

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Uo Rong Kim and Ok Hui Kim
Address 64Makaweo Avenue
Wahiawa, Hawaii 96786
Project Name(\*): "Makaweo Avenue Estates"
Address: 60, 64 and 64-A Makaweo Avenue, Wahiawa, Hawaii 96786
Registration No. 5324 (Conversion) Effective date: March 29, 2004
Expiration date: April 29, 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 advise 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 586-2643 to submit your request.

**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:

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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 a vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is 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:

Uo Rong Kim and Ok Hui Kim Name\* Phone: 622-3915 (Business)
64 Makaweo Avenue Business Address
Wahiawa, Hawaii 96786
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\*:

Primary Properties, Inc. Name Phone: (808) 550-0818 (Business)
745 Fort Street, Suite 608 Business Address
Honolulu, Hawaii 96814

Escrow:

First Hawaii Title Corporation Name Phone: (808) 487-1595 (Business)
98-211 Pali Momi Street, Suite 600 Business Address
Aiea, Hawaii 96701

General Contractor\*:

N/A Name Phone: (Business)
Business Address

Condominium Managing Agent\*:

Self-Managed by Association of Apartment Owners Name Phone: (Business)
Business Address

Attorney for Developer:

Jennifer A. Aquino Name Phone: (808) 294-0707 (Business)
1188 Bishop Street, Suite 3009 Business Address
Honolulu, Hawaii 96813

\* 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:

<input type="checkbox"/>	Proposed			
<input type="checkbox"/>	Recorded - Bureau of Conveyances	Document No.	_____	
		Book	_____	Page _____
<input checked="" type="checkbox"/>	Filed - Land Court	Document No.	3084405	

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

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

<input type="checkbox"/>	Proposed			
<input type="checkbox"/>	Recorded - Bureau of Conveyances	Condo Map No.	_____	
<input checked="" type="checkbox"/>	Filed - Land Court	Condo Map No.	1611	

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

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

The Bylaws for this condominium are:

<input type="checkbox"/>	Proposed			
<input type="checkbox"/>	Recorded - Bureau of Conveyances	Document No.	_____	
		Book	_____	Page _____
<input checked="" type="checkbox"/>	Filed - Land Court	Document No.	3084406	

The Bylaws referred to above have been amended by the following instrument [state name of document, date and recording/filing information]:

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial house rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed       Adopted       Developer does not plan to adopt House Rules.

E. **Changes to Condominium Documents** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

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

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

2. **Developer:**

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

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

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 Subleasehold:

**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 advise 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: 60, 64 and 64-A Makaweo Avenue Tax Map Key (TMK) : (1)7-4-016-023  
Wahiawa, Hawaii 96786

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

Land Area: 21,780  square feet  acre(s) Zoning: R-5

Fee Owner:

Uo Rong Kim and Ok Hui Kim  
Name  
64 Makaweo Avenue  
Address  
Wahiawa, Hawaii 96786

Lessor: 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: Three Floors Per Building: One Floor  
 Exhibit \_\_\_\_\_ contains further explanations.

3. **Principal Construction Material:**  
 Concrete  Hollow Tile  Wood  
 Other Glass, asphalt shingles

4. **Uses Permitted by Zoning:**

	No. of Apts.	<u>Uses Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>3</u>	<input checked="" type="checkbox"/> Yes*	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input 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

\*Variance No. 1956/ZRA-93 issued for Unit 64-A, See Exhibit "D"

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

Yes  No

5. Special Use Restrictions:

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

- Dogs, cats and other usual and customary animals may be kept in reasonable number pursuant to
- [ X ] Pets: rules and regulations adopted by the Board.
- [ ] Number of Occupants: \_\_\_\_\_
- [ ] Other: \_\_\_\_\_
- [ ] There are no special restrictions.

6. Interior (fill in appropriate numbers):

Elevators: None                      Stairways: None                      Trash Chutes: None

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
<u>60</u>	<u>1</u>	<u>2/1</u>	<u>940</u>	<u>289</u>	<u>carport</u>
<u>64</u>	<u>1</u>	<u>3/1</u>	<u>1,277</u>	<u>408</u>	<u>garage</u>
<u>64-A</u>	<u>1</u>	<u>2/1</u>	<u>776</u>	<u>222</u>	<u>carport</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Apartments: 3

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

See Exhibit "I".

7. Parking Stalls:

Total Parking Stalls: 4

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned Units 60 & 64A -1 (for each unit)	<u>          </u>	<u>4</u>					
Guest	<u>          </u>						
Unassigned	<u>          </u>						
Extra for Purchase	<u>          </u>						
Other:	<u>          </u>						
Total Covered & Open:	<u>4</u>	<u>          </u>	<u>4</u>				

Each apartment will have the exclusive use of at least 1 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: Common Element driveway containing an area of 2,525 square feet

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):

In accordance with the report, dated September 8, 2003, prepared by Michael D. Lau, Professional Architect No. 8385, a copy of which is attached as Exhibit "C", the structures are in good condition and the electrical and plumbing systems are in good working order.

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:

Variance No. 1956/ZBA-93 issued by the City Planning Commission on July 15, 1957 allows for the third dwelling unit (64A Makaweo Avenue) on the site. See letter dated January 22, 2004, issued by the Department of Planning and Permitting, City and County of Honolulu, attached as Exhibit "D"

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 does not now conform to present zoning requirements.

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

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 "E".

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 "F".

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 has an undivided One-Third (1/3rd) interest in the common elements.

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 " G " describes the encumbrances against the title contained in the title report dated March 17, 2004 and issued by First Hawaii Title.

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>
Mortgages	Buyer's interest may be terminated and Buyer may be entitled to a refund less any escrow cancellation fees.

F. Construction Warranties:

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

1. Building and Other Improvements:

None

2. Appliances:

None

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

Unit 64 was constructed in 1936, Unit 60 was constructed in 1954 and Unit 64-A was constructed in 1957.

H. **Project Phases:**

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

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

#### IV. CONDOMINIUM MANAGEMENT

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

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

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

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

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

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

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

Exhibit "H" 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 - See Exhibit "I"

Specimen Sales Contract  
Exhibit "J" contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated November 21, 2003  
Exhibit "K" 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 sale 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 buyer's 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. 5324 filed with the Real Estate Commission on March 23, 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**

**Hazardous Materials**

The developer neither prepared nor commissioned a Phase 1 Environmental Site Assessment and makes no representations or warranties whatsoever. The developer has made no independent investigation as to asbestos or other hazardous substances in the apartments or in, under or around the Project, including but not limited to, radioactive materials, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and any and all other substances or materials defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under, or for the purposes of, hazardous materials laws. Buyer acknowledges that in light of the age of the Project, there may be asbestos and other hazardous substances in the apartments, or in, under or around the Project. Because of the possible presence of such substances, Buyer should have the apartment inspected to determine the extent (if any) of such contamination and any necessary remedial action. The developer will not correct any defects in the apartments or in the Project or anything installed or contained therein and Buyer expressly releases the developer from any liability to Buyer if any hazardous materials are discovered.

**Lead Warning Statement**

Pursuant to federal law, 42, U.S.C 4852(d), the Residential Lead-Based Paint Reduction Act, "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-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.

Uo Rong Kim and Ok Hui Kim  
 Printed Name of Developer

By:	<u>Uo Rong Kim</u> Duly Authorized Signatory*	<u>3/11/04</u> Date
By:	<u>Ok Hui Kim</u> Duly Authorized Signatory*	<u>3/11/04</u> Date

Uo Rong Kim and Ok Hui Kim  
 Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

***\*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.***

### BOUNDARIES OF APARTMENTS

Three (3) separate and distinct freehold estates constructed primarily of wood, glass, CMU and asphalt shingles, bounded by and including the decorated or finished surfaces of the exterior of the perimeter walls, by the exterior surfaces of the respective roofs thereof, and inclusive of the floor and ceiling of each of the dwellings in the Project, which dwellings are designated on the Condominium Map as "Unit 64", "Unit 64-A", and "Unit 60", and are sometimes referred to herein collectively as "Units". The term "Unit" as used herein shall have the same meaning as the term "Apartment" in the Condominium Property Act, as the same may be amended from time to time.

(a) Unit 64 (located at 64 Makaweo Avenue) contains one (1) floor, without a basement, in which there are three (3) bedrooms, one (1) bath, a kitchen, a living room, a dining room, a den, and a covered lanai. Unit 64 also has a detached two (2) car garage with a laundry/workshop. Unit 64 contains a net living area of approximately 1,277 square feet and other area of 345 square feet. The detached garage contains approximately 408 square feet.

(b) Unit 60 (located at 60 Makaweo Avenue) contains one (1) floor, without a basement, in which there are two (2) bedrooms, one (1) bath, a kitchen, a living room, a den/study and a one (1) car carport. Unit 60 contains a net living area of approximately 940 square feet and other area of 82 square feet. The carport and laundry area contain approximately 289 square feet.

(c) Unit 64-A (located at 64-A Makaweo Avenue) contains one (1) floor, without a basement, in which there are two (2) bedrooms, one (1) bath, a kitchen, and a living room. Unit 64-A also has a detached one (1) car carport. Unit 64-A contains a net living area of approximately 776 square feet and other are of 63 square feet. The detached carport contains approximately 222 square feet.

Each Unit shall also include all pipes, wires, conduits, and other utility and service lines contained wholly within such Unit and which are utilized exclusively by and serve only such Unit.

**EXHIBIT "A"**

## **PERMITTED ALTERATIONS TO APARTMENTS**

No work shall be done to the Units, the limited common elements appurtenant thereto, or any other part of the Project, by any owner of a Unit or any other person, which could jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the Project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the Project, or directly affect any nonconsenting owner in any unreasonable manner, all as determined by the Board, without in every such case first obtaining the consent of the owner of the other Unit, which consent shall not be unreasonably withheld.

Notwithstanding the foregoing, each Unit owner may, without the consent of the Association or the other Unit owner(s), replace, restore, construct or make additions to his or her Unit, provided such replacement, restoration, construction or additions are allowed by the applicable building codes and zoning ordinances. Prior to making such replacement, restoration, construction, or additions the owner of the Unit must obtain all applicable governmental approvals and permits. If the replacement, restoration, construction or additions alter the description, layout or location of the Unit as set forth in Section A of the Declaration, or as shown in the Condominium Map, the owner of the Unit shall, at his or her cost, prepare and file an amendment to the Declaration and/or Condominium Map reflecting the alterations, additions and/or renovations to his or her Unit, with a copy of the recorded amendment provided to the Association. No replacement, restoration, construction or additions may be done which would affect the structural integrity of the common elements of the Project, any other Unit, or impair the availability of utility services or any type of drainage, access and/or utility easement to any of the other Unit owners.

In addition to the foregoing limitations, no owner shall also be allowed, without the express written consent of all other owners, to construct any addition or alteration which would cause their Unit to exceed their proportionate share of the maximum allowable floor area for the lot. Said proportionate share shall be equal to the maximum floor area multiplied by the percentage of common interest in the condominium project appurtenant to such Unit.

**EXHIBIT "B"**

Michael D. Lau  
Architect, AIA  
2151 Wilder Avenue  
Honolulu, HI 96822

September 8, 2003

TO: Real Estate Commission:  
State of Hawaii

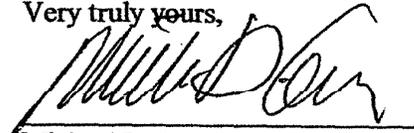
RE: **"Makaweo Avenue Estates"**  
Address/Unit Number: **60, 64 and 64A Makaweo Avenue**  
TMK: **1-7-4- 016: 023**

FROM: Michael Lau

I have inspected the structures of the **"Makaweo Avenue Estates"** Condominium Project. Without making any invasive examination of covered components, my observations during this inspection are:

1. The buildings appear to be in good structural condition.
2. The electrical and plumbing systems appear to be in good working order.

Very truly yours,



Michael D. Lau  
Registered Professional  
Architect No. 8385

EXHIBIT "C"

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 523-4414 • FAX: (808) 527-6743 • INTERNET: [www.cc.honolulu.hi.us](http://www.cc.honolulu.hi.us)

JEREMY HARRIS  
MAYOR



ERIC G. CRISPIN, AIA  
DIRECTOR

BARBARA KIM STANTON  
DEPUTY DIRECTOR

2003/ELOG-3878(LW)  
2003/EU-35

January 22, 2004

Ms. Lynn Nishiki  
1585 Kapiolani Boulevard  
Honolulu, Hawaii 96814

Dear Ms. Nishiki:

**SUBJECT: EXISTING USE PERMIT APPLICATION NO. 2003/EU-35**  
Project: Makaweo Avenue Estates  
Location: 60, 64 & 64A Makaweo Avenue - Wahiawa  
Tax Map Key: 7-4-16: 23  
Received: December 26, 2003

This responds to your application for an Existing Use (EU) permit submitted on December 26, 2003. We have reviewed our records, including our letters of October 29 and November 12, 2003, and determined that an EU permit is not required for the three existing single-family dwellings at the above location.

The 21,780-square-foot lot is zoned R-5 Residential District. In accordance with Section 21-8.30(a) of the Land Use Ordinance (LUO), two single-family dwellings are permitted on the site. Thus, dwelling units "60 and 64 Makaweo Avenue" are permitted by right. In addition, Variance No. 1956/ZBA-93, granted by the City Planning Commission on July 15, 1957, allows a third dwelling unit (64A Makaweo Avenue) on the site.

Therefore, the dwellings were incorrectly identified as "nonconforming dwelling units" in our letter of November 12, 2003. Further, since no limitations or conditions were placed on the third dwelling unit by the variance, all of the dwellings may be altered, repaired, or reconstructed if destroyed.

All work to the dwellings are subject to the current zoning code, including but not limited to, the residential district and general development standards, parking regulations, and driveway requirements.

**EXHIBIT "D"**

Ms. Lynn Nishiki  
Page 2  
January 22, 2004

We apologize for any inconvenience this may have caused you. We are returning your application, including the filing fee (check No. 3534), but have kept one copy of the application materials for our file.

If you have any questions, please contact the staff planner, Lin Wong, at 523-4485 and refer to the above file number.

Sincerely yours,



for

ERIC G. CRISPIN, AIA  
Director of Planning and Permitting

EGC:pl

Encl.

cc: Mr. Uo Rong & Mrs. Ok Hui Kim

doc. 271446

### **COMMON ELEMENTS**

The common elements shall consist of all portions of the Project except the Units, and shall specifically include, but not be limited to:

- (a) The land in fee simple.
- (b) All pipes, wires, conduits, and other utility and service lines which are utilized for or serve more than one Unit.
- (c) That Common Element driveway containing an area of approximately 2,525 square feet, providing access to Units 60 and 64-A from Makaweo Avenue, as designated on said Condominium Map.
- (d) Any and all other apparatus and installations of common use, and all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

**EXHIBIT "E"**

### **LIMITED COMMON ELEMENTS**

Certain parts of the common elements are set aside and reserved for the exclusive use of the Unit or Units and shall constitute limited common elements appurtenant thereto. Each Unit shall have an exclusive easement for the use of the limited common elements appurtenant thereto, except as otherwise provided herein. The cost of maintenance, repair, upkeep, and replacement of each limited common element shall be assessed to the owner of the Unit or Units to which such limited common element is appurtenant. The limited common elements shall be appurtenant to each of the Units as follows:

(a) That certain 11,881 square feet, more or less, of the real property of the Project which includes the real property upon which Unit 64 is situated, as shown on said Condominium Map, shall constitute a limited common element appurtenant to and for the exclusive use of Unit 64.

(b) That certain 3,093 square feet, more or less, of real property of the Project which includes the real property upon which Unit 60 is situated, as shown on said Condominium Map, shall constitute a limited common element appurtenant to and for the exclusive use of Unit 60.

(c) That certain 4,281 square feet, more or less, of the real property of the Project which includes the real property upon which Unit 64-A is situated, as shown on said Condominium Map, shall constitute a limited common element appurtenant to and for the exclusive use of Unit 64-A.

(d) One mailbox shall be appurtenant to and for the exclusive use of each Unit in the Project.

(e) All pipes, wires, conduits, and other utility and service lines not contained within a Unit but used by and servicing one or more Units, but not all the Units, shall be a limited common element appurtenant to and for the exclusive use of the Unit or Units using and serviced by such pipes, wires, conduits, and other utility and service lines.

**EXHIBIT " F "**



Dated: November 26, 1998  
Document No. 98-179671

8. DECLARATION OF CONDOMINIUM PROPERTY REGIME OF MAKAWEO AVENUE ESTATES

Dated: March 11, 2004  
Document No. 3084405

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. 1611, to which reference is hereby made.

9. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF MAKAWEO AVENUE ESTATES

Dated: March 11, 2004  
Document No. 3084406  
to which reference is hereby made

**Page 2 and End of EXHIBIT "G"**

EXHIBIT H

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 64	\$ 13.89 x 12 = \$ 166.68
Unit 60	\$ 13.89 x 12 = \$ 166.68
Unit 64-A	<u>\$ 13.89 x 12 = \$ 166.68</u>
	TOTAL: \$500.04

**Estimate of Maintenance Fee Disbursements:**

Monthly Fee x 12 months = Yearly Total

Utilities and Services

- Air Conditioning
- Electricity
  - common elements only
  - common elements and apartments
- Elevator
- Gas
  - common elements only
  - common elements and apartments
- Refuse Collection
- Telephone
- Water and Sewer

Maintenance, Repairs and Supplies

- Building
- Grounds

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance \$41.67 x 12 = \$500.00

Reserves(\*)

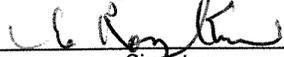
Taxes and Government Assessments

Audit Fees

Other

**TOTAL \$500.00**

I, UO RONG KIM, as agent for/and/or employed by Developer,  
the condominium managing agent/developer for the  
"Makaweo Avenue Estates" condominium project, hereby certify that the  
above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in  
accordance with generally accepted accounting principles.

  
Signature

3/11/04  
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.

MAKAWEO AVENUE ESTATES

Unit No.	Bed/Bath	Net Lvg. Area	Estimated Area of Ltd. Common Elements	Parking Stall	Estimated Monthly Maintenance Fee	Price
60	2/1	940 s.f.	3,093	1	\$13.89	\$310,000
64A	2/1	776 s.f.	4,281	1	\$13.89	\$279,000

This is an owner occupant notice for "Makaweo Avenue Estates" which is located at 64 Makaweo Avenue, Wahiawa, HI 96786, TMK.1-7-4-16-23. These units shall initially be offered for a 30-day period after the first publication of this announcement to only prospective owner occupants on the reservation list, who will use the residential units as their principal residences for a period of not less than 365 consecutive days. There will be a total of two (2) fee simple detached units for residential use. Pursuant to Hawaii Revised Statutes Section 514A-102, the units shall be offered for sale upon the issuance of an effective date of the first public report, which is \_\_\_\_\_ . None of the two (2) units are "accessible and adaptable" as those terms are defined and interpreted in 24 C.F.R. section 100 et. seq. for persons with disabilities. The units will be offered first to tenants occupying the units immediately prior to the conversion who submit the owner-occupant affidavit and earnest money deposit pursuant to Section 514A-105(a), Hawaii Revised Statutes. Any interested person may contact the Project Realtor from 9:00 a.m. to 3:00 p.m. daily for an owner occupant affidavit and be placed on a reservation list to obtain further project information. Reservations are being taken now at the Realtor's office. The reservation list shall be compiled for a period of 30 days in chronological order beginning with the date of the first announcement dated ( \_\_\_\_\_ ). A refundable \$1,000 deposit is required with a reservation.

Primary Properties  
 745 Fort Street, Ste. 608  
 Honolulu, HI 96813  
 PHONE: (808) 550-0818

## Exhibit "J"

SUMMARY OF SALES CONTRACT: The specimen Sales Contract (Deposit, Receipt, Offer and Acceptance) contains, among other things, the following provisions:

1. Risk of Loss and Insurance. Risk of loss passes to Buyer upon closing or possession, whichever occurs sooner.
2. Time is of the Essence/Default. Time is of the essence of the obligations of Buyer under this Agreement. In the event Buyer fails to perform Buyer's obligations under the Sales Contract, Seller may (a) bring an action for damages for breach of contract, or (b) retain the initial deposit and all additional deposits provided by Buyer as liquidated damages, and the Buyer shall be responsible for any costs incurred in accordance with the Sales Contract.
3. Conversion of Existing Building; No Warranties. Buyer is aware, agrees and affirms that the Project consists of a conversion of a existing dwellings constructed prior to 1957 (Unit 64 in 1936, Unit 60 in 1954 and Unit 64-A in 1957). It is expressly understood and agreed by and between Seller and Buyer that SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNIT(S), OR CONSUMER PRODUCTS OR ANYTHING ELSE INSTALLED IN THE UNIT OR IN THE PROJECT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS OF THE UNIT FOR A PARTICULAR PURPOSE.
4. Existing "As Is" Condition. Buyer agrees the Unit is being purchased in its "AS IS" condition, without any warranties or representations, expressed or implied. Buyer acknowledges that Buyer will be given an opportunity to inspect the Unit and by closing on the sale of the Unit, Buyer accepts the Unit in its "AS IS" condition as provided for herein.
5. Mediation And Arbitration. If any dispute or claim in law or equity arises out of this Agreement, and Buyer and Seller are unable to resolve the dispute themselves, Buyer and Seller agree in good faith to attempt to settle such dispute or claim by mediation under the Commercial Mediation rules of the American Arbitration Association. If such mediation is not successful in resolving such dispute or claim, then such dispute or claim shall be decided by a neutral binding arbitration before a single arbitrator in accordance with the Commercial Arbitration rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator may award reasonable attorney's fees and costs to the prevailing party.

EXHIBIT "J"

**Exhibit "K"**

**SUMMARY OF ESCROW AGREEMENT:** An escrow agreement (hereinafter called the "Escrow Agreement") detailing the manner in which purchasers' funds are to be handled, has been executed and a copy thereof has been filed with the Commission. The Escrow Agent is FIRST HAWAII TITLE, INC. (hereinafter referred to as "Escrow"). The escrow agreement, among other things, contains the following provisions:

1. **Payment of Funds to Escrow.** As and when Purchaser enters into a Sales Contract for the conveyance of an apartment in the Project, it shall require the payment due thereunder to be promptly made to Escrow, and shall deliver an executed copy thereof to Escrow together with the name(s) and address(es) of the purchaser(s). Developer shall specify in writing to Escrow whether the purchaser's funds were received prior to or subsequent to the issuance by the Real Estate Commission of a Contingent Final Public Report or Final Public Report (as those terms are used in the Condominium Act). Developer shall also promptly provide a pay over to Escrow all monies received by Developer from or on behalf of the purchasers, including those received pursuant to any Sales Contract, and all funds representing purchasers Permanent Loans as defined below, and all other monies received from purchasers of apartments in the Project, and Escrow shall promptly receipt therefor.
2. **Receipt of Funds by Escrow.** Escrow shall receive, deposit and hold in separate escrow accounts and disburse as herein set forth: (a) all payments received by it under Sales Contracts, (b) such sums received by it hereunder from or for the account of Developer, and (c) all sums received by it from any other source with respect to the Project. Escrow shall not at any time commingle or permit the commingling of any purchaser's funds with funds belonging to or held for the benefit of Developer.
3. **Disbursement of Purchaser's Funds.** Escrow shall make no disbursements of purchaser's funds or proceeds on the sale of such apartments (including any payments made on loan commitments from Permanent Lenders), except by way of refunds thereof as provided in the Escrow Agreement, until: (a) Escrow receives a copy of a "Receipt for Public Report(s) and Notice of Right to Cancel", in the form specified by Section 514A-62 of the Condominium Act for the Final and any Supplementary Public Reports, executed by the purchaser; (b) Escrow has received a certification from Developer, acceptable to Escrow, stating that the Sales Contract has become effective and requirements of Section 514A-63 has been met as those quoted phrases are used in Section 514A-65 of the Condominium Act; and (c) until the purchaser's apartment deed is filed in the Land Court or the Bureau of Conveyances of the State of Hawaii, as the case may be.
4. **Refunds to Purchaser; Return of Documents.** A purchaser shall be entitled to a return of his or her funds, and Escrow shall pay such funds to such purchaser if one of the following has occurred:
  - a) Escrow receives a written request from Developer and purchaser to return to the purchaser the funds of the purchaser then being held hereunder by Escrow; or
  - b) Developer and purchaser notify Escrow in writing of Developer's exercise of any option to rescind the Sales Contract pursuant to any right of rescission stated therein or otherwise available to Developer; or

**EXHIBIT "K"**

c) Developer and purchaser notify Escrow that the conditions provided for a refund under Sections 514A-62 or 514A-63 of the Condominium Act have been met.

Upon occurrence of any of the forgoing entitling a purchaser to a refund of his or her funds, neither purchaser nor Developer shall be obligated under the Sales Contract, and Escrow shall return said funds to purchaser, and return to Developer such purchaser's Sales Contract. Other documents delivered to Escrow relating to the sale of the apartment identified in such Sales Contract will be returned to the person from whom or entity from which they were received.

All escrow proceeds to be returned under this paragraph 8 shall not include any interest that has been generated by such purchaser's funds, except as otherwise provided in any rider to this Agreement or Sales Contract.

5. Purchaser's Default. If the purchaser fails to make any payment on or before the due date thereof or if the purchaser does or fails to do any other act which would constitute an event of default under the Sales Contract, Developer shall give to such purchaser written notice of such default with a copy to Escrow. If a purchaser fails to make any payment under the Sales Contract, Developer shall give to such purchaser written notice of such default with a copy to Escrow. If a purchaser fails to make any payment under the Sales Contract within the time specified in a notice by the Developer or fails to provide to Escrow any document required for closing within the time specified in a notice by Developer or Escrow, Escrow shall so advise the Developer with reasonable promptness. If purchaser has failed to cure the default after the delivery of notice by Developer and such default continues after the expiration of any grace period, Developer shall so advise Escrow. If Developer shall thereafter certify in writing to Escrow (i) that Developer has elected to terminate the Sales Contract and has notified the purchaser, or (ii) that purchaser is otherwise in default and provides Escrow with a copy of the default notice, then, and in either event, Escrow shall thereafter treat all funds of the purchaser paid under such Sales Contract, or any portion thereof as may be allowed by said Sales Contract, less the cancellation fee and expenses of Escrow, as funds of Developer and not of the purchaser. Thereafter, such funds shall be held free of the escrow established by this Agreement and shall be held by Escrow for the account of Developer. Upon written request by Developer, Escrow shall pay such funds to Developer or order and shall return to Developer the Sales Contract of such purchaser and any other documents theretofore delivered to Escrow in connection with the purchase of the apartment specified in such Sales Contract shall be returned to the person from whom or entity from which such documents were received.