall(s). Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

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

8. **Recreational and Other Common Facilities:**

There are no recreational or common facilities.

Swimming pool     Storage Area     Recreation Area

Laundry Area     Tennis Court     Trash Chute/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):

N/A

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 use them, as described in the Declaration, are:

described in Exhibit C\*

as follows:

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

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

described in Exhibit

as follows: Each unit and its owner(s) shall have appurtenant thereto a one half (1/2) fractional (50%) interest in the common elements of the Project for all purposes including voting, said interest is referred to as "common interest".

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

Exhibit D describes the encumbrances against the title contained in the title report dated November 11, 2003 and issued by First Hawaii Title Corporation.

**Blanket Liens:**

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgages	Lender has priority over Buyer's rights under a sales contract. And has a right to terminate sales contracts. Upon foreclosure Of its mortgages before an apartment sale is closed. Should the lender terminate Buyer's sales contract, Buyer shall be entitled to a refund of all deposits, 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:

Improvements are sold "AS IS".

2. Appliances:

Appliances are sold "AS IS".

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

Unit 1 dwelling was completed in 1992.  
Unit 2 ohana dwelling was completed in 1992.

**H. Project Phases:**

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

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

**IV. CONDOMINIUM MANAGEMENT**

- A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

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

- not affiliated with the Developer  the Developer or 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 (Disclosure Abstract) contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

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

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

None  Electricity (\_\_\_ Common Elements only \_\_\_Common Elements & Apartments)

Gas (\_\_\_Common Elements only \_\_\_Common Elements & Apartments)

Water  Sewer  Television Cable

Other \_\_\_\_\_

## V. MISCELLANEOUS

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

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

Notice to Owner Occupants

Specimen Sales Contract

Exhibit E contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated January 10, 2003

Exhibit F contains a summary of the pertinent provisions of the escrow agreement.

Other

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

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

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

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

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

A) The Developer delivers to the buyer a copy of:

- 1) Either the Final Public Report OR the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; AND
- 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;

B) The buyer is given an opportunity to read the report(s); AND

C) One of the following has occurred:

- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
- 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
- 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

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

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

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

2. **Rights Under the Sales Contract:** Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other - \_\_\_\_\_

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)  
Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)  
Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 5297 filed with the Real Estate Commission on January 5, 2004.

**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

**Disclosure Regarding Selection of Real Estate Broker:**

No plans have been made at this time to sell Unit 1 or 2 of the condominium project. In the event the Developer chooses to use a real estate broker for the sale of Unit 1 or 2, prior to entering into a binding contract for such sale the developer shall (1) submit to the real estate commission a duly executed copy of a broker listing agreement with a Hawaii-licensed Real Estate Broker, together with a duly executed disclosure abstract identifying the designated broker, and (2) provide a copy of the disclosure abstract to the purchaser together with a copy of this public report.

**Disclosure Regarding Department of Water Supply and Sub-Metering**

WATER SERVICE: The Project consists of one "Lot" as the same is defined by the Zoning Code of the County of Hawaii, as amended, and, as such, the entire Project is allotted 600 gallons of water per day by department of Water Supply Company via a 5/8" water meter which is a common element of the Project. A private sub-meter installed on Unit "2" will determine the usage of Unit "2" and, by deduction, the usage of Unit "1". The unit owners will pay Kohala Ranch Water Company their proportionate amount of water bills based upon the usage indicated by these water meters. Each unit owner shall be solely responsible and liable for their water usage; and the unit owners shall indemnify, defend, and hold all others harmless from and against any and all claims arising out of their water usage, including without limitation part of the costs and fees related to their water usage.

**Disclosure Regarding Farm Dwellings**

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 204-4.5, Hawaii Revised Statutes is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000.00 for any additional violation.*

I acknowledge that I have read the above  
And have been given a copy

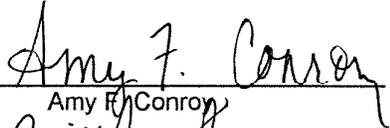
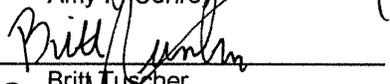
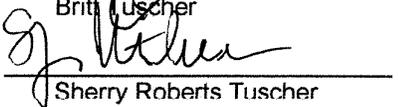
\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
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 provision 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 provision maybe found on Exhibit "I". A copy of the County of Hawaii Planning department Additional farm Dwelling Agreement form is attached as Exhibit "J".

- 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.

Printed Name of Developer

 _____ Amy F. Conroy	7/5/01 Date
 _____ Britt Tuscher	7/5/01 Date
 _____ Sherry Roberts Tuscher	7/5/01 Date

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

***\*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 the Estates Created**

Two freehold estates were created and designated, and hereinafter referred to as "condominium units" (also referred to herein as "unit" or "units"). Specifically, the two estates so created and designated are referred to hereinafter as "Unit 1" and "Unit 2". Unless provided otherwise herein, each individual condominium unit is comprised of all of the structures and/or other improvements physically located or to be located on the land area appurtenant to said unit, as designated and defined in subparagraphs 5(a) and 5(b) herein. Said condominium units are or will be located as shown and designated on the Condominium Map, the number of which is noted above. The units are described as follows:

(a) "Unit 1" consists of (i) a nine (9) room, two story, double wall dwelling having a net living area of approximately 1526 square feet, a covered lanai having a net area of approximately 300 square feet, and a carport having a net area of approximately 714 square feet, and (ii) 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 the above-described improvements, the owner thereof is permitted, if allowed by law, to build any permitted structures on the land area appurtenant to said unit, provided that said structures comply with all applicable building codes and zoning ordinances. The costs and expenses of any such future construction shall be borne solely by the owner of said unit.

(b) "Unit 2" consists of (i) a seven (7) room, two story, double wall dwelling having a net living area of approximately 960 square feet, a covered lanai having a net area of approximately 576 square feet, a porch with a net area of approximately 16 square feet, and storage area having a net area of approximately 672 square feet, and (ii) 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 the above-described improvements, the owner thereof is permitted, if allowed by law, to build any permitted structures on the land area appurtenant to said unit, provided that said structures comply with all applicable building codes and zoning ordinances. The costs and expenses of any such future construction shall be borne solely by the owner of said unit.

**END OF EXHIBIT A**

## **EXHIBIT B**

### **Description of Common Elements**

One freehold estate was designated in all portions of the Project other than the units (except as herein specifically included), these portions of the Project being herein referred to as the "common elements", including specifically, but not limited to:

- (a) The land in fee simple;
- (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 water, power, light, sewage, irrigation and telephone;
- (c) Any and all other apparatus, installations and/or facilities in common use and all other parts of the Property necessary or convenient to the existence, maintenance and safety of the Project, or normally in common use;
- (d) Each unit shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes of ingress to, egress from, utility services for, and support, maintenance and repair of such unit, and in the other common elements of the Project for use according to their respective purposes. When applicable, each unit shall also have appurtenant thereto easements in the other unit(s) for the purposes of utility service for, and the maintenance and repair of said utility services, including but not limited to electricity, gas, water, sewage, telephone and television cable;
- (e) The limited common elements described in Exhibit C of this public report and Section 5 of the Declaration.

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

**END OF EXHIBIT B**

## **EXHIBIT C**

### **Limited Common Elements**

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

(a) That certain land area upon and around which Unit 1 is located, shown and designated on the Condominium Map as "Limited Common Element Land Area Appurtenant to Unit 1", containing an area of approximately 0.5001 acres, shall be a limited common element appurtenant to and for the exclusive use of Unit 1.

(b) That certain land area upon and around which Unit 2 is located, shown and designated on the Condominium Map as "Limited Common Element Land Area Appurtenant to Unit 2", containing an area of approximately 0.5001 acres, shall be a limited common element appurtenant to and for the exclusive use of Unit 2;

(c) The limited common element access easement shown and designated on the Condominium Map over and across the limited common element land area appurtenant to Unit 2 shall be a limited common element access easement in favor of Unit 1.

(d) The limited common element access easement shown and designated on the Condominium Map over and across the limited common element land area appurtenant to Unit 2 shall be a limited common element access easement in favor of Unit 1.

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

**END OF EXHIBIT C**

**EXHIBIT D**

**ENCUMBRANCES AGAINST TITLE**

1. For information regarding real property taxes due and owing, reference is made to the County of Hawaii Director of Finance.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms, provisions, covenants, easements and reservations as contained in the following:

DECLARATION

Dated: July 31, 1989  
Book: 23612  
Page: 184

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

4. The covenants, agreements, obligations, conditions, ~~easements~~ and other provisions as contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF "HANAI A KA MALAMA LOT K CONDOMINIUM PROJECT"

Dated: February 22, 2001  
Document No. 2001-048028

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.

Condominium Map No. 3239, to which reference is hereby made.

5. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF HANAI A KA MALAMA LOT K CONDOMINIUM PROJECT

Dated: February 22, 2001  
Document No. 2001-048029  
to which reference is hereby made

6. AS TO ITEM I ONLY:

(A) The terms, provisions, covenants, easements and reservations as contained in the following:

APARTMENT DEED (ORIGINAL)

Dated: May 17, 2001  
Document No. 2001-111906

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

(B) *MORTGAGE*

Loan No. 4327024  
Mortgagor: AMY F. CONROY, a single woman  
"MERS" MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns); MERS is organized and existing under the laws of Delaware

Lender: NORTH AMERICAN MORTGAGE COMPANY, which is organized and existing under the laws of Delaware, now known as WASHINGTON MUTUAL BANK, FA, a Federal savings bank organized and existing under the laws of the United States of America

Dated: Novcmber 01, 2001  
Document No. 2001-176483  
Principal Sum: \$200,000.00

The present amount due should be determined by contacting the owner of the debt.

7. AS TO ITEM II ONLY:

- (A) The terms, provisions, covenants, easements and reservations as contained in the following:

APARTMENT DEED (ORIGINAL)

Dated: May 17, 2001  
Document No. 2001-111907

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

(B) MORTGAGE

Loan No. 4327023  
Mortgagor: *BRITT TUSCHER and SHERRY ROBERTS TUSCHER, husband and wife*  
"MERS" MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns); MERS is organized and existing under the laws of Delaware  
Lender: NORTH AMERICAN MORTGAGE COMPANY, which is organized and existing under the laws of Delaware, now known as WASHINGTON MUTUAL BANK, FA, a Federal savings bank organized and existing under the laws of the United States of America  
Dated: November 01, 2001  
Document No. 2001-176484  
Principal Sum: \$226,000.00  
The present amount due should be determined by contacting the owner of the debt.

(C) MORTGAGE

Loan No. 4327152  
Mortgagor: BRITT TUSCHER and SHERRY ROBERTS TUSCHER, husband and wife  
Mortgagee: WASHINGTON MUTUAL BANK, FA, a Federal savings bank organized and existing under the laws of the United States of America  
Dated: January 29, 2002  
Document No. 2002-020468  
Principal Sum: \$40,000.00  
The present amount due should be determined by contacting the owner of the debt.

## **EXHIBIT E**

### **SUMMARY OF SALES CONTRACT**

It is Seller's intention to use the most recent edition of the Hawaii Association of Realtor's form of Deposit Receipt Offer and Acceptance (DROA). Among other provisions, the contract will contain the following:

1. Evidence of title: Seller shall furnish Buyer evidence of Seller's marketable title to the interest which is to be conveyed to Buyer. If Seller fails to deliver title as herein provided Buyer has the option to terminate this agreement and have any of Buyer's deposits returned to Buyer. The foregoing shall not exclude any other remedies available to Buyer. Buyer will receive an Owner's standard coverage policy of title insurance at closing: (a) Seller shall pay 60% of the premium to be charged for an Owner's standard coverage policy of title insurance to be issued to the buyer in the amount of the sales price, and (b) Buyer shall pay 40% of such premium and any additional costs relating to the issuance of any extended coverage policy, including a Lender's policy.
2. Default: It is expressly understood and agreed: First: In the event Buyer fails to pay the balance of the purchase price or complete the purchase as herein provided, Seller may (a) bring an action for damages for breach of contract; (b) retain the initial deposit and all additional deposits provided for herein, as liquidated damages, and (c) Buyer shall be responsible for any costs incurred in accordance with this contract. Second: In the event Seller fails to perform his obligations as herein provided, Buyer not being in default, Buyer may (a) bring an action against Seller for damages for breach of contract; (b) file and maintain an action against Seller for specific performance of the contract and (c) Seller shall be responsible for any cost incurred in accordance with this contract. The foregoing shall not exclude any other remedies available to either Seller or Buyer in the event of default and/or a lawsuit arising out of this contract (including a suit by a REALTOR for commission), the prevailing party shall be entitled to recover all costs incurred including reasonable attorney's fees. All expenses incurred by escrow shall be deducted from deposited funds prior to any disbursement to the prevailing party.
3. Closing: For the purpose of this contract "closing" shall be the date upon which all appropriate documents are recorded. Buyer and Seller agree to execute appropriate or customary documents when requested to do so.
4. Time is of the Essence: If either Buyer or Seller for reasons beyond his control cannot perform his obligation to purchase or sell the property by the closing date, then such party by giving escrow written notice prior to the closing date called for in this contract with copies to all parties to this contract, can extend closing for no longer than 30 calendar days to allow performance. Thereafter time is of the essence and the default provisions of Standard Term H apply. Any further extension must then be agreed to in writing by both parties. There is no automatic right to extend. This provision relates only to the extension of the closing date.

**END OF EXHIBIT E**

## EXHIBIT F

### SUMMARY OF CONDOMINIUM ESCROW AGREEMENT

1. Sales Contracts Deposited in Escrow. As and when Developer shall enter into a sales contract for the sale of a unit, Developer shall deliver an executed copy of such sales contract to Escrow.

2. Receipt of Funds by Escrow. Developer shall pay over to Escrow any monies received by Developer from purchaser under sales contracts covering units in the Project, including all disbursements made on loan commitments, if any, from lending institutions to individual purchasers.

3. Conditions to be Met Prior to Disbursement. No disbursements of funds held in escrow shall be made unless and until the following conditions have been fulfilled:

(a) The Real Estate Commission shall have issued a Final Report on the Project; provided, however, to the extent any sales contracts are entered into and a purchaser's funds are obtained prior to the issuance of a Final Public Report of the Real Estate Commission, no disbursements shall be made from such purchaser's funds until (i) such Final Public Report shall have been issued; and (ii) the purchaser shall have been given a copy of said Final Report and shall have acknowledged receipt of same or shall have been deemed to have acknowledged receipt of same and Developer's attorney shall have delivered a written opinion to Escrow that the purchaser's sales contract has become effective; and

(b) Developer or Developer's attorney shall have delivered a written opinion to Escrow stating that the requirements of Sections 514A-62 and 514A-63, Hawaii Revised Statutes, as amended, have been met; and, if the project is a conversion project, that requirements of Section 521-38, Hawaii Revised Statutes, as amended, have been complied with; and

(c) Developer shall have given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract; and

(d) Developer shall have delivered to Escrow a certificate from Developer's architect stating that the project is in compliance with the Federal Fair Housing Amendments Act of 1988.

4. Return of Funds and Documents. A purchaser shall be entitled to a return of funds and Escrow shall pay such funds to such purchaser, without interest, if any one of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow in writing to return to the purchaser the funds of the purchaser held hereunder by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or

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

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

In any of the foregoing events, Escrow shall, upon the occurrence of the event described in (a) or (b) above or upon receipt of a written request for a refund from the purchaser upon the occurrence of an event described in (c) or (d) above, unless the purchaser has waived or has been deemed to have waived the right to a refund, pay said funds to said purchaser (less a cancellation fee of Escrow of not less than \$25.00 per unit or a cancellation fee commensurate with the work done by Escrow prior to such cancellation, whichever fee is greater, up to a maximum of \$250.00) and thereupon said sales contract and any conveyance document theretofore delivered to Escrow shall be returned to Developer and shall be deemed no longer held hereunder; provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to receipt by Developer of written notice from Escrow of its intent to make such refund.

(e) Notwithstanding any other provision in this Agreement to the contrary, Escrow further agrees to make refunds to purchasers, in accordance with Part VI, Chapter 514A, Hawaii Revised Statutes, out of the funds then on deposit with Escrow, if Developer and the purchaser shall so request in writing and any one of the following events has occurred:

- (i) No sales contract has been offered to the purchaser who has been placed on Developer's reservation list of owner-occupant applicants; or
- (ii) The purchaser has been unable to obtain adequate financing, or a commitment for adequate financing, for the purchaser's reserved unit within thirty (30) calendar days following the end of the ten (10) calendar day period during which Developer is limited to selling to owner-occupants; or
- (iii) 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
- (iv) The purchaser indicates an intent not to become an owner-occupant of such unit.

Except for cancellations under subparagraph (i) above, Escrow may deduct from any such refund made to a purchaser a cancellation fee as set forth above.

## EXHIBIT G

### DISCLOSURE ABSTRACT HANAI A KA MALAMA LŌT K CŌNDŌMINIUM PRŌJĒCT

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

##### DEVELOPER/PROJECT MANAGER

Amy F. Conroy, Britt Tuscher, and Sherry Roberts Tuscher, 74-4975 Kealakaa Street, Kailua-Kona, Hawaii 96740.

##### ESTIMATED MAINTENANCE FEES/COSTS PER CONDOMINIUM UNIT

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

**WATER SERVICE:** The Project consists of one "Lot" as the same is defined by the Zoning Code of the County of Hawaii, as amended, and, as such, the entire Project is allotted 600 gallons of water per day by the Department of Water Supply via one 5/8" water meter which is a common element of the Project. The Department of Water Supply meter installed on Unit "1" will indicate the amount of water used by the Project. A private sub-meter installed on Unit "2" will determine the usage of Unit "2" and, by deduction, the usage of Unit "1". The unit owners will pay the Department of Water Supply their proportionate amount of water bills based upon the usage indicated by these water meters.

**INDIVIDUAL INSURANCE:** Section 514A-86, Hawaii Revised Statutes, requires that fire insurance be purchased to cover the improvements portion of the Project and that premiums be common expenses. Developer anticipates that the Association will elect to permit unit owners to obtain separate policies and name the Association as additional insured. In such case, insurance premiums will be the individual's responsibility of each owner unit rather than common expenses of the Project. Developer estimates such annual premium expense to be \$250.00 per apartment. This estimate was prepared in accordance with generally accepted accounting principles.

##### WARRANTIES

"Unit 1" is a nine (9) room, two (2) story, wood frame, double wall dwelling with no basement.

"Unit 2" is a seven (7) room, two (2) story, wood frame, double wall dwelling with no basement.

Potential buyers of said Units are advised that they are being sold "AS IS" without any building warranties.

USE OF CONDOMINIUM UNITS

The units of the Project and their appurtenant land areas shall be occupied and used only by the respective owners thereof, their families, domestic servants, personal guests, tenants, and employees, and only for those purposes permitted by applicable zoning ordinances. The unit owners shall have the absolute right to lease or rent their units subject to the limitations, restrictions, covenants and conditions contained in the Declaration or in the By-Laws of the Association of Condominium Owners. Subject also to said Declaration and By-Laws, maximum allowance and freedom shall be given so as to accommodate the individual unit owner's artistic, creative and life-style requirements.

STRUCTURAL COMPONENTS AND MECHANICAL & ELECTRICAL INSTALLATIONS

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 in sound and satisfactory condition. HOWEVER, NO REPRESENTATIONS OF ANY KIND ARE MADE AS TO THE EXPECTED USEFUL LIFE, IT ANY, OF THE STRUCTURAL COMPONENTS AND MECHANICAL AND ELECTRICAL INSTALLATIONS MATERIAL TO THE USE AND ENJOYMENT OF THE CONDOMINIUM UNITS.

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.

7/5/01  
Date

Amy F. Conroy  
Amy F. Conroy

Britt Tuscher  
Britt Tuscher

Sherry Roberts  
Sherry Roberts

END OF EXHIBIT G

EXHIBIT "H"

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**  
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

April 1, 2003

Wendelin L. Campbell, Esq.  
Campbell & Campbell  
Haina Cottage, Suite 5  
65-1235A Opelo Road  
Kamuela, HI 96743

Dear Ms. Campbell:

**SUBJECT: Condominium Registration Information**  
**Project: Hanai A Ka Malama Lot K Condominium Project**  
**Developer: Amy F. Conroy, Britt Tuscher, and Sherry Roberts Tuscher**  
**Tax Map Key: (3) 7-4-007:074**

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We are in receipt of your letter, dated August 6, 2002 (received February 26, 2003) and the accompanying Notice of Intention, Declaration of Condominium Property Regime, Condominium Public Report, Bylaws of the Association of Condominium Owners, and CPR Map for the project. The proposed condominium consists of two limited common elements of 0.5001 acres and 0.5001 acres each.

The subject 1.002-acre property was created by subdivision (SUB 5793) on July 24, 1989. The property is zoned Agricultural (A-1a) by the County and is situated within the State Land Use Agricultural district.

The following is our response to your request for the issuance of a written statement, pursuant to the requirements of Hawaii Revised Statutes §514A-40(b)(1), regarding the referenced condominium project.

1. The existing buildings on the property were constructed in compliance with all zoning ordinances and codes applicable to said buildings. A statement of compliance with all building codes should be requested from the Department of Public Works -- Building Division.

Wendelin L. Campbell, Esq.

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- a) Ohana Dwelling Unit Permit No. 2444 was approved on November 8, 1991 to allow the construction of a second dwelling on the subject lot.
  - b) BP #915641 was issued on May 29, 1991 to construct a 2-story, 1,520-square foot 3-bedroom/2-bath dwelling with an open carport, laundry and storage on the lower level. This permit was closed due to final inspection recorded on October 1, 1992.
  - c) BP #925163 was issued on February 4, 1992 to construct a 2-story, 1,104-square foot 2-bedroom/1.5-bath ohana dwelling with a 2-car carport, laundry and storage on the lower level. This permit was closed due to final inspection recorded on October 1, 1992.
  - d) BP #925597 was issued on April 23, 1992 to construct a new retaining wall for the ohana dwelling (BP #925163) under construction. This permit was closed due to final inspection recorded on October 1, 1992.
  - e) BP #925616 was issued on April 28, 1992 to add a slab for a two-car garage and add one full bath. This permit was closed due to final inspection recorded on October 1, 1992.
2. No non-conforming uses or structures have been identified on the subject property.
  3. No variances were granted to achieve compliance with any zoning ordinances or codes.
  4. Regarding minimum lot size requirements. In that a Declaration of Condominium Property Regime was recorded with the Bureau of Conveyances by Document No. 2001-048028 on April 4, 2001, the subject CPR project is in compliance with the Hawaii County Subdivision Code, pursuant to §23A-20(a)(1), Ordinance 02-111.
  5. We note that Exhibit G of the submitted Public Report identifies the allocated 5/8" water meter as a common element and that a private sub-meter is installed to provide county water to Unit #2. Sub-metering is not consistent with Department of Water Supply policy. The developer is urged to contact the Department of Water Supply – Water Resources and Planning Branch at 961-8070.

Chapter 205, HRS does not authorize residential dwellings as a permissible use in the Agricultural District as classified by the State Land Use Commission, unless the dwelling is related to an agricultural activity or is a "farm dwelling." A "farm dwelling" is defined in Section 205-4.5(a)(4) as "a single family dwelling located on and used in conjunction with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed

Wendelin L. Campbell, Esq.

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by the State, or where agricultural activity provides income to the family occupying the dwelling.” The requirements of this section apply to dwellings permitted as ohana dwelling units by the County of Hawaii. All property buyers must comply with Chapter 205, HRS.

The Hawaii County Code, Chapter 25, Zoning, Sections 25-5-77(b), (c) and (1) state the following:

- (b) One (1) single-family dwelling or one (1) farm dwelling shall be permitted on any building site in the “A” district. A farm dwelling is a single-family dwelling that is located on or used in connection with a farm or if the agricultural activity provides income to the family occupying the dwelling.
- (c) Additional farm dwellings may be permitted in the “A” district only upon the following conditions:
  - (1) A farm dwelling agreement for each additional farm dwelling, on a form prepared by the director, shall be executed between the owner of the building site, any lessee having a lease on the building site with a term exceeding one (1) year from the date of the farm dwelling agreement, and the County. The agreement shall require the dwelling to be used for farm-related purposes.

All property buyers must comply with Chapter 25 of the Hawaii County Code.

Should you have questions, please feel welcome to contact Larry Brown at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

LMB:mad

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cc: Planning Department – West Hawaii Office  
Department of Water Supply – Water Resources & Planning Branch  
Real Property Tax Office

## EXHIBIT "I"

### Farm Dwelling Agreement

*Notice – the following is presented for informational purposes only. It is not intended to be legal advise, and it is not exhaustive of the subject. Anyone whose plans may be affected or limited by the Hawaii County Zoning Coded 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.

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 \_\_\_\_\_, 200\_\_ before me personally appeared (OWNERS OF RECORD) 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.

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

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

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: \_\_\_\_\_