

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer HAIKU ESTATE, LLC
Address P. O. Box 6368, Kaneohe, Hawaii 96744

Project Name (\*): HAIKU ESTATES
Address: 46-312 Haiku Road, Kaneohe, Hawaii 96744

Registration No. 5481
Effective date: November 1, 2004
Expiration date: December 1, 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:

- X 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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the:
And [ ] Supersedes all prior public reports

(\* ) 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       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 ABOUT LAND AREAS**

This is a **CONDOMINIUM PROJECT**, not a subdivision. It does not involve the sale of individual subdivided lots. The land area immediately underlying and surrounding each unit is designated a **LIMITED COMMON ELEMENT** and not a legally subdivided lot. The drawings on the Condominium Map indicating the boundaries and disclosing the approximate 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. This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency. **THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.**

## TABLE OF CONTENTS

|  | Page |
|--|------|
| Preparation of this Report   | 1    |
| Expiration Date of Reports   | 1    |
| Type of Report   | 1    |
| Disclosure Abstract  | 2    |
| Summary of Changes from Earlier Public Reports   | 2    |
| Table of Contents  | 3    |
| General Information on Condominiums  | 4    |
| Operation of the Condominium Project   | 4    |
| <br>   |      |
| I. PERSONS CONNECTED WITH THE PROJECT  | 5    |
| Developer                      Attorney for Developer                      General Contractor  |      |
| Real Estate Broker              Escrow Company                      Condominium Managing Agent |      |
| <br>   |      |
| II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS   |      |
| A. Declaration   | 6    |
| B. Condominium Map (File Plan)   | 6    |
| C. Bylaws  | 6    |
| D. House Rules   | 7    |
| E. Changes to Condominium Documents  | 7    |
| <br>   |      |
| III. THE CONDOMINIUM PROJECT   |      |
| A. Interest to be Conveyed to Buyer  | 8    |
| B. Underlying Land   | 9    |
| C. Buildings and Other Improvements  | 10   |
| D. Common Elements, Limited Common Elements, Common Interest                                   | 13   |
| E. Encumbrances Against Title  | 14   |
| F. Construction Warranties   | 15   |
| G. Status of Construction  | 16   |
| H. Project Phases  | 16   |
| <br>   |      |
| IV. CONDOMINIUM MANAGEMENT   |      |
| A. Management of the Common Elements   | 17   |
| B. Estimate of Initial Maintenance Fees  | 17   |
| C. Utility Charges for Apartments  | 17   |
| <br>   |      |
| V. MISCELLANEOUS   |      |
| A. Sales Documents Filed with the Real Estate Commission                                       | 18   |
| B. Buyer's Right to Cancel Sales Contract  | 18   |
| C. Additional Information Not Covered Above  | 20   |
| D. Signature of Developer  | 21   |
| <br>   |      |
| EXHIBIT A: DESCRIPTION OF APARTMENTS   |      |
| EXHIBIT B: BOUNDARIES OF APARTMENTS  |      |
| EXHIBIT C: PERMITTED ALTERATIONS TO APARTMENTS   |      |
| EXHIBIT D: COMMON ELEMENTS   |      |
| EXHIBIT E: LIMITED COMMON ELEMENTS   |      |
| EXHIBIT F: ENCUMBRANCES AGAINST TITLE  |      |
| EXHIBIT G: DEVELOPER'S RESERVED ALTERATION AND WITHDRAWAL RIGHTS                               |      |
| EXHIBIT H: ESTIMATE OF INITIAL MAINTENANCE FEES AND ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS  |      |
| EXHIBIT I: SUMMARY OF SALES CONTRACT AND ESCROW AGREEMENT                                      |      |
| EXHIBIT J: INDIVIDUAL WASTEWATER SYSTEM INFORMATION  |      |

## **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: HAIKU ESTATE, LLC Phone: (808) 226-7788
Name\* (Business)
P. O. Box 6368
Business Address
Kaneohe, Hawaii 96744

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

The sole member-managers of HAIKU ESTATE, LLC, are Rodger Benz and Maria Y. K. Benz

Real Estate Broker\*: Island Heritage Realty, Inc. Phone: (808) 941-7773
Name (Business)
1400 Kapiolani Blvd., Ste. A-1
Business Address
Honolulu, Hawaii 96814

Escrow: Old Republic Title & Escrow of Hawaii, Ltd. Phone: (808) 266-0150
Name (Business)
116 Hekili Street, Suite 7
Business Address
Kailua, Hawaii 96734

General Contractor\*: Benz Construction, Incorporated Phone: (808) 226-7788
Name (Business)
P. O. Box 6368
Business Address
Kaneohe, Hawaii 96744

Condominium Managing Agent\*: N/A (Project will be self-managed by AOAO) Phone: N/A
Name (Business)
N/A
Business Address
N/A

Attorney for Developer: Brooks Tom Porter & Quitiquit, LLP Phone: (808) 526-3011
Name (Business)
841 Bishop Street, Suite 2125
Business Address
Honolulu, Hawaii 96813
Attn: Edward R. Brooks, Esq., and Jeffrey D. Watts, Esq.

\* 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. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 3148296

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:

- Proposed  
 Recorded - Bureau of Conveyances Condo Map No. \_\_\_\_\_  
 Filed - Land Court Condo Map No. 1659

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:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 3148297

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

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

The House Rules for this condominium are:

Proposed             Adopted             Developer does not plan to adopt House Rules

**E. Changes to Condominium Documents**

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

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

|                                | <u>Minimum<br/>Set by Law</u> | <u>This Condominium</u> |
|--------------------------------|-------------------------------|-------------------------|
| Declaration<br>(and Condo Map) | 75%*                          | 75%                     |
| Bylaws                         | 65%                           | 65%                     |
| House Rules                    | N/A                           | N/A                     |

\* The percentage 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:

At any time prior to the first recording of a conveyance or transfer (other than for security) of an Apartment and its appurtenances to a party not a signatory to the Declaration, the Developer may amend the Declaration (including all exhibits), the Bylaws and the Condominium Map in any manner, without the consent or joinder of any Apartment purchaser or any other party. Notwithstanding the lease, sale or conveyance of any of the Apartments, the Developer may amend the Declaration and the Condominium Map to file the "as-built" verified statement required by Section 514A-12 of the Act. For so long as the Developer retains any interest in an Apartment in the Project, the Developer shall have the right (but not the obligation) to amend the Declaration and the Bylaws (and the Condominium Map, if appropriate) without the consent or joinder of any Apartment Owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Project or any of the Apartments, (iv) any institutional lender lending funds on the security of the Project or any of the Apartments, or (v) any other governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; provided, however, that no amendment which would change the common interest appurtenant to an Apartment or substantially change the design, location or size of an Apartment shall be made without the consent of all persons having an interest in such Apartment. Prior to the election of the first Board of Directors, the Developer may amend the Rules and Regulations in any manner without the joinder, consent or approval of any other party. The Developer has also reserved various other rights, as more particularly disclosed on page 20 of this public report and in Exhibit "G".

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 Subleasehold: 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 Subleaseholds:

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 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: 46-312 Haiku Road, Kaneohe, HI 96744

Tax Map Key (TMK): (1) 4-6-12-35

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

Land Area: approx. 50,794 [X] square feet  acre(s) Zoning: R 7.5

Fee Owner: HAIKU ESTATE, LLC  
 Name  
P. O. Box 6368  
 Address  
Kaneohe, Hawaii 96744

Lessor: n/a  
 Name  
 Address

**C. Buildings and Other Improvements:**

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

2. Number of Buildings: 5 Floors Per Building 2

Exhibit "A" contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other stucco, glass and allied building materials

4. Uses Permitted by Zoning:

|   | No. of<br>Apts. <u>      </u> | <u>Use Permitted By Zoning</u>          |                             |
|---|-------------------------------|---|-----------------------------|
| <input checked="" type="checkbox"/> Residential | <u>5</u>                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Commercial             | <u>      </u>                 | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Mix Res/Comm           | <u>      </u>                 | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Hotel                  | <u>      </u>                 | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Timeshare              | <u>      </u>                 | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Ohana                  | <u>      </u>                 | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Industrial             | <u>      </u>                 | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Agricultural           | <u>      </u>                 | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Recreational           | <u>      </u>                 | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| <input type="checkbox"/> Other                  | <u>      </u>                 | <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

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: Dogs, cats and other generally recognized household pets permitted in reasonable numbers, with prior approval of the Board. See the Bylaws.

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

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

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0

Stairways: 1 per Unit

Trash Chutes: 0

| UNIT | Bedrooms & Bathrooms     | Net Living Area (sf)* | Net Garage, Storage & Covered Entry Area (sf)* | Net Covered Lanai Area (sf)* | Net Combined Area (sf)* |
|------|--------------------------|-----------------------|--|------------------------------|-------------------------|
| A    | 4 Bedrooms, 4½ Bathrooms | 3,068.50              | 569.90   | 166.27                       | 3,804.67                |
| B    | 4 Bedrooms, 3½ Bathrooms | 3,106.20              | 596.70   | 87.50                        | 3,790.40                |
| C    | 4 Bedrooms, 3½ Bathrooms | 3,106.20              | 596.70   | 87.50                        | 3,790.40                |
| D    | 4 Bedrooms, 4½ Bathrooms | 3,068.50              | 569.90   | 166.27                       | 3,804.67                |
| E    | 4 Bedrooms, 3½ Bathrooms | 3,106.20              | 596.70   | 87.50                        | 3,790.40                |

Total Apartments: 5 SEE EXHIBIT "A"

**\*Net Living Area is the floor area of the unit measured from the interior surface of the unit's perimeter walls. The Net Garage, Storage, Covered Entry and Covered Lanai areas are the floor areas of the respective spaces measured from the interior surfaces of perimeter walls and doors (for the garages and storage areas) and from interior surfaces of perimeter walls to a railing (for lanais with railings) or to the outer edge of flooring material (for lanais and entry areas that do not have railings).**

**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 "B"

Permitted Alterations to Apartments:

SEE EXHIBIT "C"

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. Developer has elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 10

|                      | <u>Regular</u> |             | <u>Compact</u> |             | <u>Handicap</u> |             | <u>TOTAL</u> |
|----------------------|----------------|-------------|----------------|-------------|-----------------|-------------|--------------|
|                      | <u>covered</u> | <u>open</u> | <u>covered</u> | <u>open</u> | <u>covered</u>  | <u>open</u> |              |
| Assigned*            | <u>10</u>      | _____       | _____          | _____       | _____           | _____       | <u>10</u>    |
| Guest                | _____          | _____       | _____          | _____       | _____           | _____       | _____        |
| Unassigned           | _____          | _____       | _____          | _____       | _____           | _____       | _____        |
| Extra for Purchase   | _____          | _____       | _____          | _____       | _____           | _____       | _____        |
| Other:               | _____          | _____       | _____          | _____       | _____           | _____       | _____        |
| Total Covered & Open | <u>10</u>      | _____       | <u>0</u>       | _____       | <u>0</u>        | _____       | <u>10</u>    |

\*Each unit will have the exclusive use of 2 parking stalls located in the unit's attached garage.

Commercial parking garage permitted in condominium project.

Exhibit "A" 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: The Project includes a private park area of approximately 615 square feet, as shown on the Condominium Map. The Project also includes a private driveway serving all units.

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>      | _____                 | _____          |
| Structures | <u>  X  </u>      | _____                 | _____          |
| Lot        | <u>  X  </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 "D".

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 "E".

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 been assigned an undivided common interest of twenty percent (20%). The method used in assigning common interests was to assign to each Unit an equal share.

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

Exhibit "F" describes the encumbrances against the title contained in the title report dated July 2, 2004 and issued by Old Republic Title and Escrow of Hawaii, Ltd.

Blanket Liens:

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

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

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

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

| <u>Type of Lien</u> | <u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>   |
|---------------------|---|
| Mortgage            | If the Developer defaults before the Unit is conveyed to Buyer, the Mortgagee will have the right to decide whether to sell the Unit to the Buyer under the Sales Contract or to terminate the Sales Contract. If the Mortgagee terminates the Sales Contract, Buyer's deposit will be refunded, less any escrow cancellation fee, and Buyer shall have no further interest under the Sales Contract. |

**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:**

The construction contract requires the general contractor to provide a one-year warranty, commencing upon the date of "Substantial Completion", or such other date as the architect specifies in the Certificate of Substantial Completion the architect delivers to the contractor and the Developer for the work that is under warranty. The contractor warrants that (a) the materials and equipment furnished for construction of the project will be of good quality and new, unless the construction contract requires or permits that the materials and equipment be otherwise; and (b) the construction and services required by the construction contract (including all labor, materials and equipment to be provided by the general contractor) will be free from defects, except for defects inherent in the quality of the construction and services required or permitted by the construction contract. Without incurring any legal liability, the developer will agree to cooperate with the buyer to try to have the general contractor perform all of the general contractor's warranties. (See section F.7 of the Sales Contract.)

2. **Appliances:**

The developer intends to transfer to the buyer any manufacturer's or dealer's warranties that are transferable and cover appliances sold with the apartments.

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

Construction of Unit A commenced in February, 2004, and was completed in October, 2004. Construction of Unit B commenced in September, 2004, and the Developer estimates that construction of Unit B will be completed in January, 2005. The Developer estimates that construction of Unit C will commence in January, 2005, and will be completed in May, 2005. The Developer estimates that construction of Unit D will commence in January, 2005, and will be completed in May, 2005. The Developer estimates that construction of Unit E will commence in January, 2005, and will be completed in June, 2005.

**H. Project Phases:**

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

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

SEE PAGE 20 BELOW.  
SEE ALSO EXHIBIT "G" ATTACHED.

**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
- self-managed by the Association of Apartment Owners
- the Developer or the Developer's affiliate
- 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 (cold)\*       Sewer       Television Cable
- Other: \_\_\_\_\_

\*Each unit will be separately metered and billed for its own water consumption. However, water provided to one or more units will also be used periodically to maintain the common element private park located between units C and D. Accordingly, each unit will be charged a monthly assessment to compensate the owner of the unit(s) whose water is used to maintain the private park.

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 "I" contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated December 15, 2003

Exhibit "I" 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 given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, 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 part of Registration No. 5481 filed with the Real Estate Commission on August 11, 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:**

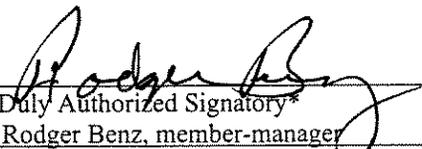
1. Development in Increments. The five (5) units in the Project will be constructed in increments. Immediately following issuance of this Preliminary Public Report on the entire Project, the Developer will issue a Final Public Report covering units A and B. As the Developer meets the requirements for a final public report on the remaining units, the Developer will issue one or more subsequent Final Public Reports identifying the units for which final public report requirements have been met. Only those units covered by a Final Public Report will be sold to purchasers under binding sales contracts. However, the Developer may continue to market all of the units described in this Preliminary Public Report, and purchasers will be able to enter into nonbinding contracts for the units that have not yet been covered in a Final Public Report.

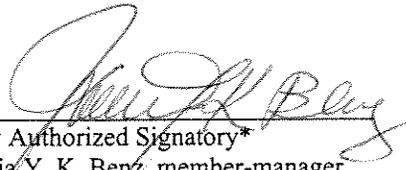
2. Developer's Reserved Alteration and Withdrawal Rights. In Paragraph 23 of the Declaration, the Developer has reserved the right to alter unbuilt and unsold units or to withdraw such units, together with certain portions of the common elements and limited common elements, from the Project. For the Buyer's convenience, Exhibit "G" attached to this Public Report reproduces Paragraph 23 of the Declaration in its entirety. **THE BUYER IS ENCOURAGED TO READ EXHIBIT "G" VERY CAREFULLY, AS THE EXERCISE OF THE DEVELOPER'S RIGHTS RESERVED IN PARAGRAPH 23 OF THE DECLARATION MAY HAVE A MATERIAL EFFECT ON THE BUYER'S INTEREST IN THE PROJECT.**

3. Individual Waste Water Systems. The Project will not be connected to a public sewer system. Instead, each Unit will be sold with its own individual waste water system, as permitted by and in accordance with applicable laws, rules, codes and ordinances. Each individual wastewater system will include a septic tank and absorption bed and must be operated and maintained, at the sole cost and expense of the buyer, in accordance with operation and maintenance instructions prepared by the Developer's individual wastewater system engineer (the "Operation and Maintenance Instructions"). Operation and maintenance requirements include (but are not limited to) annual inspection of the Unit's individual wastewater system and pumping of the septic tank if and when necessary, according to criteria set forth in the Operation and Maintenance Instructions. The Operation and Maintenance Instructions also disclose that odors may be present in connection with the individual wastewater system for the first six to eight weeks of system operation. Exhibit "J" attached to this Public Report includes an "approval of use" letter from the State of Hawaii Department of Health to the Developer's individual wastewater system engineer, and a copy of the engineer's Operation and Maintenance Instructions. **EACH BUYER SHALL BE REQUIRED BY LAW TO OPERATE AND MAINTAIN HIS OR HER UNIT'S INDIVIDUAL WASTEWATER MAINTENANCE SYSTEM IN ACCORDANCE WITH THE OPERATION AND MAINTENANCE INSTRUCTIONS AND ALL APPLICABLE LAWS, ORDINANCES, CODES, RULES AND REGULATIONS, INCLUDING (BUT NOT LIMITED TO) HAWAII ADMINISTRATIVE RULES, TITLE 11, CHAPTER 62, SUBCHAPTER 3, PERTAINING TO INDIVIDUAL WASTEWATER SYSTEMS.**

- 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.

HAIKU ESTATE, LLC, a Domestic Limited Liability Company  
 Printed Name of Developer

By:  8/10/04  
 Duly Authorized Signatory\* Date  
 Rodger Benz, member-manager  
 Printed Name & Title of Person Signing Above

By:  8/10/04  
 Duly Authorized Signatory\* Date  
 Maria Y. K. Benz, member-manager  
 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.*

## DESCRIPTION OF APARTMENTS

The Project contains five (5) Units identified in the Declaration and on the Condominium Map as Unit A, Unit B, Unit C, Unit D and Unit E. The Units are more particularly described as follows:

### UNIT A:

Unit A is a free-standing building with two stories and includes four (4) bedrooms, four and one-half (4½) bathrooms, a kitchen, a dining room, a living room, a study, a family room, a laundry room, an entry foyer, an attached two-car garage, a covered exterior entry and a covered lanai (ground floor). The net living area of Unit A (excluding the garage, the covered entry and the covered lanai) is approximately 1,336.3 square feet on the ground floor and approximately 1,732.2 square feet on the second floor, for a total net living area of approximately 3,068.5 square feet. The net floor area of the garage (including storage area) is approximately 496.4 square feet, the net floor area of the covered entry is approximately 73.5 square feet and the net floor area of the covered lanai is approximately 166.27 square feet. The total combined net area of Unit A, including net living area and the net floor areas of the garage, covered entry and covered lanai, is approximately 3,804.67 square feet.

### UNIT B:

Unit B is a free-standing building with two stories and includes four (4) bedrooms, three and one-half (3½) bathrooms, a kitchen, a pantry, a living room, a family room, a laundry room, an entry foyer, an attached two-car garage, a covered exterior entry and a covered lanai (second floor). The net living area of Unit B (excluding the garage, the covered entry and the covered lanai) is approximately 1,709.7 square feet on the ground floor and approximately 1,396.5 square feet on the second floor, for a total net living area of approximately 3,106.2 square feet. The net floor area of the garage (including storage area) is approximately 548.7 square feet, the net floor area of the covered entry is approximately 48.0 square feet and the net floor area of the covered lanai is approximately 87.5 square feet. The total combined net area of Unit B, including net living area and the net floor areas of the garage, covered entry and covered lanai, is approximately 3,790.40 square feet.

### UNIT C:

Unit C is a free-standing building with two stories and includes four (4) bedrooms, three and one-half (3½) bathrooms, a kitchen, a pantry, a living room, a family room, a laundry room, an entry foyer, an attached two-car garage, a covered exterior entry and a covered lanai (second floor). The net living area of Unit C (excluding the garage, the covered entry and the covered lanai) is approximately 1,709.7 square feet on the ground floor and approximately 1,396.5 square feet on the second floor, for a total net living area of approximately 3,106.2 square feet. The net floor area of the garage (including storage area) is approximately 548.7 square feet, the net floor area of the covered entry is approximately 48.0 square feet and the net floor area of the covered lanai is approximately 87.5 square feet. The total combined net area of Unit C, including net

living area and the net floor areas of the garage, covered entry and covered lanai, is approximately 3,790.40 square feet

**UNIT D:**

Unit D is a free-standing building with two stories and includes four (4) bedrooms, four and one-half (4½) bathrooms, a kitchen, a dining room, a living room, a study, a family room, a laundry room, an entry foyer, an attached two-car garage, a covered exterior entry and a covered lanai (ground floor). The net living area of Unit D (excluding the garage, the covered entry and the covered lanai) is approximately 1,336.3 square feet on the ground floor and approximately 1,732.2 square feet on the second floor, for a total net living area of approximately 3,068.5 square feet. The net floor area of the garage (including storage area) is approximately 496.4 square feet, the net floor area of the covered entry is approximately 73.5 square feet and the net floor area of the covered lanai is approximately 166.27 square feet. The total combined net area of Unit D, including net living area and the net floor areas of the garage, covered entry and covered lanai, is approximately 3,804.67 square feet.

**UNIT E:**

Unit E is a free-standing building with two stories and includes four (4) bedrooms, three and one-half (3½) bathrooms, a kitchen, a pantry, a living room, a family room, a laundry room, an entry foyer, an attached two-car garage, a covered exterior entry and a covered lanai (second floor). The net living area of Unit E (excluding the garage, the covered entry and the covered lanai) is approximately 1,709.7 square feet on the ground floor and approximately 1,396.5 square feet on the second floor, for a total net living area of approximately 3,106.2 square feet. The net floor area of the garage (including storage area) is approximately 548.7 square feet, the net floor area of the covered entry is approximately 48.0 square feet and the net floor area of the covered lanai is approximately 87.5 square feet. The total combined net area of Unit E, including net living area and the net floor areas of the garage, covered entry and covered lanai, is approximately 3,790.40 square feet.

## **BOUNDARIES OF APARTMENTS**

Except as otherwise provided in the Declaration, each Unit shall be deemed to consist of the entire Building in which the Unit is located, including:

(a) the outside surfaces of the Building (including the roof), the bottom surfaces of the footing of the Building, the entire foundation and/or concrete slab (if any) underlying the Building, all exterior stairways, eaves, awnings, rain gutters and other physical components of the Building, including covered lanais and entryways;

(b) all stairways and crawl spaces, all perimeter and interior walls and partitions, both load-bearing and non-load-bearing;

(c) all doors and door frames, windows and window frames comprising part of the Building;

(d) the air space within the Building's perimeter walls, floor, and ceilings, including the air space between the ceiling and roof;

(e) all ducts, pipes, wires and conduits within the Building that serve only that Building; and

(f) all fixtures installed within the Building.

The Units shall be deemed not to include:

(a) any pipes, wires, ducts, conduits or other utility or service lines running through the Unit that are utilized by or serve more than one Unit;

(b) the paved driveway adjacent to each Unit's garage (said driveways being limited common elements as hereinafter provided); and

(c) the uncovered ground floor lanais appurtenant to Units B, C and E (said uncovered lanais being limited common elements as hereinafter provided).

Should the descriptions and divisions set forth in the Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map, however, is intended to show only the layout, location, Apartment numbers and dimensions of the Apartments and elevations of the buildings and is not intended and shall not be deemed to contain or make any other representation or warranty.

The approximate areas of the Units are set forth in Exhibit "A" of this Public Report and in the Declaration, and are based on measurements taken from the interior surface of all perimeter walls (or railings, in the case of second floor lanais, and the outer edge of affixed floor surfaces, in the case of covered ground floor lanais without railings and covered entryways),

### **EXHIBIT "B"**

#### **Page 1 of 2**

except that no reduction is made to account for interior walls, ducts, vents, shafts, and the like located within the perimeter walls. The areas set forth in Exhibit "A" and in the Declaration are not exact but are approximations based on the floor plans of each of the Units.

## PERMITTED ALTERATIONS

### Alterations and Additions to Units and Limited Common Elements.

Section 8.3 of Article VIII of the Bylaws provides that each Unit Owner shall have the right, upon obtaining the prior written consent of the Board (which consent shall not be unreasonably withheld or delayed) and the holders of all mortgages affecting such Owner's Unit, to improve, renovate, remodel, make additions to, enlarge, remove, replace or restore the Unit or portions thereof (collectively, the foregoing are referred to as "changes"), subject to the following conditions:

(a) All building plans for any such changes shall be prepared by a licensed architect or professional engineer and shall conform with County building and zoning laws and other applicable City and County ordinances.

(b) No change to a Unit will be made outside the boundaries of the limited common element land area appurtenant to and surrounding the Unit as shown on the Condominium Map; no change will affect any common element or limited common element other than limited common elements appurtenant to such Unit, unless the Owner first obtains the written consent of the Board of Directors; no change will reduce the distance between the Buildings to less than what it was originally as shown on the Condominium Map unless the Owners of all Units affected consent; and no change to a Unit will be made if the effect of such change would be to exceed the Unit's proportionate share of the allowable floor area or lot area coverage for the Land, as defined by the zoning ordinance of the City and County of Honolulu in effect when the change is to be made. The proportionate share of allowable floor area or lot area coverage for each Unit shall be the same as the Unit's undivided interest in the common elements.

(c) All such changes shall be at the expense of the Unit Owner making the change and shall be expeditiously made and in a manner that will not unreasonably interfere with the other Unit Owners' use of their Units or appurtenant limited common elements.

(d) During the entire course of construction, the Unit Owner making such change will cause to be maintained at such Owner's expense builder's all-risk insurance in an amount not less than 100% of the estimated cost of construction. The Association, at its request, and any Unit mortgagee who so requires shall be named as additional insureds and, upon the request of the Association, evidence of such insurance shall be deposited with the Association or its managing agent, if any.

(e) Prior to commencement of the construction of a change, and as a condition thereto, the Unit Owner making such change shall give reasonable assurance to the Association of the Owner's financial ability to complete and to pay for the change.

(f) The Owner of the changed Unit shall have the right to utilize, relocate and realign existing and/or to develop additional central and appurtenant installations for services to the Unit affected by such change for electricity, sewer and other utilities and services and, when applicable, to add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on

the common elements as necessary or desirable in connection therewith; provided that the same shall not cause any interruption in the service of such utilities to any other part of the Project without the prior consent of the Owners thereby affected, which consent shall not be unreasonably withheld.

(g) Promptly upon completion of any of the foregoing changes, the Owner of the changed Unit, at such Owner's sole cost and expense and without the consent or joinder of any other person except the holders of all mortgages affecting the Unit, shall duly record an amendment to the Declaration and the Condominium Map reflecting the changes to such Owner's Unit, together with a certificate made by a registered architect or professional engineer certifying that the sheet or sheets amending the Condominium Map and filed in the Land Court concurrently with recordation of the Declaration amendment fully and accurately depict the layout, location, Unit number and dimensions of the changed Unit as approved by the City and County officer having jurisdiction over the issuance of permits for the construction of buildings and as built. All existing Unit Owners and all future Unit Owners and their mortgagees, by accepting an interest in a Unit, shall be deemed to have given each Unit Owner a Power of Attorney to execute an amendment to the Declaration and the Condominium Map solely for the purpose of describing the changes to such Owner's Unit so that each Unit Owner shall hereafter have a Power of Attorney from all the other Unit Owners to execute such amendment to the Declaration and the Condominium Map. This Power of Attorney shall be deemed coupled with each Owner's interest in his or her Unit (including the Unit's appurtenant common interest) and shall be irrevocable.

#### **Alterations and Additions to Common Elements.**

Section 8.4 of Article VIII of the Bylaws provides, in part, as follows:

(a) Except as otherwise provided in the Bylaws or in the Declaration, additions, alterations, repairs or improvements to the common elements of the Project may be made only by or at the direction of the Board of Directors.

(b) Except as otherwise provided in the Bylaws or in the Declaration, no Owner may, without the prior written approval of the Board, (i) make any alteration, addition, repair or improvement to his or her Unit which may affect the common elements, or (ii) make any alteration, addition, repair or improvement to any of the common elements (except the limited common elements located within the limited common element yard area appurtenant to such Owner's Unit), including common elements within, encompassing or adjacent to his Unit.

#### **Exemptions for Persons with Disabilities.**

Section 8.5 of Article VIII of the Bylaws provides that, notwithstanding anything to the contrary contained in the Bylaws, the Declaration or the Rules and Regulations (if any), Owners with disabilities shall be permitted to make reasonable modifications to their Units and/or common elements, at their expense (including the cost of obtaining any bonds required by the Declaration, the Bylaws or the Act), if such modifications are necessary to enable them to use and enjoy their Units and/or the common elements, as the case may be, provided that any Owner with a disability desiring to make such modifications shall make such request, in writing, to the

Board of Directors. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modifications. The Board of Directors shall not unreasonably withhold or delay their consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the Board's receipt thereof, or within forty-five (45) days of the Board's receipt of additional information reasonably required in order to consider such request, whichever shall last occur. Nothing contained in Section 8.5 of the Bylaws, however, shall exempt an Owner from making all amendments to the Bylaws, the Declaration or the Condominium Map necessitated by any changes permitted under that Section.

Article VIII of the Bylaws contains additional information regarding alterations to the Units, the common elements and the limited common elements.

## **COMMON ELEMENTS**

The common elements consist of all portions of the Project other than the Units, including specifically, but not limited to:

- (a) The Project's land (the "Land"), in fee simple;
- (b) The limited common elements described in paragraph 5 of the Declaration and in Exhibit "E" attached to this Public Report;
- (c) All pipes, wires, conduits, or other utility or service lines located outside of the Units;
- (d) All pipes, wires, conduits or other utility or service lines running through a Unit that serve more than one Unit;
- (e) All drainage swales, ditches or culverts and retaining walls located anywhere at the Project;
- (f) The driveway providing access to the Units and their limited common element areas from a public road and the open area located between Units C and D and designated on the Condominium Map as "Private Park";
- (g) All landscaping, fences, gates, mailboxes and other parts of the Project that are not part of any of the Units.

## LIMITED COMMON ELEMENTS

The limited common elements set aside and reserved for the exclusive use of the Apartments to which they are assigned are as follows:

(a) **Unit A.** The limited common elements appurtenant to and for the exclusive use of Unit A are as follows:

(i) The entire land area surrounding and underlying Unit A and designated on the Condominium Map as “Limited Common Element A”, including a yard area, a concrete driveway and an entry walkway, and containing an area (including the portion underlying Unit A) of approximately 7,214 square feet; subject, however, to any easements and/or setbacks as shown on the Condominium Map or as now or hereafter designated on any map(s) filed in the Land Court and covering all or any portion of the Project’s Land, including Limited Common Element A.

(ii) The mail box, if any, wherever located and for the exclusive use of Unit A.

(b) **Unit B.** The limited common elements appurtenant to and for the exclusive use of Unit B are as follows:

(i) The entire land area surrounding and underlying Unit B and designated on the Condominium Map as “Limited Common Element B”, including a yard area, a concrete driveway and an uncovered lanai, and containing an area (including the portion underlying Unit B) of approximately 7,122 square feet; subject, however, to any easements and/or setbacks as shown on the Condominium Map or as now or hereafter designated on any map(s) filed in the Land Court and covering all or any portion of the Project’s Land, including Limited Common Element B.

(ii) The mail box, if any, wherever located and for the exclusive use of Unit B.

(c) **Unit C.** The limited common elements appurtenant to and for the exclusive use of Unit C are as follows:

(i) The entire land area surrounding and underlying Unit C and designated on the Condominium Map as “Limited Common Element C”, including a yard area, a concrete driveway and an uncovered lanai, and containing an area (including the portion underlying Unit C) of approximately 6,438 square feet; subject, however, to any easements and/or setbacks as shown on the Condominium Map or as now or hereafter designated on any map(s) filed in the Land Court and covering all or any portion of the Project’s Land, including Limited Common Element C.

(ii) The mail box, if any, wherever located and for the exclusive use of Unit C.

(d) **Unit D.** The limited common elements appurtenant to and for the exclusive use of Unit D are as follows:

(i) The entire land area surrounding and underlying Unit D and designated on the Condominium Map as “Limited Common Element D”, including a yard area, a concrete driveway and an entry walkway, and containing an area (including the portion underlying Unit D) of approximately 8,482 square feet; subject, however, to any easements and/or setbacks as shown on the Condominium Map or as now or hereafter designated on any map(s) filed in the Land Court and covering all or any portion of the Project’s Land, including Limited Common Element D.

(ii) The mail box, if any, wherever located and for the exclusive use of Unit D.

(e) **Unit E.** The limited common elements appurtenant to and for the exclusive use of Unit E are as follows:

(i) The entire land area surrounding and underlying Unit E and designated on the Condominium Map as “Limited Common Element E”, including a yard area, a concrete driveway and an uncovered lanai, and containing an area (including the portion underlying Unit E) of approximately 11,876 square feet; subject, however, to any easements and/or setbacks as shown on the Condominium Map or as now or hereafter designated on any map(s) filed in the Land Court and covering all or any portion of the Project’s Land, including Limited Common Element E.

(ii) The mail box, if any, wherever located and for the exclusive use of Unit E.

(f) Any other common element of the Project that is rationally related to less than all of the Units shall be deemed a limited common element appurtenant to and for the exclusive use of the Unit or Units to which such common element is rationally related.

## ENCUMBRANCES AGAINST TITLE

That certain Preliminary Report dated **July 2, 2004**, issued by Old Republic Title & Escrow of Hawaii, Ltd., discloses that the land of the Project is subject to the following encumbrances:

1. Easement "641", as shown on Map 205, as set forth by Land Court Order No. 69446, filed April 13, 1984.
2. Any rights, easements, interests or claims which may exist or arise by reason of or reflected by the facts shown on the plat of a survey made by DENNIS K. HASHIMOTO, Licensed Professional Land Surveyor, Certificate No. 5688, on September 12<sup>th</sup>, 2002, designated Job No. 02988, as follows:

(a) The South boundary is evident by:

- Concrete wall which is on the property line inside the subject parcel by 0.85 ft. for 40.5 ft. and inside parcel 2 by 0.15 ft. for 40.5 ft.

NOTE: Matters shown on a survey plat entitled "PERIMETER SURVEY SKETCH", dated September 12, 2002, prepared by DENNIS K. HASHIMOTO, Licensed Professional Land Surveyor, Certificate No. 5688, Job No. 02988, as follows:

(A) The East boundary is evident by:

- Hollow tile wall which extends into the subject parcel by 0.45 ft., to 0.0 ft. for 45 ft.

(B) The West boundary is evident by:

- Concrete sidewalk and conc. curb that extend into the subject parcel for 0.3 ft.

(C) The West boundary is evident by:

- Electric pole which extends into the subject parcel 1.2 ft.

FURTHER NOTE: The matters shown above would appear to fall within the definition of a "de minimus structure position discrepancy" pursuant to HRS Section 669-A, however, no assurance is provided regarding the accuracy of the survey nor the interpretation of said statute.

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

Amount : \$1,232,000.00

**EXHIBIT "F"**

**Page 1 of 3**

Mortgagor : HAIKU ESTATE, LLC, a Domestic Limited Liability Company  
Mortgagee : FIRST HAWAIIAN BANK, a HAWAII corporation  
Dated : February 5<sup>th</sup>, 2004  
Recorded : February 9<sup>th</sup>, 2004 in the Office of the Assistant Registrar of the  
Land Court, State of Hawaii, as Document No. 3066094  
Loan No. : 0283415  
Returned to Address : 999 BISHOP STREET, HONOLULU, HI 96813

4. ABSOLUTE ASSIGNMENT OF RENTALS AND LESSOR'S INTEREST IN LEASES  
Dated : February 5<sup>th</sup>, 2004  
Recorded : February 9<sup>th</sup>, 2004 in the Bureau of Conveyances of the State of  
Hawaii as Document No. 2004-026418  
Assignor : HAIKU ESTATE, LLC, a HAWAII limited liability company  
Assignee : FIRST HAWAIIAN BANK, a HAWAII corporation  
Assignment as security for the repayment of \$1,232,000.00

(NOTE: Not noted in Transfer Certificate of Title)

5. ABSOLUTE ASSIGNMENT OF SALES CONTRACTS, ESCROW DEPOSITS,  
ESCROW AGREEMENTS AND NET SALES PROCEEDS  
Dated : February 5<sup>th</sup>, 2004  
Recorded : February 9<sup>th</sup>, 2004 in the Bureau of Conveyances of the State of  
Hawaii as Document No. 2004-026419  
Assignor : HAIKU ESTATE, LLC, a HAWAII limited liability company  
Assignee : FIRST HAWAIIAN BANK, a HAWAII corporation  
Assignment as security for the repayment of \$1,232,000.00

(NOTE: Not noted in Transfer Certificate of Title)

6. FINANCING STATEMENT  
Recorded : February 9<sup>th</sup>, 2004 in the Bureau of Conveyances of the State of  
Hawaii as Document No. 2004-026420  
Debtor : HAIKU ESTATE, LLC  
Secured Party : FIRST HAWAIIAN BANK  
Covers : All right, title and interest in and to the property described therein.

(NOTE: Not noted in Transfer Certificate of Title)

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

Amount : \$50,000.00  
Mortgagor : HAIKU ESTATE, LLC, a Domestic Limited Liability Company  
Mortgagee : FIRST HAWAIIAN BANK, a HAWAII corporation

**EXHIBIT "F"**

Recorded : February 18<sup>th</sup>, 2004 in the Office of the Assistant Registrar of the  
Land Court, State of Hawaii, as Document No. 3070899  
Returned to Address : P.O. BOX 3200, HONOLULU, HI 96847

8. In addition to the foregoing encumbrances, the Project is also subject to the following documents that were recorded after the date of the Preliminary Report referred to above:
  - (A) HAIKU ESTATES DECLARATION OF CONDOMINIUM PROPERTY REGIME, dated August 4, 2004, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3148296.
  - (B) HAIKU ESTATES CONDOMINIUM MAP NO. 1659 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.
  - (C) BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF HAIKU ESTATES, dated August 4, 2004, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3148297.
9. Real Property taxes as may be due and owing. Refer to the City and County of Honolulu Director of Finances for further information.

## **DEVELOPER'S RESERVED ALTERATION AND WITHDRAWAL RIGHTS**

Paragraph 23 of the Declaration provides as follows:

### **23. Reservation to Change Units, Withdraw Land and/or Units and Reconfigure the Project.**

23.1 Any other provision in this Declaration to the contrary notwithstanding, the Developer shall have the right (but shall not be obligated) in its sole discretion under this paragraph 23, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Unit Owner, or any mortgagee, lien holder, Unit purchaser, or any other person who may have an interest in the Project or in any Unit, to change the type, layout and dimensions of any unbuilt and unsold Unit and/or the limited common elements appurtenant thereto, and/or to remove and delete from the Project and from the effect of this Declaration and the Act unimproved portions of the Land, all or any unbuilt and unsold Units and any related unbuilt or unimproved common elements and limited common elements; provided, however, that the right to withdraw shall not apply to the common element driveway or any walkways, landscaped areas, easements or any other part of or interest in the Project actually utilized by or serving any Unit owned by any person other than the Developer at the time of such withdrawal. For purposes of this paragraph 23, "unsold Unit" shall mean a Unit owned by the Developer and for which no sales contract for the purchase and sale of the Unit has become binding upon both the seller and the buyer under the contract.

23.2 Upon such removal and deletion as set forth in this paragraph 23, and with no further action required, no Unit Owner, mortgagee, lien holder, Unit purchaser or any other person (other than the Developer and the holder of any blanket mortgage covering the unsold portion of the Project) who may have an interest in the Project or any Unit shall have any legal or equitable interest in the portion of the Land and the Units so removed and deleted (it being the intent hereof that upon such removal and deletion, fee simple title to the Land and Units so removed and deleted will be vested solely in the Developer). If deemed necessary to effect the intent of this Paragraph 23, each Unit Owner, mortgagee, lien holder and any other person who may have an interest in the Project or any Unit shall, if requested by the Developer, unconditionally quitclaim and/or release its interest (if any) in that portion of the Land and common elements so removed and deleted to the Developer.

23.3 In the exercise of the rights reserved in this paragraph 23, the Developer may (but shall not be required to) at any time (i) file and process to final approval an application with the City and County of Honolulu for the legal subdivision of that portion of the Project to be withdrawn, (ii) file or record supporting file plans, maps or other instruments in the Land Court, (iii) record one or more amendments to this Declaration in the Land Court containing an amended description of the Land and/or Units covered by this Declaration and deleting therefrom that portion of the Land and/or the Units removed and deleted from the Project (if any), and amending the common interests appurtenant to the remaining Units (by increasing such common interests if necessary) so that the aggregate common interest appurtenant to all remaining Units equals 100%, (iv) file in the Land Court an amended Condominium Map

### **EXHIBIT "G"**

#### **Page 1 of 2**

reflecting the changes to the Units and/or the removal and deletion of the withdrawn Land and/or Units, and (v) if deemed appropriate, apply for and obtain from the Real Estate Commission of the State of Hawaii a Supplementary Public Report describing the changes made in the Project pursuant to the terms of this paragraph 23. Any changes to the Units and/or the common interests and/or removal and deletion of any portion of the Land and/or Units made pursuant to this paragraph 23 shall be deemed effective for all purposes upon the recordation in the Land Court of the amendment(s) to this Declaration and Condominium Map referenced herein.

23.4 The Developer shall have the absolute right, notwithstanding the lease, sale or conveyance of any Unit, and without being required to obtain the consent or joinder of any Unit Owner, lien holder or other persons, to effect the changes to the Units and/or limited common elements and/or the removal and deletion of portions of the Project in accordance with this paragraph 23, and to execute, record and/or file the herein described application, amendments, quitclaims, releases and any and all other instruments necessary or appropriate for the purpose of effecting the changes and/or removal and deletion of portions of the Land and/or Units as contemplated hereby. Any such action shall be deemed taken by the Developer as the true and lawful attorney-in-fact of the respective Unit Owners and lien holders. Each and every person acquiring an interest in any Unit, the Project or the Land covered by this Declaration, by such acquisition, consents to such changes (including an increase in the common interest appurtenant to any Unit owned by such person and a concomitant increase in such person's ownership interest in the Project's remaining common elements), deletion and/or removal and to the recordation of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints the Developer his, her or its attorney-in-fact with full power of substitution to execute such documents and do such other things on his, her or its behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such person.

23.5 The rights of the Developer under this paragraph 23 shall extend to the Developer and its respective successors and assigns.

23.6 Notwithstanding any provision herein to the contrary, this paragraph 23 may not be amended without the written consent and joinder of the Developer for so long as the Developer retains an ownership interest in any Unit in the Project.

**EXHIBIT H**

**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS  
FOR  
HAIKU ESTATES CONDOMINIUM**

**Estimate of Initial Maintenance Fees:**

| UNIT | Monthly Fee | X 12 Months | = Yearly Total |
|------|-------------|-------------|----------------|
| A    | \$206.40    |             | \$2,476.80     |
| B    | \$206.40    |             | \$2,476.80     |
| C    | \$206.40    |             | \$2,476.80     |
| D    | \$206.40    |             | \$2,476.80     |
| E    | \$206.40    |             | \$2,476.80     |

Unit owners shall not be obligated for the payment of their respective shares of the common expenses until such time as the Developer files with the Real Estate Commission a disclosure statement providing that, commencing upon a date certain stated in the disclosure statement, each Unit owner shall become obligated to pay his respective share of the common expenses.

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

**Estimate of Maintenance Fee Disbursements**  
**Haiku Estates, LLC**  
**(5 units)**

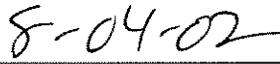
|   | Monthly Fee       | Yearly Total       |
|---|-------------------|--------------------|
| <b>Utilities and Services</b>                           |                   |                    |
| Air Conditioning  | \$0.00            | \$0.00             |
| Electricity   |                   |                    |
| <input type="checkbox"/> common elements only           | \$0.00            | \$0.00             |
| <input type="checkbox"/> common elements and apartments | \$0.00            | \$0.00             |
| Elevator  | \$0.00            | \$0.00             |
| Gas   |                   |                    |
| <input type="checkbox"/> common elements only           | \$0.00            | \$0.00             |
| <input type="checkbox"/> common elements and units      | \$0.00            | \$0.00             |
| Refuse Collection                                       | \$0.00            | \$0.00             |
| Telephone   | \$0.00            | \$0.00             |
| Water   | \$10.00           | \$120.00           |
| <b>Maintenance, Repairs and Supplies</b>                |                   |                    |
| Common Elements   | \$50.00           | \$600.00           |
| Common Grounds (Private Park)                           | \$50.00           | \$600.00           |
| <b>Management</b>                                       |                   |                    |
| Management Fee  | \$0.00            | \$0.00             |
| Payroll and Taxes                                       | \$0.00            | \$0.00             |
| Office Expenses   | \$100.00          | \$1,200.00         |
| <b>Insurance</b>  |                   |                    |
| Hazard and Liability                                    | \$625.00          | \$7,500.00         |
| Director and Officer's Liability                        | \$55.00           | \$660.00           |
| Reserves (*) (for common element roadway)               | \$42.00           | \$504.00           |
| Taxes and Government Assessments                        | \$5.00            | \$60.00            |
| Audit Fees  | \$45.00           | \$540.00           |
| Other   | \$50.00           | \$600.00           |
| <b>TOTAL</b>  | <b>\$1,032.00</b> | <b>\$12,384.00</b> |
| <b>Fee Per Unit Monthly</b>                             | <b>\$206.40</b>   |                    |
| <b>Fee Per Unit Annually</b>                            |                   | <b>\$2,476.80</b>  |

(\*) 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.

Hawaiiana Management Company, Ltd. will not be managing agent. The condominium association will be self-managed. Hawaiiana Management Company, Ltd. certifies that above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles and according to information and assumptions provided by the Developer.

  
 Emory Bush, President  
 Hawaiiana Management Company, Ltd.

  
 Date

**EXPLANATION REGARDING RESERVES**

In arriving at the figures for "Reserves" in this Exhibit "H", the Developer did not conduct 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. The amount shown for "Reserves" in this Exhibit was calculated based on the estimated life of the Project's common element driveway, the estimated cost to repair or replace the driveway at the end of its estimated life, and the amount that must be collected monthly and annually in order to pay the estimated cost to repair or replace the driveway at the end of its estimated life.

## **SUMMARY OF SALES CONTRACT AND ESCROW AGREEMENT**

The Sales Contract provides for the sale of a condominium unit (the "Unit") by the Developer to a Buyer. The Escrow Agreement provides how the funds paid by the Buyer under the Sales Contract to Escrow are to be held and released. Both the Sales Contract and Escrow Agreement contain many important provisions which are not set out here and should be carefully reviewed by every prospective Buyer.

The Sales Contract provides for the number, amount and timing of payments the Buyer is to make to Escrow. The Escrow Agreement provides that Escrow is to collect these payments and hold them in accounts with banks or savings institutions in Hawaii at the prevailing interest rates. The Sales Contract and Escrow Agreement provide who gets to keep interest that may be earned on the funds with Escrow. If the Sales Contract is signed before the Real Estate Commission has issued an effective date for a Final (or Supplementary) Public Report covering the Unit and before certain other things have happened (as described in the Sales Contract), the Sales Contract shall not be binding on the Buyer or the Seller, and either of them may cancel it at any time before it becomes binding. After the Sales Contract becomes binding, it may be cancelled by the Developer, among other reasons, if the Buyer is obtaining financing and fails to obtain a lender commitment within a certain time period specified in the Sales Contract, or if the Buyer is a cash buyer and fails to furnish satisfactory evidence of ability to pay within other time periods. In certain cases, the Buyer may be responsible for cancellation fees.

The Escrow Agreement provides for the closing or settlement of the sale. Escrow collects all payments and other amounts owed under the Sales Contract, including closing costs which are shared between the Developer and the Buyer as set forth in the Sales Contract.

If the Buyer defaults under the Sales Contract after an effective date is issued for a Final Public Report for the Project and the Final Public Report is "accepted" by the Buyer, the Buyer may lose all of the deposits with Escrow and the Developer, at its option, may pursue other legal remedies. If the Developer defaults under the Sales Contract, the Buyer shall be entitled to specific performance of the Sales Contract, or shall have the right to cancel and terminate the Sales Contract or pursue any other remedies available to the Buyer at law or in equity. Under the Sales Contract, the Developer promises to complete construction of the Unit within two (2) years from the effective date of the Sales Contract, provided that the two (2) year period may be extended under certain circumstances specified in Section F.6 of the Sales Contract.

If the Buyer cancels and terminates the Sales Contract because of the Developer's default, the Developer shall repay to the Buyer all sums the Buyer has paid to the Developer or to Escrow under the Sales Contract, and the Buyer may pursue other legal or equitable remedies.

The Sales Contract confirms that the Buyer has had the opportunity to read and approve certain important legal documents for the Project, including the Declaration and the Bylaws. The Sales Contract also provides that the rights of any construction lender with a mortgage against the Project will be superior to the rights of the Buyer under the Sales Contract.

The Sales Contract limits the Buyer's right to assign the Sales Contract and provides that the Seller may require a consent fee for any transfer. The Sales Contract provides for "pre-closing." "Pre-closing" means that Escrow may set a time for the Buyer to sign all of the documents Escrow asks the Buyer to sign, including the Unit Deed and other closing documents, and the Buyer will pay the Buyer's share of the closing costs, as estimated by Escrow, even though the Buyer's Unit may not be ready for occupancy. Buyer's share of closing costs include one-half of Escrow's fee, all recording fees, real property taxes and other prorations, Buyer's notary fees, up to four (4) months' maintenance start-up fees, title report and title insurance fees, conveyance tax, and fees charged by a lender if the Buyer is financing the purchase of his Unit with a loan. Escrow then handles the closing and the transfer of title in accordance with the Escrow Agreement. The Unit must be conveyed to the Buyer free and clear of any blanket liens, such as mortgages covering more than one unit.

By signing the Sales Contract, the Buyer acknowledges that sales and construction activity at the Project by the Developer may continue after closing of the Buyer's purchase. The Buyer also acknowledges certain conditions at the Project and certain reserved rights of the Seller (as "Developer") under the Project's condominium documents.

The Escrow Agreement provides certain protections to Escrow in the event of a dispute between the Buyer and the Developer. These protections include the right to file an "interpleader" and the right to recover certain fees and costs. In an interpleader action the escrow deposit is given to the court to decide what action to take. The Escrow Agreement sets out escrow fees, escrow cancellation fees and the fees for certain policies of title insurance.

The Sales Contract gives notice to the Buyer that Hawaii law contains important requirements that the Buyer must follow before the Buyer may file a lawsuit or other action for defective construction against the contractor who designed or constructed the Buyer's unit.

**THIS SUMMARY IS NOT COMPLETE AND WILL NOT CONTROL IN THE EVENT OF ANY CONFLICT WITH A PROVISION IN THE SALES CONTRACT OR THE ESCROW AGREEMENT. PROSPECTIVE BUYERS ARE CAUTIONED AND ENCOURAGED TO READ CAREFULLY THE SALES CONTRACT AND ESCROW AGREEMENT.**

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 968013378

In reply, please refer to:  
File:

June 22, 2004

Mr. Ron G. Neely, P.E.  
Alanui Enterprises  
P.O. Box 390628  
Kailua-Kona, Hawaii 96739

Dear Mr. Neely:

Subject: Individual Wastewater System (IWS) Plans for  
**Roger Benz**  
Project Site: 46-1042 Haiku Road, Kaneohe, Oahu  
TMK: (1) 4-6-012: 035  
IWS File No.: 3766

We have received your Certification of Construction and As Built Plans for the above IWS. Information submitted to us indicates that the installed IWS meets applicable provisions of Hawaii Administrative Rules, Title 11, Chapter 62, entitled "Wastewater Systems."

As the professional engineer responsible for the Certification of Construction, please inform your client that the above IWS is approved for use. We strongly recommend that you discuss the necessary operation and maintenance of the individual wastewater system with your client. Emphasis should be placed on periodic inspections for scum and sludge accumulation as well as informing them not to dispose of materials that could affect the operation of the wastewater system.

As the professional engineer, you are also responsible for seeing that your client receives a copy of this Approval for Use letter. The owner will be required to give a copy of this letter to the County Building Inspector as a prerequisite to receiving final approval on the dwelling.

Should you have any questions, please feel free to contact the Wastewater Branch at 974-4000, extension x64294.

Sincerely,

HAROLD K. YEE, P.E.  
Chief, Wastewater Branch

JO:lmh

## OPERATION AND MAINTENANCE INSTRUCTIONS

### FOR SEPTIC TANKS & ABSORPTION BEDS

1. SYSTEM SHALL BE INSPECTED ON AN ANNUAL BASIS. INSPECT SEPTIC TANK THROUGH CLEAN OUT TO GRADE. TANK SHALL BE PUMPED IF EITHER BOTTOM OF FLOATING SCUM LAYER WITHIN FOUR INCHES OF BOTTOM OF OUTLET TEE OR SETTLED SLUDGE LAYER WITHIN EIGHT INCHES OF BOTTOM OF OUTLET TEE. INSPECT DISTRIBUTION BOX THROUGH CLEAN OUT TO GRADE. IF SCUM OR SLUDGE PRESENT, IN DISTRIBUTION BOX TANK SHALL BE PUMPED.
2. PUMP TANK CONTENTS BY MEANS OF VACUUM PUMP TRUCK. ALLOW FOUR TO SIX INCH DEPTH OF RESIDUAL SLUDGE TO REMAIN FOR SEEDING PURPOSES. TANK CONTENTS TO BE DISPOSED OF AT AN APPROVED FACILITY.
3. ENTRY INTO THE SEPTIC TANK CONSTITUTES A CONFINED SPACE ENTRY AND SHOULD NOT BE ATTEMPTED BY UNTRAINED PERSONNEL. ENTRY INTO SEPTIC TANK SHALL BE ACCORDING TO CONFINED SPACE ENTRY PROCEDURES AS ESTABLISHED BY FEDERAL OSHA REGULATION.
4. TOXIC CHEMICALS SHOULD NOT BE FLUSHED INTO OR OTHERWISE INTRODUCED INTO THE SEPTIC SYSTEM. HOUSEHOLD DISINFECTANTS USED IN SMALL QUANTITIES WILL NOT ADVERSELY AFFECT THE SYSTEM.
5. ODORS MAY BE PRESENT FOR THE FIRST SIX TO EIGHT WEEKS OF SYSTEM OPERATION. IF ODORS PERSIST CONTACT THE DESIGN ENGINEER.
6. THE SEPTIC SYSTEM IS DESIGNED TO ACCEPT ONLY HUMAN WASTE AND TISSUE PAPER. INTRODUCTION OF OTHER TYPES OF PAPER OR PLASTIC PRODUCTS WILL LEAD TO FAILURE OF THE ABSORPTION BED OR SEEPAGE PIT.
7. AREA SURROUNDING ABSORPTION BED OR SEEPAGE PIT SHOULD NOT RECEIVE EXCESSIVE LANDSCAPE WATERING. EXCESSIVE LANDSCAPE WATER APPLICATION MAY LEAD TO HYDRAULIC OVERLOAD OF DISPOSAL SYSTEM.
8. IF SYSTEM EXHIBITS SIGNS OF FAILURE CONTACT THE DESIGN ENGINEER IMMEDIATELY.

ALANUI ENTERPRISES

P.O. BOX 390628

KAILUA-KONA, HI. 96739

(808) 329-6225

EXHIBIT "J"

Page 2 of 2

OM-1