

## CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: MARK ROGER HENDERSON  
Address: 4660 HAUAALA ROAD  
KAPAA, HAWAII 96746

Project Name(\*): HENDERSON CONDOMINIUM  
Address: 4660 HAUAALA ROAD (for sale of Apartment B only\*)  
KAPAA, HAWAII 96746

Registration No. 5743 Effective date: September 20, 2005  
(Partial Conversion) Expiration date: October 20, 2006

### 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, in any, of the project or of purchasing an apartment in the project.

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

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

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

### Type of Report:

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

(\*) Please refer to the last paragraph on page 20 of this Public Report concerning the delayed sale of Apartment A

(\*) 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-30 286/986/189/1190/892/0197/1098/0104

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

[ X ] Required and attached to this report As Exhibit "G" [ ] Not required - Disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

[ X ] No prior reports have been issued by the developer.

[ ] Changes made are as follows:

**SPECIAL NOTICE:**

1. Issuance of an effective date for this Public Report does not constitute an approval of the project by the Real Estate Commission, or any other governmental agency, nor does it imply that all County codes, ordinances and subdivision requirements have been complied with.
2. This project does not involve the sale of individual subdivided lots. The land area beneath and immediately adjacent to each unit, as shown on the Amended Condominium Map, is designated as a limited common element for that unit and does not represent a legally subdivided lot. The dotted lines on the Amended Condominium Map merely represent the location of the limited common element assigned to each unit.
3. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

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

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: MARK ROGER HENDERSON Phone: (808) 353-9308  
Name\*  
4660 HAUAALA ROAD  
Business Address  
KAPAA, HAWAII 96746

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

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker\*: NONE SELECTED, see page 20. Phone: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Escrow: FIRST AMERICAN TITLE COMPANY Phone: (808) 536-3866  
Name  
333 QUEEN STREET, #700  
Business Address  
HONOLULU, HAWAII 96813

General Contractor\*: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Condominium Managing Agent\*: SELF-MANAGED BY ASSOCIATION Phone: \_\_\_\_\_  
Name  
OF APARTMENT OWNERS  
Business Address  
\_\_\_\_\_

Attorney for Developer: STEVEN R. LEE Phone: (808) 246-1101  
Name  
4473 PAHE'E STREET, SUITE L  
Business Address  
LIHUE, HAWAII 96766

\*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The Declaration for this condominium is:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded	- Bureau of Conveyances:	Document No. 2004-109430
			Book                      Page
<input type="checkbox"/>	Filed	- Land Court:	Document No.

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

First Amendment to Declaration of Condominium Property Regime of Henderson Condominium and Condominium Map No. 3769 recorded as Document No. 2004-243968

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

The Condominium Map for this condominium project is:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded	- Bureau of Conveyances Condo Map No. 3769	
<input type="checkbox"/>	Filed	- Land Court Condo Map No.	

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

First Amendment to Declaration of Condominium Property Regime of Henderson Condominium and Condominium Map No. 3769 recorded as Document No. 2004-243968

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

The Bylaws for this condominium are:

<input type="checkbox"/>	Proposed		
<input checked="" type="checkbox"/>	Recorded	- Bureau of Conveyances:	Document No. 2004-109431
			Book                      Page
<input type="checkbox"/>	Filed	- Land Court:	Document No.

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

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

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

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

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

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

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

2. Developer:

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



[ ] 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: 4660 HAUAALA ROAD Tax Map Key: (TMK): (4) 4-5-014: 019  
KAPAA, HAWAII 96746

[ X ] Address [ X ] TMK is expected to change because each unit will have its own CPR number

Land Area: 13,762 [ X ] square feet [ ] acre(s) Zoning: R-10

Fee Owner: MARK ROGER HENDERSON  
 Name  
4660 HAUAALA ROAD  
 Address  
KAPAA, HAWAII 69746

Lessor: NONE  
 Name  
 Address

C. **Buildings and Other Improvements:**

1.  New Building(s)  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion
2. Number of Buildings: 2 Floors Per Building: 1  
 Exhibit "C" contains further explanations.

3. Principal Construction Material:  
 Concrete  Hollow Tile  Wood  
 Other: METAL POLES AND SHADE CLOTH (UNIT B)

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted by Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>1</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 Residential/Commercial	<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 checked="" type="checkbox"/> Other: <u>Shade structure</u>	<u>1</u>	<input checked="" 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: \_\_\_\_\_

[  ] Number of Occupants: \_\_\_\_\_

[  ] Other: \_\_\_\_\_

[  ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>Bed/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>Identify</u>
<u>A</u>	<u>1</u>	<u>2 / 2</u>	<u>918</u>	<u>---</u>	<u>Residence</u>
	<u>1</u>			<u>197</u>	<u>Deck</u>
	<u>1</u>			<u>51</u>	<u>Porch</u>
	<u>1</u>			<u>117</u>	<u>Shade House</u>
	<u>1</u>			<u>240</u>	<u>Storage</u>
<u>B</u>	<u>1</u>	<u>---</u>	<u>---</u>	<u>16</u>	<u>Shade Structure</u>

Total number of Apartments: 2

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

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

Boundaries of Each Apartment: Per the Declaration of Condominium Property Regime, the boundaries of each apartment shall be the outer surface of the entire building. Wires or conduits, pipes or any utility lines running over, under or through any apartment which are utilized for or serve more than one unit shall not be deemed a part of the apartment, the same being deemed common elements.

Permitted Alterations to Apartments: Permitted alterations to apartments are as allowed by County of Kauai zoning ordinances and recorded restrictions on the project, if any. Upon construction of each permanent improvement, an amendment to the Declaration of Condominium Property Regime will be required to disclose actual improvements as a matter of public record.

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by Section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has not elected to provide the information in a published announcement or advertisement.



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 Interests:

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

described in Exhibit E.

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit E.

as follows:

3. Common Interests: Each apartment will have an undivided fractional interests in all of the common elements. This interest is called the "common interests." 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 C.

as follows:

E. Encumbrances Against Title:

An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property on 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 25, 2005  
and issued by First American Title Company.

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	LENDER HAS PRIORITY OVER A BUYER'S RIGHTS UNDER A SALES CONTRACT, AND HAS A RIGHT TO TERMINATE SALES CONTRACT UPON FORECLOSURE OF ITS MORTGAGE BEFORE AN APARTMENT SALE IS CLOSED. IN SUCH EVENT BUYER SHALL BE ENTITLED TO A REFUND OF ALL DEPOSITS, LESS ESCROW CANCELLATION FEES.

F. Construction Warranties:

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

- 1. Building and Other Improvements:  
NONE

- 2. Appliances:  
NONE

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

The residence on Unit A was completed in 1978. The shade structure on Unit B was completed in May 2004.

H. **Project Phases:**

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

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

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 affiliated is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

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

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

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

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

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

Exhibit H contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

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

[ X ] None [ ] Electricity ( \_\_\_ Common Elements only \_\_\_ Common Elements & Apartments)  
[ ] Gas ( \_\_\_ Common Elements only \_\_\_ Common Elements & Apartments)  
[ ] Water [ ] Sewer [ ] Television Cable  
[ ] Other: \_\_\_\_\_

## V. MISCELLANEOUS

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

- Sales documents on file with the Real Estate commission include but are not limited to:
- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit B contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated December 13, 2004  
Exhibit D contains a summary of the pertinent provisions of the escrow agreement.
- Other: SPECIMEN APARTMENT DEED

### 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 the 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 a part of Registration No. 5743 filed with the Real Estate Commission on May 14, 2005

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:**

This is a condominium project, not a subdivision. Units purchased are not subdivided lots. To determine whether your expectations can be realized, you should carefully review the contents of this Report. You should also conduct your own investigations and ascertain the validity of information provided.

The prospective purchaser of Unit B shall have the right to build one single-family dwelling at purchaser's expense. The purchaser shall also, in such event, file the "as-built" certificate within thirty days of completion of the residence in conformance with Section 514A-12, Hawaii Revised Statutes, and record an amendment of the Declaration of Condominium Property Regime ("Declaration") to describe the residence. The County of Kauai Planning Department requires, in order to process the necessary permits for the construction of a residence, authorization from at least 75% of the legal and equitable ownership of the entire project, consistent with the Declaration and the Bylaws ("condominium documents"). Except as limited specifically by the condominium documents and house rules, all uses permitted in the residential zone are permitted.

Except as limited specifically by the condominium documents and subdivision restrictive covenants, all uses permitted in the residential zone are permitted. The prospective purchaser should consult the appropriate county agency for information on uses and construction in the residential zone.

A buyer should understand that all development and use of the property shall be in compliance with County codes and ordinances, that owners in this condominium project will not necessarily receive the same County benefits as owners of approved subdivided lots and that owners who develop their limited common element later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations.

Disclosure regarding selection of Real Estate Broker. The developer has not selected a real estate broker for the sales of the apartments in the Project. In the event the Developer chooses to use a real estate broker for the sale of an apartment prior to entering into a binding contract for such sale the Developer shall (1) submit to the Real Estate Commission a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, together with a duly executed disclosure abstract identifying the designated broker, and (2) provide a copy of the disclosure abstract to the purchaser together with a copy of this public report.

Disclosure regarding prior building violation. By letter dated April 26, 2005 the Kauai Planning Department acknowledged that the Developer had rectified the zoning violations cited in its letter of January 24, 2005. See Exhibit "I".

Disclosure regarding renovation of Unit A by Owner. Pursuant to HRS 444-2(7), a structure built or renovated under an owner-builder permit cannot be offered for sale until a period of one year from its completion has elapsed. Since the permit was signed off on October 4, 2004, Unit A cannot be offered for sale until October 5, 2005. Prior thereto, the Developer must request of the REC an effective date for a supplementary public report authorizing the sale of Unit A.

- 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.

MARK ROGER HENDERSON  
Printed Name of Developer

By:   
Duly Authorized Signatory\*

May 4, 2005  
Date

MARK ROGER HENDERSON, DEVELOPER  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, COUNTY OF KAUAI

Planning Department, COUNTY OF KAUAI

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



## **EXHIBIT "B"**

### **SUMMARY OF SALES CONTRACT**

This Project Utilized a Condominium Addendum to Sales Contract (the "Addendum") to be utilized in conjunction with a standard printed form contract provided by the Hawaii Association of Realtors. The Addendum protects the rights of the Purchasers and the handling of the funds under the Condominium Property Act (the "Act"), as well as the insuring compliance with the Act by all parties. Relevant portions of the Addendum are summarized as follows:

1. The fact that the Act controls over any portion of a contract to sell a condominium unit.
2. That an effective date for a final or supplementary public report must be in place and a receipt for the same signed by the buyer to have an effective date.
3. That all purchaser funds must be held in escrow until the law allows closing and disbursement of the funds.

The conditions precedent to release of the funds are enumerated, including in part:

- (a) That Purchaser will receive a copy of the final public report for the project.
- (b) Purchaser agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow agreement, and Purchaser is subject to all of the terms of the Escrow Agreement.
- (c) If there is a dual agency by a single broker, it will be disclosed in the contract.

**SPECIAL NOTICE:** THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL THE TERMS AND PROVISIONS CONTAINED IN THE CONTRACT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE PURCHASER'S RIGHTS AND OBLIGATIONS, THE PURCHASER MUST REFER TO THE PURCHASER'S CONTRACT TO DETERMINE THE BUYER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONTRACT, THE CONTRACT WILL CONTROL AND NOT THIS SUMMARY.

**EXHIBIT "C"**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS**

Qty.	Unit No.	Area of Limited Common Element* (Sq.Ft.)	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	% of Common Int.
1	A	6,778	2 / 2	918	197 Deck 51 Porch 117 Shade house 240 Storage building	50%
1	B	6,013	0 / 0	0	16 Shade shed	05%

Pursuant to Section 16-107-5, Hawaii Administrative Rules, reference is hereby made to the method by which common interest has been computed. Units A and B will each burden the common elements as shown above. Therefore, the assessment of undivided interest both for common expense and for voting is 50% for Unit A; 50% for Unit B.

The common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration of Condominium Property Regime, each unit owner may use the unit, alter or add to it in any manner deemed desirable, so long as it is permitted by law and the Declaration of Protective Covenants and House Rules, if any. If adjoining unit owners desire to alter and/or transfer portions of their respective units, they can do so by the filing of an amendment to the Condominium Map and the Declaration of Condominium Property Regime together with their respective signatures.

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

## EXHIBIT "D"

### SUMMARY OF PORTIONS OF ESCROW AGREEMENT HENDERSON CONDOMINIUM

The Escrow Agreement ("Agreement") between FIRST AMERICAN TITLE COMPANY (the "Escrow"), and MARK ROGER HENDERSON (the "Seller"), contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.
2. Escrow will receive payments under the sales contract and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.
3. Escrow will release from the trust fund and disburse Buyer's funds at closing, unless: (a) Buyer has elected within seven days of signing the sales contract to cancel and receive all funds paid, without deduction; or (b) the Real Estate Commission has not issued a Final Public Report on the project or the requirements of the sales contract have not been met; or (c) Seller has not satisfied Escrow that all other requirements of Hawaii Revised Statutes have been met.
4. Escrow will return deposited sums to the Buyer without interest, if Seller and Buyer give Escrow written notice to return the funds to Buyer, if there is a right to cancellation and refund of monies under the sales contract or otherwise. If there is a cancellation under the seven-day right, no fees will be charged Buyer. Thereafter, in the event of a cancellation as a matter of agreement or right, Buyer's funds shall be returned to Buyer less Escrow's cancellation fee, if any, and all other costs incurred in connection with the Escrow, not less than \$25.00.
5. Escrow will arrange for and supervise the signing of all documents, which are to be signed subsequent to and contemplated by the sales contract.
6. As Escrow's compensation for its performance under this Agreement, Escrow will receive its schedule rate for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. The cost of title insurance will be an additional amount, based upon schedule rate.
7. In the event of default by the Buyer, Buyer may forfeit his or her deposit, which will be paid to the Seller, less any cancellation fees charged by Escrow.

SPECIAL NOTICE: THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE AGREEMENT, ONE MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

## EXHIBIT "E"

### COMMON ELEMENTS OF THE PROJECT

The common elements of the project are:

- (a) the land in fee simple;
- (b) the roadway and utilities common element consisting of 971 square feet, as shown on the condominium map.
- (c) all commonly used present or future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone; and
- (d) any and all other future elements and facilities in common use or necessary to the Project.

### LIMITED COMMON ELEMENTS OF THE PROJECT

Certain parts of the common elements, referred to as the "limited common elements," have been designated and set aside for the exclusive use of one or more units, and such unit(s) have appurtenant exclusive easements for the use of such limited common elements. The limited common elements set aside, reserved and deemed a limited common element appurtenant to and for the exclusive use of each respective unit is that certain land area upon and around which Units A and B are located, shown and designated on the Condominium Map and the table below.

Unit Number	Area of Limited Common Element*
A	6,778 square feet
B	6,013 square feet

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

10. The terms and provisions contained in or incorporated by reference in the Declaration of Condominium Property Regime, as may be amended from time to time. Said Declaration was recorded May 28, 2004 as Regular System Document No. 2004-109430 of Official Records.

The foregoing Declaration was amended by instrument recorded December 2, 2004 as Regular System Document No. 2004-243968 of Official Records.

11. The terms and provisions contained in or incorporated by reference in the Condominium By-Laws, as may be amended from time to time. Said By-Laws were recorded May 28, 2004 as Regular System Document No. 2004-109431 of Official Records.
12. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.

## EXHIBIT "F"

### ENCUMBRANCES AGAINST TITLE

The following encumbrances apply to all Units:

1. Real property taxes that may be due and owing. Check with the County of Kauai Tax Assessor for further information.
2. Title to all mineral and metallic mines reserved to the State of Hawaii.
3. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination base don race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Land Patent Grant No. S-15,463, dated October 2, 1978.
4. A right-of entry and temporary easement for construction, maintenance of power and communication lines and incidental purposes, in favor of Citizens Utilities Company, a Delaware corporation (now Citizens Communications Company), recorded January 30, 1980, as Book 14457, Page 739 of Official Records.
5. The terms and provisions contained in the Waiver and Release Agreement recorded February 11, 2004, as Regular System Document No .2004-028774 of Official Records.
6. A mortgage to secure an original principal indebtedness of \$256,500.00, and any other amounts or obligations secured thereby.

Dated: March 10, 2004  
Mortgagor: Mark Roger Henderson, single  
Mortgagee: Mortgage Electronic Registration Systems, Inc., solely as nominee for Aloha Financial, LLC, a Hawaii limited liability company, its successors and assigns.  
Recorded: March 18, 2004, as Regular System Document No. 2004-055364 of Official Records.

7. A mortgage to secure an original principal indebtedness of \$51,300.00, and any other amounts or obligations secured thereby.

Dated: March 29, 2004  
Mortgagor: Mark Roger Henderson, a single man  
Mortgagee: National City Mortgage Co., dba Accubanc Mortgage, an Ohio corporation  
Recorded: April 13, 2004, as Regular System Document No .2004-073012.

According to the public records, the foregoing document was assigned to Mortgage Electronic Registration Systems, Inc., a Delaware corporation, by assignment recorded November 29, 2004, as Regular System Document No. 2004-239794.

8. A future road widening setback, thirteen (13) feet wide, as set forth or disclosed by the instrument recorded May 28, 2004 as Regular System Document No. 2004-109430 of Official Records
9. Regular System Condominium Map No. 3769
10. The terms and provision contained in or incorporated by reference in the Declaration of condominium Property Regime, as may be amended from time to time. Said Declaration was recorded May 28, 2004, as Regular System Document No. 2004-109430.

The foregoing Declaration was amended by instrument recorded December 2, 2004, as Regular System Document No. 2004-109431 of Official Records.

11. The terms and provisions contained or incorporated by reference in the Condominium Bylaws, as may be amended from time to time. Said Bylaws were recorded May 29, 2004, as Regular System Document no. 2004-109431.
12. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.

**END OF EXHIBIT "F"**



EXHIBIT "H"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
A	\$20.83                      \$249.96
B	\$20.83                      \$249.96

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

**Estimate of Maintenance Fee Disbursements:**

Monthly Fee x 12 months = Yearly Total

Utilities and Services

Air Conditioning		
Electricity		
[ ] common elements only		
[ ] common elements and apartments		
Elevator		
Gas		
[ ] common elements only		
[ ] common elements and apartments		
Refuse Collection		
Telephone		
Water and Sewer (Septic System)	\$25.00	\$300.00

Maintenance, Repairs and Supplies

Building		
Grounds		
Driveway	\$16.66	\$199.92

Management

Management Fee  
Payroll and Payroll Taxes  
Office Expenses

Insurance

Reserves(\*)

Taxes and Government Assessments

Audit Fees

Other

TOTAL	\$41.66	\$499.92
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I, MARK ROGER HENDERSON, , the condominium developer, for the HENDERSON CONDOMINIUM project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

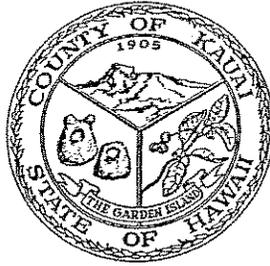
  
Signature

  
Date

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

Pursuant to  $\alpha$ 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.

BRYAN J. BAPTISTE  
MAYOR



IAN K. COSTA  
DIRECTOR OF PLANNING

GARY K. HEU  
ADMINISTRATIVE ASSISTANT

MYLES S. HIRONAKA  
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I  
PLANNING DEPARTMENT  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUA'I, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

DATE: April 26, 2005

TO: Senior Condominium Specialist  
Real Estate Commission  
P & VLD/DCCA  
335 Merchant Street, Room 333  
Honolulu, Hawai'i 96813

FROM: Ian K. Costa, Director of Planning 

SUBJECT: Recertification of Inspection of Existing Buildings

Project Name: HENDERSON  
Condominium Project (213)  
Tax Map Key: (4) 4-5-014: 019

The developer of the above-mentioned condominium project has rectified the zoning violations as indicated in our letter dated January 24, 2005. Therefore, this office as an agency of the County of Kauai having reviewed the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, (Section 514 A-40 (b), (1), Hawaii Revised Statutes, subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The developer has contracted engineer Peter Taylor to certify that the existing buildings on the proposed project referred to as Henderson Condominium Unit A and Unit B are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that

EXHIBIT I

Senior Condominium Specialist  
Henderson Condominium  
TMK: (4) 4-5-014: 019  
April 26, 2005  
Page two

certification as it pertains to the rules and regulations administered solely by the Department.

2. The parcel does not contain any outstanding nonconforming uses or structures as a result of the adoption or amendments of any ordinances or codes and regulations.
3. There are no variances approved for the subject property.
4. There are no notices of violation of County building or zoning codes outstanding according to our records.
5. **WAIVER**  
The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under subsection 514 A-40, (b), and (1), Hawaii Revised Statutes.

If you have any questions, please contact Sheilah Miyake at 241-6677.

cc: Mark Henderson, Project Developer  
Robert Grinpas, Attorney at Law