

## CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer: JAMES E. BEYER and VAUGHN BEYER  
Business Address: P. O. Box 3385, Lihue, Kauai, Hawaii 96766

Project Name(\*): KALAHEO HILLSIDE ESTATES  
Address: 3080 Lauoho Road, Kalaheo, Kauai, Hawaii 96741

Registration No. 6037

Effective date: January 20, 2010  
Expiration date: February 20, 2011

### 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:**  
(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. A Final Public Report will be issued by the developer when complete information is filed.
- FINAL:**  
(white) The developer has legally created a condominium and has filed complete information with the Commission.  
[ ] No prior reports have been issued.  
[ ] This report supersedes all prior public reports.  
[ ] This report must be read together with \_\_\_\_\_
- SUPPLEMENTARY:**  
(pink) This report updates information contained in the:  
[ ] Preliminary Public Report dated: \_\_\_\_\_  
[ X ] Final Public Report dated: July 10, 2006  
[ ] Supplementary Public Report dated: \_\_\_\_\_
- And [ X ] Supersedes all prior public reports  
[ ] Must be read together with \_\_\_\_\_  
[ X ] This report reactivates the the Final Public Report dated July 10, 2006  
public report(s) which expired on September 10, 2008

(\*) 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-30 286/986/189/1190/892/0197/1098/0800/0203/0104/0107

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

- Required and attached to this report attached as Exhibit "L"                       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:

1. The Developer's Final Report expired on September 10, 2008. Pursuant to Section 16-107-19, Hawaii Administrative Rules, sales contracts executed during the period that the public report was not in effect may be rescinded at the option of the purchaser and all monies refunded to the purchaser. The purchaser's right to rescind under this rule shall be void thirty (30) calendar days after receipt of written notification of these rights from the Developer or his/her real estate agent.
2. The designated real estate broker for the sale of Units A, B and C of the Project has changed to Prudential All Star Realty.
4. The designated escrow company for the sale of Units A, B and C of the Project has changed to Title Guaranty Escrow Services, Inc.
5. The attorney for the Project has changed.
6. The 16 square foot shed on Unit A has been replaced by a 987.323 square foot metal shed.
7. A disclosure that each unit is entitled to only one (1) water meter from the County of Kauai Water Department.
8. A disclosure that portions of a retaining wall on Unit D encroaches upon Unit C and that the owners of Unit D and Unit C have entered into that certain Encroachment Agreement recorded in the Bureau of Conveyances as Document No. 2007-188709.
9. A disclosure that Unit D is subject to Easement D-1 for drainage purposes and Easement U-3 for utility purposes.
10. A disclosure that Unit C is subject to an East Basin Setback Area for detention basin purposes and other requirements contained in the Detention Basin Agreement to be executed between the Developer and the County of Kauai.
11. A disclosure that Unit A is subject to Easement U-2 for utility purposes.
12. A disclosure that no building, structure or other improvements not directly related to the maintenance and security of the East Basin Setback Area shall be constructed in the setback area.
13. A disclosure that the Association of Unit Owners of the Project will be responsible for the maintenance of the detention basin located on Unit C and other obligations contained in the Detention Basin Agreement.
14. A Second Amendment to Declaration of Condominium Property Regime of Kalaheo Hillside Estates has been recorded in said Bureau as Document No. 2009-156651, to note items 6 through 13 above.

## SPECIAL ATTENTION

This is a CONDOMINIUM PROJECT, not a subdivision. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. The Purchaser should consult with the appropriate County agencies to determine whether the Purchaser may build a residential dwelling unit, or any other type of structure, on the property.

1. There are presently one (1) residential structure, one (1) metal shed, and two (2) shade structures on the property, all of which may be defined as an "apartment" under the condominium property act.
2. This public report does not constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and is not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.
4. Facilities and improvements normally associated with County-approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

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

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

I. PERSONS CONNECTED WITH THE PROJECT

Developer: JAMES E. BEYER, Trustee and VAUGHN BEYER, Trustee Phone: (808) 332-6439  
Name\* (Business)  
P. O. Box 3385  
Business Address  
Lihue, Kauai, Hawaii 96766

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\*: PRUDENTIAL ALL STAR REALTY. Phone: (808) 651-9463  
Name (Business)  
4-971 Kuhio Highway  
Business Address  
Kapaa, Kauai, Hawaii 96746

Escrow: TITLE GUARANTY ESCROW SERVICES, INC. Phone: (808) 533-6261  
Name (Business)  
235 Queen Street  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: \*\* BEYER QUALITY BUILDERS, LTD. Phone: (808) 332-5959  
Name (BC-24142)  
P. O. Box 580  
Business Address  
Kalaheo, Kauai, Hawaii 96741

\*\* The license for the above-named General Contractor has lapsed. In the event additional construction is required, a licensed general contractor will be retained by the Developer.

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

Attorney for Developer: Jonathan J. Chun, Esq. Phone: (808) 245-4705  
Name (Business)  
Belles Graham Proudfoot Wilson & Chun, LLP  
Business Address  
4334 Rice Street, Suite 202  
Lihue, Kauai, Hawaii 96766-1388

\*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. 2006-036188

Book \_\_\_\_\_ Page \_\_\_\_\_

Filed - Land Court:

Document No. \_\_\_\_\_

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

First Amendment to Declaration of Condominium Property Regime of Kalaheo Hillside Estates and Condominium Map No. 4169 dated April 27, 2006, recorded as Document No. 2006-081041.

Second Amendment to Declaration of Condominium Property Regime of Kalaheo Hillside Estates dated October 8, 2007, recorded as Document No. 2007-188710.

Second Amendment to Declaration of Condominium Property Regime of Kalaheo Hillside Estates dated September 22, 2009, and recorded as Document No. 2009-156651.

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. 4169

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 Kalaheo Hillside Estates and Condominium Map No. 4169 dated April 27, 2006, recorded as Document No. 2006-081041.

Second Amendment to Declaration of Condominium Property Regime of Kalaheo Hillside Estates dated September 22, 2009, and recorded as Document No. 2009-156651.

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. 2006-036189

Book \_\_\_\_\_ Page \_\_\_\_\_

Filed - Land Court:

Document No. \_\_\_\_\_

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

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%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	-----	<u>N/A</u>

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

2. **Developer**

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

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

The Developer has reserved the right to amend the House Rules up until sale of any unit, such as to create building pads for residential (not agricultural) improvements. The House Rules will govern the residential uses on the project and will not conflict with Hawaii State law which regulates uses on agricultural zoned land.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

[ X ] Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.

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

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

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

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

Lease Rent Payable: [ ] Monthly [ ] Quarterly  
[ ] Semi-Annually [ ] Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year

For Sub-leaseholds:

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

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

[ ] Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

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

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

Lease Rent Payable: [ ] Monthly [ ] Quarterly  
[ ] Semi-Annually [ ] Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per: [ ] Month [ ] Year

Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: 3080 Lauoho Road  
Kalaheo, Kauai, Hawaii 96741

Tax Map Key: (TMK): (4) 2-3-002-010  
CPR 0001, 002, 003 and 004

Address  TMK is expected to change because addresses will be assigned at the time of Development of individual homes.

Land Area: 11.716  square feet  acre(s) Zoning: Agricultural

Fee Owner  
of Units A,  
B and C:

JAMES E. BEYER, Trustee of the James Beyer Revocable Living  
Trust dated November 28, 2005  
VAUGHN BEYER, Trustee of the Vaughn Beyer Revocable Living  
Trust dated November 28, 2005  
P. O. Box 3385  
Lihue, Kauai, Hawaii 96766

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: 4 Floors Per Building 1  
 Exhibit "A" contains further explanations.
3. Principal Construction Material:  
 Concrete  Hollow Tile  Wood (Unit D)  
 Other Unit A – Metal frame with corrugated metal sides;  
Units B and C - Metal poles and shade cloth
4. Permitted Uses by Zoning:

	No. of Apts.	<u>Use Permitted by Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: Shed	<u>3</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:

- See Bylaws Section 5.3(9) and Declaration of Covenants, Conditions and Restrictions,  
 Pets: Article VI, paragraph 14  
 Number of Occupants: \_\_\_\_\_  
 Other: \_\_\_\_\_  
 There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>Identify</u>
<u>A</u>	<u>1</u>	<u>---</u>	<u>---</u>	<u>987.323</u>	<u>Storage Shed</u>
<u>B</u>	<u>1</u>	<u>---</u>	<u>---</u>	<u>16</u>	<u>Shade Structure</u>
<u>C</u>	<u>1</u>	<u>---</u>	<u>---</u>	<u>16</u>	<u>Shade Structure</u>
<u>D</u>	<u>1</u>	<u>3 / 3</u>	<u>1,812</u>	<u>---</u>	<u>Residence</u>
<u>D</u>	<u>---</u>	<u>---</u>	<u>---</u>	<u>162 / 31</u>	<u>Garage/Entry</u>

Total number of Apartments: 4

**\*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.

7. Parking Stalls:

Total Parking Stalls:	<u>2 *</u>						
	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>TOTAL</u>
Assigned	2	0	_____	_____	_____	_____	<u>2</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>2</u>		<u>0</u>		<u>0</u>		<u>2</u>

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

\* Each unit has ample space for parking within its limited common element area.

Commercial parking garage permitted in condominium project.

Exhibit "B" contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool                       Storage Area                       Recreation Area

Laundry Area                       Tennis court                       Trash Chute/Enclosure(s)

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

9. Compliance With Building Code and Municipal Regulations: Cost to Cure Violations

There are no violations.                       Violations will not be cured.

Violations and cost to cure are listed below.                       Violations will be cured by \_\_\_\_\_  
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
(For conversions of residential apartments in existence for at least five years):

Condition Report by Architect Avery Youn dated November 9, 2005 state that Unit D has a probable expected useful life in excess of twenty years. A copy of the Condition Report is attached hereto as Exhibit "C".

No representation is made for the sheds on Units A, B and C.

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 lawfully at one time but which does not now conform to present zoning requirements:

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

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

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

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

D. Common Elements, Limited Common Elements, Common 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     "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 "D".

as follows:

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

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 "D".

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 "E" describes the encumbrances against the title contained in the title report dated October 14, 2009 and issued by Title Guaranty of Hawaii, Inc.

**Blanket Liens:**

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

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

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

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 Date of Completion:**

The storage shed built on Unit A was completed in August 2009.  
The storage sheds on Units B and C were constructed in April 2005  
The residence on Unit D was constructed in 1973.

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):

The Developer reserves the right to add one additional phase to the Project.

**IV. CONDOMINIUM MANAGEMENT**

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

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

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

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

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

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

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

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

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

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

- None  Electricity (\_\_\_\_ Common Elements only \_\_\_\_ Common Elements & Apartments)  
 Gas (\_\_\_\_ Common Elements only \_\_\_\_ Common Elements & Apartments)  
 Water  Sewer  Television Cable  
 Other \_\_\_\_\_

## V. MISCELLANEOUS

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

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit "G" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated September 22, 2009  
Exhibit "H" contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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. 6037 filed with the Real Estate Commission on March 2, 2006.

**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. 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, especially the Exhibit to this report, which is a summary of the recorded restrictive covenants for the subdivision within which this project is located. Among other things, the restrictive covenants govern land use, building type and materials, possession of animals, and cultivation of crops. You should also conduct your own investigations and ascertain the validity of information provided.
2. The prospective purchaser shall have the right to build such residence or farm dwelling at purchaser's expense. The purchaser shall also, in such event, file the "as-built" certificate within thirty days of completion of the farm dwelling in conformation with Section 514A-12, Hawaii Revised Statutes, and record an amendment of the Declaration of Condominium Property Regime ("Declaration") to describe the farm dwelling. The County of Kauai Planning Department requires, in order to process the necessary permits for the construction of a farm dwelling and the processing of a farm dwelling agreement, authorization from at least 75% of the legal and equitable ownership of the entire project, consistent with the Declaration and the Bylaws ("condominium documents"). In most cases a farm dwelling may not be constructed unless a unit owner demonstrates to the County his ability to derive income from his property, established and verified prior to any building permit approval.
3. Except as limited specifically by the condominium documents and subdivision restrictive covenants, all uses permitted in the respective residential, agricultural and open zones are permitted. Uses in one zone are not the same as in the other, and the prospective purchaser should consult the appropriate county agency for information on uses and construction in the respective zones in which purchase is considered.
4. A buyer should understand 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.
5. Purchasers of Units should be aware that Chapter 205, Hawaii Revised Statutes ("H.R.S."), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

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

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

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

6. Purchaser should be aware that there is no public sewer system available, which required the project to comply with the requirements of Chapter 11-62, HAR, "Wastewater systems". Purchasers of each apartment of unit would bear the cost of designing and installing the wastewater system as part of their construction costs. The County of Kauai may allow the first apartment/unit applying for such a permit to use a cesspool; the second would require a septic system. Any prospective purchaser should verify requirements with the County of Kauai and seek design and installation estimates prior to proceeding with the wastewater system.

7. This Project is entitled to one guest house. The right to construct guest houses is reserved to Developer, to be assigned to such unit(s) as Developer may determine. This right may be assigned to any other unit in the Project by written agreement which is recorded in the Bureau of Conveyances, State of Hawaii.
8. Each unit is entitled to only one (1) water meter from the County of Kauai Water Department.
9. Unit A is subject to Easement U-2 for utility purposes.
10. Unit C is subject to Easement U-1 for utility purposes.
11. Unit D is subject to Easement D-1 for drainage purposes and Easement U-3 for utility purposes.
12. Unit C is subject to an East Basin Setback Area for detention basin purposes and other requirements contained in the Detention Basin Agreement to be executed between the Developer and the County of Kauai. The material provisions of the Detention Basin Agreement to be executed between the Developer and the County of Kauai are set forth in the draft Detention Basin Agreement attached to the Declaration as Exhibit "C". The draft Detention Basin Agreement may be amended at any time prior to its final execution by the County of Kauai. Buyers should review the final executed Detention Basin Agreement between the County of Kauai and the Developer to determine the obligations of the Association and Unit C.

No building, structure or other improvements not directly related to the maintenance and security of the East Basin Setback Area shall be constructed within the setback area located on Unit C.

The Association of Unit Owners of the Project will be responsible for the maintenance of the detention basin located on Unit C and other obligations contained in the Detention Basin Agreement.

13. A portion of a retaining wall on Unit D encroaches upon Unit C. The owners of Unit D and Unit C have entered into that certain Encroachment Agreement recorded in the Bureau of Conveyances as Document No. 2007-188709.
14. Purchasers should be aware that condominium Units A through D are subject to the restrictions contained in that certain unrecorded Declaration of Covenants, Conditions And Restrictions For Kalaheo Hillside Estates Condominium, a summary of which is attached hereto as Exhibit "J".
15. The project is in compliance with all ordinances, codes, rules and regulations as stated in the Memo from the County of Kauai, Planning Department, dated June 14, 2006, a copy of which is attached hereto as Exhibit "K".
16. Currently the Association has not adopted a budget for the project pursuant to HRS §514A-83.6. After the first meeting of the Association is called, the Association will adopt a formal budget to include the maintenance of all common elements.
17. HRS 514B – New Condominium Law

A new condominium law for the State of Hawaii took effect as of July 1, 2006, and is codified as Hawaii Revised Statutes, Chapter 514B ("HRS 514B"). The former condominium law, found at Hawaii Revised Statutes Chapter 514A, will continue to be applicable to this Project, subject to certain sections being superseded by HRS 514B. Buyers should retain counsel to answer any questions they may have with regard to the effect HRS 514B will have on this project.

- 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.

JAMES E. BEYER and VAUGHN BEYER

\_\_\_\_\_  
Owners/Developers

  
\_\_\_\_\_  
JAMES E. BEYER

\_\_\_\_\_  
October 28, 2009  
Date

  
\_\_\_\_\_  
VAUGHN BEYER

\_\_\_\_\_  
October 28, 2009  
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

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

**EXHIBIT "A"**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS**

Qty.	Unit No.	Area of Limited Common Element	No. of Br./Bath	Appx. Net Living Area (Sq. Ft.)	Appx. Other Area (Sq. Ft.)	Percentage of Common Int.
1	A	6.364 acres	0/0	0	987.323 - Storage shed	40%
1	B	2.237 acres	0/0	0	16 - Shade Structure	25%
1	C	1.924 acres	0/0	0	16 - Shade Structure	25%
1	D	1.000 acre	3/3	1,812 Residence	0	10%
	D				162/31 Garage/Entry	

The Developer has determined that Unit A has a higher burden on the common elements and access and utility easements within the Project, Units B and C have an equal burden on the common elements and the access and utility easements within the Project and Unit D has the smallest burden on the common elements and access and utility easements within the Project. Based on this determination the Developer has assigned the above percentage interests to Units A, B, C and D for both common expense and voting purposes.

**EXHIBIT "B"**

**PARKING PLAN**

Unit D has two (2) designated covered parking stalls within the limited common element appurtenant to Unit D for the use of the owner of Unit D. There are no parking stalls designated for Units A, B and C. When a dwelling unit is constructed on Units A, B and C or its respective appurtenant limited common element, the owners shall designate and provide at least two (2) parking stalls within their limited common element appurtenant to said unit or within an attached or detached garage of the unit.

EXHIBIT "C"

AVERY H. YOUN, ARCHITECT  
2980 EWALU STREET  
LIHUE, HI 96766  
PH. (808) 245-9414  
FAX (808) 245-5238

ARCHITECT'S CONDITION REPORT  
"KALAHEO HILLSIDE ESTATES"

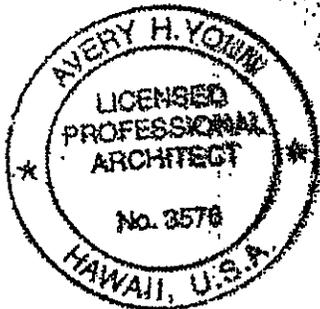
The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 3576, has inspected the Unit D dwelling, of the "KALAHEO HILLSIDE ESTATES" project and declares as follows:

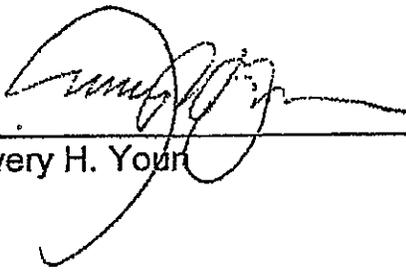
Unit D dwelling constructed in 1973

The structures are situated at Kalaheo, Kauai, Hawaii and identified as Tax Map Key No. (4) 2-3-02: 10

The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing, appear to be in satisfactory and sound condition for the stated age thereof. The structures and related systems and components have an expected useful life in excess of twenty (20) years for Unit D dwelling.

DATED: Lihue, Kauai, Hawaii Nov. 9, 2005.



  
\_\_\_\_\_  
Avery H. Young

**EXHIBIT "D"**

**COMMON ELEMENTS OF THE PROJECT**

The common elements of the project are:

- (a) the 0.190 acre common element roadway;
- (b) the land in fee simple;
- (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, B, C and D are located, shown and designated on the Condominium Map and the table below.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
A	6.324 acres
B	2.237 acres
C	1.924 acres
D	1.000 acres

Land areas as referenced herein are not legally subdivided lots.

**EXHIBIT "E"**

**ENCUMBRANCES AGAINST TITLE**

1. Effects if any of the following:

The terms and provisions contained in the following:

AGREEMENT REGARDING LOAN AND SECURITY dated July 31, 1986, recorded in Liber 21291 at Page 594, by and between RICHARD RACOMA, son of Theresa Santos, "Lender", ELLA LOUISE SANTOS, daughter of Theresa Santos, "Borrower", and THERESA SANTOS, mother of Richard Racoma and Ella Louise Santos, "Testator".

2. Pipeline Right-of-Way No. 5, as shown on Tax Map.
3. Any unrecorded leases and matters arising from or affecting the same.
4. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "KALAHEO HILLSIDE ESTATES" CONDOMINIUM PROJECT dated February 2, 2005, recorded as Document No. 2006-036188.

Condominium Map No. 4169 and any amendments thereto.

Said Declaration was amended by instruments dated April 27, 2006, recorded as Document No. 2006-081041, and dated October 8, 2007, recorded as Document No. 2007-188710, and dated September 22, 2009, recorded as Document No. 2009-156651.

5. The terms and provisions contained in the BY-LAWS OF THE ASSOCIATION OF OWNERS dated February 2, 2005, recorded as Document No. 2006-036189.
6. The terms and provisions contained in the ENCROACHMENT AGREEMENT dated October 8, 2007, recorded as Document No. 2007-188709, by and between JAMES E. BEYER, as Trustee of the James E. Beyer Family Revocable Living Trust and VAUGHN BEYER, as Trustee of the Vaughn Beyer Family Revocable Living Trust, both trusts dated November 28, 2005, "Unit C Owner", and JAMES E. BEYER, as Trustee of the James E. Beyer Family Revocable Living Trust and VAUGHN BEYER, as Trustee of the Vaughn Beyer Family Revocable Living Trust, both trusts dated November 28, 2005, "Unit D Owner".

7. -AS TO UNIT A ONLY:-

The terms and provisions contained in Apartment Deed dated August 27, 2007, recorded as Document No. 2007-163387.

8. -AS TO UNIT B ONLY:-

The terms and provisions contained in Apartment Deed dated August 27, 2007, recorded as Document No. 2007-163386.

9. -AS TO UNIT C ONLY:-
- (A) The terms and provisions contained in Apartment Deed dated August 27, 2007, recorded as Document No. 2007-163388.
  - (B) MORTGAGE dated December 21, 2007, in favor of KAUAI COMMUNITY FEDERAL CREDIT UNION, a federally chartered credit union, recorded as Document No. 2007-223403.
10. The terms and provisions contained in the DECLARATION OF GRANT AND RESERVATION OF ACCESS AND UTILITY EASEMENT dated September 4, 2009, recorded as Document No. 2009-141367.
11. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
12. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

EXHIBIT "F"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>
Unit A	\$80.00 x 12 = \$960.00
Unit B	\$50.00 x 12 = \$600.00
Unit C	\$50.00 x 12 = \$600.00
Unit D	\$20.00 x 12 = \$240.00

***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

\$ 00.00 x 12 = \$ 00.00

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

Maintenance, Repairs and Supplies

Building  
Grounds  
Unpaved accessway  
East Basin maintenance and certification

\$200.00 x 12 = \$2,400.00

Management

Management Fee  
Payroll and Payroll Taxes  
Office Expenses

Insurance

Reserves(\*)

Taxes and Government Assessments

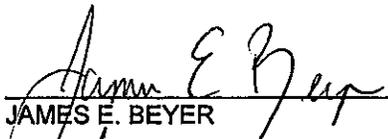
Audit Fees

Other

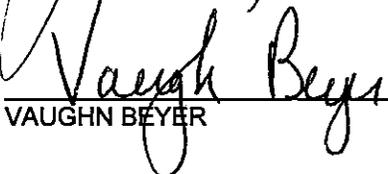
TOTAL

\$200.00 x 12 = \$2,400.00

We, JAMES E. BEYER and VAUGHN BEYER, the owners/developers for the KALAHEO HILLSIDE ESTATES condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
\_\_\_\_\_  
JAMES E. BEYER

October 28, 2009  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
VAUGHN BEYER

October 28, 2009  
\_\_\_\_\_  
Date

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

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

End of EXHIBIT "F"

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

## EXHIBIT "G"

### SUMMARY OF PURCHASE CONTRACT

The Purchase Contract, including the terms and conditions attached thereto as the CPR Addendum (hereinafter collectively called the "Purchase Contract") contain the price and other terms and conditions under which a purchaser will agree to buy a unit in the Project. Among other things, the Purchase Contract states:

(a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a unit.

(b) That the purchaser acknowledges having received and read, prior to signing the Purchase Contract, the following: The Developer's Public Report and any amendments; the recorded project Declaration and Bylaws and any amendments; the project House Rules, if any, with amendments; a letter sized Condominium Project Map and amendments; and the Notice of Buyer's Right to Cancel.

(c) That the Developer makes no representations concerning rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.

(d) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(e) Requirements relating to the purchaser's financing of the purchase of a unit.

(f) That the unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.

(g) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.

(h) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

(i) That, unless requested, the purchaser will not receive interest on deposits made under the Purchase Contract.

(j) If the purchaser shall default:

(1) The contract may, at the Developer's option, be terminated by written notice to the purchaser; and

(2) Any sums paid by the purchaser shall belong to the Developer as liquidated damages (up to a maximum of 20% of the total purchase price); and

(3) The Developer may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorneys' fees, incurred by reason of default by the purchaser shall be borne by the purchaser.

- (k) If the Developer shall default:
- (1) The purchaser may bring an action for damages for breach of contract; and
  - (2) The purchaser may seek specific performance of the contract; and
  - (3) The Developer shall be responsible for any costs incurred in accordance with the contract.

The Purchase Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon purchasers and prospective purchasers to read with care the specimen sales Contract on file with the Real Estate Commission.

## EXHIBIT "H"

### SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) A purchaser shall be entitled to a return of such purchaser's funds and Escrow shall pay such funds to such purchaser, together with any interest which may have accrued to the credit of such purchaser, if any one of the following has occurred (collectively, the "Cancellation Provisions"):
  - (i) Seller and purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or
  - (ii) Seller shall have notified Escrow of Seller's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Seller; or
  - (iii) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to cancel the sales contract pursuant to HRS §514B-86 (thirty-day right to cancel), or, if applicable, HRS §514B-89 (failure to complete construction before specified completion deadline); or
  - (iv) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to rescind the sales contract pursuant to HRS §514B-87, by a valid rescission signed by all purchasers of the affected unit and postmarked no later than midnight of the thirtieth calendar day after the date that the purchasers received the notice of rescission from Seller, in which case the purchasers shall be entitled to a prompt and full refund of any moneys paid.
- (d) The purchaser is entitled to a refund if the purchaser or seller cancels the Sales Contract in accordance with its cancellation provisions, or if the purchaser terminates its reservation before the Sales Contract is binding. However, Escrow may deduct from the refund cancellation fees in accordance with the Sales Contract in an amount not to exceed \$250.00.

In the event of a default by the purchaser, the funds paid by the purchaser shall belong to the seller as liquidated damages (up to a maximum of twenty percent (20%) of the total purchase price).

The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. It is incumbent upon purchasers and prospective purchasers to read with care the executed Escrow Agreement on file with the Real Estate Commission.

- (e) The purchaser's funds that are placed in trust prior to closing may be used by the seller after:

(1) the purchaser has (i) been provided with a developer's public report; and any amendments thereto, recorded copies of the project Declaration and Bylaws, with any amendments, the project House rules (if any), with any amendments, a letter sized Condominium Project Map, with any amendments, and a Notice of Buyer's Right to Cancel; (ii) executed a receipt and notice and has waived his right to cancel or thirty (30) days have elapsed since the purchaser has been provided with the final public report and receipt and notice of right to cancel;

(2) the seller notifies escrow in writing that since (i) and (ii) have happened, the Sales Contract is binding; and

(3) the seller's attorney advises escrow that the Sales Contract is binding and the requirements of Hawaii Revised Statutes, Sections 514B-87 and -91 have been met.

(f) Escrow may not disburse any buyer's funds in the construction of the project until completion of the project and the expiration of the mechanic's and materialmen's lien period. Escrow may disburse prior to completion of the project and expiration of the applicable lien period if the Developers would furnish each purchaser an Owners Title Insurance with an endorsement against any future liens placed on the apartments or project as a result of the development, plus providing the Real Estate Commission a release of the General Contractor's lien rights.

**EXHIBIT "I"**

\*\*\*FOR ILLUSTRATION ONLY\*\*\*

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AFTER RECORDATION RETURN BY MAIL TO:

COUNTY OF KAUAI  
Planning Department  
Building A, Suite 473  
4444 Rice Street  
Lihue, HI 96766

Document contains \_\_\_\_ pages

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**FARM DWELLING AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by and between \_\_\_\_\_,  
\_\_\_\_\_, whose residence and post office address  
is \_\_\_\_\_,  
\_\_\_\_\_, hereinafter called the "APPLICANT(S)", and the COUNTY OF  
KAUAI, Planning Department, its business and mailing address being 4444 Rice street, Building  
A, Suite 473, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT".

**WITNESSETH:**

WHEREAS, the APPLICANT(S) warrant and represent that he/she/they is/are the  
\_\_\_\_\_ of that certain parcel of land, Tax Map Key No. (4) \_\_\_\_\_,  
more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, this document pertains only to Unit(s) \_\_\_\_\_ as shown in Exhibit "B" and  
made a part hereof; and

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

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

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

WHEREAS, the parcel identified by Tax Map Key No. (4) \_\_\_\_\_, is entitled to \_\_\_\_\_ residential units (and one guest house); and

WHEREAS, this Agreement is evidenced that \_\_\_\_\_ is entitled to one of those residential units; and

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

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

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

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

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on that certain parcel of land describe in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

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

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling"

as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District regulations, as recited herein; and

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

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

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

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

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

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

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself, herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4444 Rice Street, Suite 473, Lihue, Hawaii 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

11. This agreement shall be a covenant running with the portion of land described in Exhibit "A," and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnity agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED:

APPLICANT(S)

\_\_\_\_\_  
Planning Director

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

APPROVED AS TO FORM AND  
LEGALITY:

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

STATE OF HAWAII        )  
                                  ) SS:  
COUNTY OF KAUAI     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii

Print Name: \_\_\_\_\_

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

STATE OF HAWAII        )  
                                  ) SS:  
COUNTY OF KAUAI     )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF HAWAII        )  
                                  ) SS:  
COUNTY OF KAUAI     )

On this day of \_\_\_\_\_, 20\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that (s)he is the \_\_\_\_\_ of the PLANNING DEPARTMENT of the COUNTY OF KAUAI; and that said instrument was executed on behalf of said PLANNING DEPARTMENT; and that said \_\_\_\_\_ acknowledged that (s)he executed the same as his/her free act and deed of the PLANNING DEPARTMENT of the COUNTY OF KAUAI. Said Department has no seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## EXHIBIT "J"

### SUMMARY OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KALAHEO HILLSIDE ESTATES CONDOMINIUM

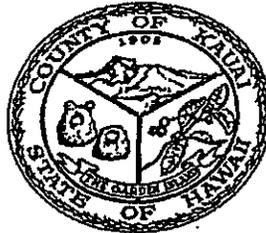
The Kalaheo Hillside Estates Condominium (herein "Project") is affected by a "Declaration of Covenants, Conditions and Restrictions" (herein called the "Protective Covenants") dated February 2, 2006, which has not been recorded. The Developer has reserved the right to further amend the Protective Covenants prior to sale and thereafter as provided by the Protective Covenants.

This is a summary of some of the restrictions applicable to the Project. This is not meant to completely recite the actual provisions of the Protective Covenants or to cover every issue in which a purchaser might have interest. The prospective purchaser is urged to obtain a full copy of the Protective Covenants from the Developer prior to entering into an agreement to purchase a unit in this Project.

1. The Protective Covenants identify the property of the Project as being the subject matter of the restrictions. It identifies the Project as being subject to agricultural restrictions.
2. The restrictions require that the property be maintained in good repair and condition and that all laws will be obeyed. Offensive and annoying activities are limited. Bona fide agricultural activities are permitted. Unsightly structures are prohibited, hunting and firearm discharge are prohibited and other non-agricultural activities are limited.
3. There are restrictions on the residential density applicable to each unit; the establishment of residential construction setbacks and building envelopes is reserved.
4. There are provisions regarding the provision of utilities, obtaining building permits and the permitted residential uses in the Project.
5. A Design Review Committee is established and the means of approval for various development plans are designated.
6. Limitations and controls are established for grading, flooding, drainage and maintenance of improvements. Temporary structures are limited. Use of signs is limited.
7. The means by which the Protective Covenants can be enforced or amended are established. Persons entitled to enforce the Protective Covenants, including the County of Kauai under certain circumstances. So long as the Developer owns any interest in a unit in the Project the Developer must approve any changes to the Protective Covenants.

**EXHIBIT "K"**

**BRYAN J. BAPTISTE**  
MAYOR



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT

**MYLES S. HIRONAKA**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUAI**  
PLANNING DEPARTMENT  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUAI, HAWAII 96766-1328

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

DATE: June 14, 2006

TO: Cynthia M.L. Yee, Esq.  
Senior Condominium Specialist  
Real Estate Commission - P & VLD/DCCA  
335 Merchant Street, Suite 333  
Honolulu, Hawaii 96813

FROM: Ian K. Costa, Director of Planning 

SUBJECT: Recertification of Inspection of Existing Buildings

Project Name: KALAHEO HILLSIDE ESTATES  
Condominium Project (335)  
Tax Map Key: (4) 2-3-002: 010

The developer of the above-mentioned condominium project has rectified the zoning violations as indicated in our letter dated April 10, 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 architect Avery Youn to certify that the existing buildings on the proposed project referred to as Kalaheo Hillside Estates Condominium Unit A through Unit D inclusive 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

Cynthia M.L. Yee, Esq.  
Senior Condominium Specialist  
Kalaheo Hillside Estates Condominium  
TMK: (4) 2-3-002: 010  
June 14, 2006  
Page two

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

2. There are no variances approved for the subject property.
3. 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.
4. There are no notices of violations 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 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 (808) 241-6677.

cc: Steven Lee, Attorney at Law  
James Beyer, Project Developer

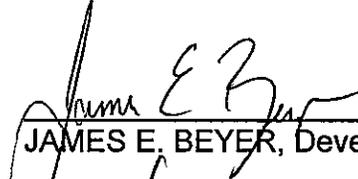
**EXHIBIT "L"**

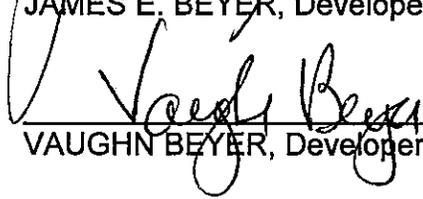
**DISCLOSURE ABSTRACT**

Pursuant to Hawaii Revised Statutes, Section 514(A)-61, the Developer of the KALAHEO HILLSIDE ESTATES condominium project makes the following disclosures:

1. The Developers of the Project are JAMES E. BEYER and VAUGHN BEYER, husband and wife, whose mailing address is P. O. Box 580, Kalaheo, Kauai, Hawaii 96741.
2. The real estate brokers for the sale of Units A, B and C of the project is PRUDENTIAL ALL STAR REALTY, whose mailing address is 4-971 Kuhio Highway, Kapaa, Kauai, Hawaii 96746, and whose telephone number is (808) 651-9463.
3. The escrow company for the sale of Units A, B and C of the project is TITLE GUARANTY ESCROW SERVICES, INC., 235 Queen Street, Honolulu, Hawaii 96803, and whose telephone number is (808) 522-6261.
4. There are no warranties against defects of material and workmanship in individual apartments, common elements or exclusive use areas, and the purchaser buys his/her unit in an "as is" condition.
5. See Exhibit "H" to the Final Public report for the projected annual maintenance fees. The Developer hereby certifies that the estimations have been based on generally accepted accounting principles.
6. The Developer has not conducted a reserve study in accordance with Section 514A-83.6, and the replacement reserve rules, Subchapter 5, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. There are no depreciable common elements in the Project. Should depreciable common elements be added, the appropriate replacement reserve will be established.
7. All of the apartment of the project are to be used for agricultural and permitted residential purposes only. No apartments shall be used for hotel or timeshare purposes. There will be no commercial use except those activities permitted by county ordinance.
8. The Developer discloses Common Interest has been divided equally as shown: Unit A – 40%, Unit B – 25%, Unit C – 25% and Unit D – 10%, reflecting the burden on common elements by the four units.
9. The Developer intends to develop the property in phases, with the current report being the first phase and the second phase will be the balance of the undeveloped land.

IN WITNESS WHEREOF, the Developers have executed this Disclosure Abstract this  
28th day of October, 2009.

  
\_\_\_\_\_  
JAMES E. BEYER, Developer

  
\_\_\_\_\_  
VAUGHN BEYER, Developer

---

**RECEIPT**

The undersigned has received a copy of the foregoing Disclosure Abstract with Exhibit "H"  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Purchaser(s):

\_\_\_\_\_