

CONDOMINIUM PUBLIC REPORT

HAROLD WILLIAM SEAGER and MONIKA FAUPUA SEAGER, JEFF S. GUEST and KARIN CARSWELL
Prepared & GUEST, GREGORY TRISTAN IMBODEN and KELLY MUCHONEY IMBODEN, DOUGLAS T. ALLEN
Issued by: Developer and BEATRICE ALLEN, ARTHUR H. BROWNSTEIN and NUTAN BROWNSTEIN
Address P. O. Box 730, Hanalei, Kauai, Hawaii 96714
Project Name(\*): HUI O HIHIMANU
Address Kapa'ka Road, Lot 20, Princeville, Kauai, Hawaii 96722

Registration No. 6042

Effective date: August 3, 2006
Expiration date: September 3, 2007

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 governmental agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

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

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

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

Type of Report:

PRELIMINARY: (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.

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

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

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

(\* Exactly as named in the Declaration

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

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

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

Required and attached to this report                       Not Required - disclosure covered in this report.

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL NOTICE:**

THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE ALSO IS 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, UPON THE PROPERTY.

1. This Public Report does not constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it ensure that all county codes, ordinances and subdivisions requirements have necessarily been complied with.
2. This Project does not involve the sale of individual subdivided lots. The land area beneath and immediate adjacent to each unit as shown on the condominium map is designated as a limited common element and does not represent a legally subdivided lot. The dotted lines on the condominium map merely represent the approximate location of the limited common element assigned to each unit.
3. Facilities and improvements normally associated with County approved subdivisions may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS FOR FURTHER INFORMATION REGARDING THE FORGOING.

## TABLE OF CONTENTS

	page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	5
Developer                      Attorney for Developer                      General Contractor	
Real Estate Broker              Escrow Company                      Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A: Description of Apartments	
EXHIBIT B: Common Elements and Limited Common Elements	
EXHIBIT C: Encumbrances Against Title	
EXHIBIT D: Summary of Sales Contract	
EXHIBIT E: Summary of Escrow Agreement	
EXHIBIT F: Special Power of Attorney	
EXHIBIT G: Agricultural Restrictions on Use	
EXHIBIT H: Farm Dwelling Agreement	

## **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. The 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 of 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 spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer Name: HAROLD WILLIAM SEAGER and MONIKA FAUPUA SEAGER, JEFF S. GUEST and KARIN CARSWELL GUEST, GREGORY TRISTAN IMBODEN and KELLY MUCHONEY IMBODEN, DOUGLAS T. ALLEN and BEATRICE ALLEN, ARTHUR H. BROWNSTEIN and NUTAN BROWNSTEIN P. O. Box 730 Business Address Hanalei, Kauai, Hawaii 96714 Phone: (808) 826-4093

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 Name Business Address Phone: (Business)

Escrow: Title Guaranty Escrow Services, Inc. Name 235 Queen Street Business Address Honolulu, Hawaii 96813 Phone: (808) 521-0211 (Business)

General Contractor: Callahan Construction, Inc. Name P. O. Box 568 Business Address Hanalei, Kauai, Hawaii 96714 Phone: (808) 826-4411 (Business)

Condominium Managing Agent: Self Managed by the Association of Unit Owners Name Business Address Phone: (Business)

Attorney for Developer: Michael H. Sakai, Esq. Name 201 Merchant Street, Suite 902 Business Address Honolulu, Hawaii 96813-2977 Phone: (808) 531-4171 (Business)

**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. 2006-086127  
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]:

- 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. 4224  
 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]:

- 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 manners which affect how the condominium project will be governed.

The Bylaws for this condominium re:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 2006-086128  
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 interest which must vote for or give written consent to changes:

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

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

2. **Developer:**

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

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

A summary of the reserved rights are as follows (references are to paragraphs in the Declaration):

Par. 16.0. The Developer reserved the right to file an amendment as provided by Section 514A-12, Hawaii Revised Statutes.

Par. 17.0 The Developer also reserved the right up to December 31, 2015 to the amend Declaration, Bylaws or Condominium Map in order to correct any typographical or grammatical error, or to comply with State, Federal or local law.



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 period 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 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: Kapa'ka Road, Lot 20, Princeville, Kauai, Hawaii 96722

Tax Map Key (TMK): (4) 5-3-008-020 (Lot 20)

Address  TMK is expected to change because A street address may be assigned and the County of Kauai may assign a new cpr number for each unit

Land Area: 25  square feet  acre(s)  Zoning: AG

**Fee Owner:** HAROLD WILLIAM SEAGER and MONIKA FAUPUA SEAGER, JEFF S. GUEST and KARIN CARSWELL GUEST, GREGORY TRISTAN IMBODEN and KELLY MUCHONEY IMBODEN, DOUGLAS T. ALLEN and BEATRICE ALLEN, ARTHUR H. BROWNSTEIN and NUTAN BROWNSTEIN  
 P. O. Box 730  
 Address  
 Hanalei, Kauai, Hawaii 96714

**Lessor:** N/A  
 Name  
 Address

**C. Buildings and Other Improvements:**

1.  New Building(s)  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion
2. Number of Buildings: 5 Floors Per Building 1  
 Exhibit A contains further explanations.
3. Principal Construction Material:  
 Concrete (footing)       Hollow Tile       Wood  
 Other iron fence post and shade cloth
4. Permitted Uses by Zoning:

	<u>No of Apts.</u>	<u>Use Permitted By Zoning</u>
<input type="checkbox"/> Residential	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input 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*	___	<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: shade structure	<u>5</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

\*See Exhibit "G" which contains the permissible uses of a property in an agricultural district.

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>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
<u>Unit A</u>	<u> 1 </u>	<u> 0/0 </u>	<u> _____ </u>	<u> 16 </u>	<u> shade structure </u>
<u>Unit B</u>	<u> 1 </u>	<u> 0/0 </u>	<u> _____ </u>	<u> 16 </u>	<u> shade structure </u>
<u>Unit C</u>	<u> 1 </u>	<u> 0/0 </u>	<u> _____ </u>	<u> 16 </u>	<u> shade structure </u>
<u>Unit D</u>	<u> 1 </u>	<u> 0/0 </u>	<u> _____ </u>	<u> 16 </u>	<u> shade structure </u>
<u>Unit E</u>	<u> 1 </u>	<u> 0/0 </u>	<u> _____ </u>	<u> 16 </u>	<u> shade structure </u>

Total Apartments:  5

**\*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:

The boundary of each unit is the exterior finished surfaces of the units' perimeter walls, shade cloths, roofs, foundations, windows and frames, doors, beams, post and entrys, if any.

Permitted Alterations to Apartments:

Each unit owner may alter the structure and any other improvements located within their unit's limited common land area as provided in paragraphs 7.0, 8.0 and 15.0 of the Declaration of Condominium Property Regime.

Apartments Designated for Owner-Occupant Only: Not Applicable

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

7. Parking Stalls:

Total Parking Stalls: 10\*

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (each)	<u>      </u>	<u>  2  </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>  10  </u>
Guest	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Unassigned	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Other:	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Total Covered & Open	<u>  10  </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>  10  </u>

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

\*Each Apartment has sufficient limited common land area for parking two (2) motor vehicles.

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational 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 \_\_\_\_\_

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

N/A

1. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

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

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

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

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

D. Common Elements, Limited Common Elements, Common Interest:

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

described in Exhibit   B  .

as follows:

2. Limited Common Elements: 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 B.\*

as follows:

\*NOTE: Land areas referenced in Exhibit B are not legally subdivided lots.

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

described in Exhibit \_\_\_\_.

as follows:

Unit A	20%
Unit B	20%
Unit C	20%
Unit D	20%
Unit E	<u>20%</u>
	100%

The common interest was determined by allocating an equal percentage to both units.

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

Exhibit C\* describes the encumbrances against the title contained in the title report dated May 2, 2006 issued by Title Guaranty of Hawaii, Inc.

\*The title report reflected that Exchange Accommodators, Inc. held a 11.5% interest in the Property. Its interest was subsequently conveyed to and is as of the issuance date of this Public Report held by Gregory Tristan Imboden and Kelly Muchoney Imboden.

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 specific sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[X] 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 <b>Prior to Conveyance</b></u>
---------------------	--

Not Applicable

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. There are no warranties, express or implied.

2. Appliances:

None. There are no warranties, express or implied.

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

Units A, B, C, D, and E were constructed in January, 2006.

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):

**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, your apartment may be liened and 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 \_\_\_\_\_ contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change)

See Page 20.

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 \_\_\_\_\_

\*All utilities are or will be separately metered. Each owner is responsible for the installation of its own meters, utilities, and wastewater system.

## 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 D contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated May 11, 2006  
Exhibit E 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 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 a 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 as 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:

- Real
- A) Condominium Public Report issued by the developer which have been given an effective date by the Hawaii Estate Commission.
  - B) Declaration of Condominium Property Regime
  - C) Bylaws of the Association of Apartment Owners
  - D) House Rules, if any.
  - E) Condominium Map
  - 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 law: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is part of Registration No. 6042 filed with the Real Estate Commission on June 20, 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**

**NOT A SUBDIVISION.** This is a condominium project which should not be confused with a subdivision. A purchaser of an apartment unit will be conveyed an apartment unit together with an "undivided" percentage interest in the common elements of the project. The entire parcel of land upon which the project is situated is designated as a common element. That portion of the common element which each purchaser has the exclusive right to use is called a limited common element or area, but is not a separate, legally subdivided lot.

**MAINTENANCE FEES.** Developer believes that there will be no maintenance fees. This is because all costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective apartment owner. All utilities are or will be separately metered. Based on the foregoing, there is no schedule of maintenance fees attached to this Public Report.

Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners to purchase fire insurance to cover the improvements of the Project, and that the premiums for the insurance be common expenses. Developer anticipates that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses. Prospective purchasers should consult with their own insurance professionals to obtain an estimate for individual fire and hazard insurance.

**RESERVES.** Developer discloses that no "reserve study" was done in accordance with Section 514A-83.6, Hawaii Revised Statutes, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

**FARM DWELLING.** Purchasers should be aware that Chapter 205, Hawaii Revised Statutes ("HRS."), 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 HRS. Chapter 205-4.5(a)(4) as a "single family dwelling located on and used in connection with a farm, including clusters of a 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 HRS 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 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 (see Exhibit "H"). In addition, Paragraph 8.0 of the Declaration imposes a duty of each unit owner to bear an equal burden proportionate to the unit owners respective appurtenant interest in the common area for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units with the Project.

**DISCLOSURE RE: SELECTION OF REAL ESTATE BROKER** This public report shall not bind a purchaser to the sale of a unit until (1) the Developer first submits to the Real Estate Commission a duly executed disclosure abstract identifying the designated sales agent, and duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, and (2) give a copy of said disclosure abstract to the purchaser together with a copy of the Public Report.

**TRANSFER OF UNIT.** The Developers intend to convey and/or transfer one or more units in the Project to each of the respective owners.

**MASTER DECLARATION.** The Project is subject to a Declaration of Restrictive Covenants dated November 11, 1977 ("Master Declaration"). The Master Declaration amongst other matters, establishes a Design Committee, contains restrictions on type of improvements that are permitted, establishes setbacks, and other requirements. Prospective purchasers need to become familiar with the requirements.

**WAIVER AND RELEASE**. The Project is subject to a Waiver and Release Agreement dated November 4, 2005 ("Wavier"). The Waiver serves to release the County and the utility provider from any liability arising from the lack or interruption of water service to the units and Project.

**SPECIAL POWER OF ATTORNEY**, The Developer may require each Purchaser to grant a Special Power of Attorney to the Developer or a nominee. This is to facilitate an owner in obtaining a building permit in the future. The form of the Special Power of Attorney is attached as Exhibit "F".

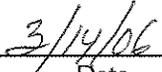
- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The 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.

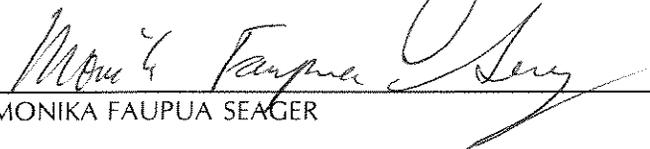
**HAROLD WILLIAM SEAGER and MONIKA FAUPUA SEAGER, JEFF S. GUEST and KARIN CARSWELL GUEST, GREGORY TRISTAN IMBODEN and KELLY MUCHONEY IMBODEN, DOUGLAS T. ALLEN and BEATRICE ALLEN, ARTHUR H. BROWNSTEIN and NUTAN BROWNSTEIN**

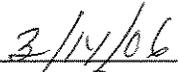
**HUI O HIHIMANU**

Printed Name of Developer

  
 \_\_\_\_\_  
 HAROLD WILLIAM SEAGER

  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 MONIKA FAUPUA SEAGER

  
 \_\_\_\_\_  
 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.

- 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.)
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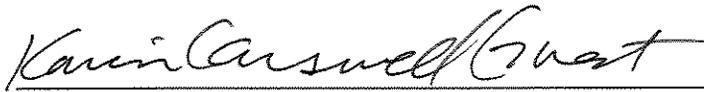
**HAROLD WILLIAM SEAGER and MONIKA FAUPUA SEAGER, JEFF S. GUEST and KARIN CARSWELL GUEST, GREGORY TRISTAN IMBODEN and KELLY MUCHONEY IMBODEN, DOUGLAS T. ALLEN and BEATRICE ALLEN, ARTHUR H. BROWNSTEIN and NUTAN BROWNSTEIN**

**HUI O HIHIMANU**

Printed Name of Developer

  
 \_\_\_\_\_  
 JEFF S. GUEST

3/23/06  
 Date

  
 \_\_\_\_\_  
 KARIN CARSWELL GUEST

3-23-06  
 Date

Distribution:

Department of Finance, County of Kauai  
 Planning Department, County of Kauai

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HAROLD WILLIAM SEAGER and MONIKA FAUPUA SEAGER, JEFF S. GUEST and KARIN CARSWELL GUEST, GREGORY TRISTAN IMBODEN and KELLY MUCHONEY IMBODEN, DOUGLAS T. ALLEN and BEATRICE ALLEN, ARTHUR H. BROWNSTEIN and NUTAN BROWNSTEIN

HUI O HIHIMANU  
Printed Name of Developer

  
GREGORY TRISTAN IMBODEN

3/30/06  
Date

  
KELLY MUCHONEY IMBODEN

3/30/06  
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.

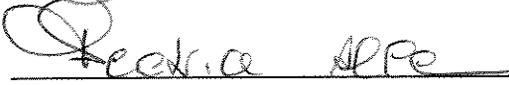
- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The 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.

**HAROLD WILLIAM SEAGER and MONIKA FAUPUA SEAGER, JEFF S. GUEST and KARIN CARSWELL GUEST, GREGORY TRISTAN IMBODEN and KELLY MUCHONEY IMBODEN, DOUGLAS T. ALLEN and BEATRICE ALLEN, ARTHUR H. BROWNSTEIN and NUTAN BROWNSTEIN**

**HUI O HIHIMANU**  
 Printed Name of Developer

  
 \_\_\_\_\_  
 DOUGLAS T. ALLEN

3/24/06  
 Date

  
 \_\_\_\_\_  
 BEATRICE ALLEN

3/24/06  
 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.

- 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.

**HAROLD WILLIAM SEAGER and MONIKA FAUPUA SEAGER, JEFF S. GUEST and KARIN CARSWELL GUEST, GREGORY TRISTAN IMBODEN and KELLY MUCHONEY IMBODEN, DOUGLAS T. ALLEN and BEATRICE ALLEN, ARTHUR H. BROWNSTEIN and NUTAN BROWNSTEIN**

**HUI O HIHIMANU**

Printed Name of Developer

  
 \_\_\_\_\_  
 ARTHUR T. BROWNSTEIN

  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 NUTAN BROWNSTEIN

  
 \_\_\_\_\_  
 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"

### Description of Apartments

The Project is hereby divided into the following five (5) freehold estates:

a. Unit A. Unit A consists of one freehold estate consisting of one shade structure. The net area of the structure is approximately 16 square feet. Parking for at least two vehicles is available anywhere within the limited common land area.

b. Unit B. Unit B consists of one freehold estate consisting of one shade structure. The net area of the structure is approximately 16 square feet. Parking for at least two vehicles is available anywhere within the limited common land area.

c. Unit C. Unit C consists of one freehold estate consisting of one shade structure. The net area of the structure is approximately 16 square feet. Parking for at least two vehicles is available anywhere within the limited common land area.

d. Unit D. Unit D consists of one freehold estate consisting of one shade structure. The net area of the structure is approximately 16 square feet. Parking for at least two vehicles is available anywhere within the limited common land area.

e. Unit E. Unit E consists of one freehold estate consisting of one shade structure. The net area of the structure is approximately 16 square feet. Parking for at least two vehicles is available anywhere within the limited common land area.

## EXHIBIT "B"

### Common Elements

The common elements of the Project and which the units have immediate access to include:

- a. The land in fee simple.
- b. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, drainage, hot and cold water and like utilities which services more than one unit and any easements for such utility services.
- c. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project.

### Limited Common Elements.

The land area delineated and designated in the Condominium Map as limited common elements are limited common elements of a unit and consist of the following:

- a. Unit A. The land area surrounding and under Unit A is a limited common element of Unit A and is for the exclusive use of Unit A and consists of approximately 5 acres.
- b. Unit B. The land area surrounding and under Unit B is a limited common element of Unit B and is for the exclusive use of Unit B and consists of approximately 5 acres.
- c. Unit C. The land area surrounding and under Unit C is a limited common element of Unit C and is for the exclusive use of Unit C and consists of approximately 5 acres.
- d. Unit D. The land area surrounding and under Unit D is a limited common element of Unit D and is for the exclusive use of Unit D and consists of approximately 5 acres.
- e. Unit E. The land area surrounding and under Unit E is a limited common element of Unit E and is for the exclusive use of Unit E and consists of approximately 5 acres.
- f. Any fences, walls or utility systems or lines which are located within the limited common land area and which services or benefits only one unit shall be deemed a limited common element of such unit.

## EXHIBIT "C"

### Encumbrances Against Title

1. Designation of Easement "E-8" (6 feet wide) for electrical transformer box as shown on File Plan No. 1574.
2. Building and Flood Setback Line, as shown on File Plan No. 1574.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Declaration of Restrictive Covenants, dated November 25, 1977, recorded in the Bureau of Conveyances, State of Hawaii, in Book 12660, Page 690.
4. Reservation in favor of Consolidated Oil & Gas, Inc., its successors and assigns, as contained in the Deed dated December 14, 1978, recorded in said Bureau, in Book 13394, Page 43.
5. Right-of-Entry in favor of Citizens Utilities Company, a Delaware corporation, dated May 13, 1983, recorded in said Bureau, in Book 17251, Page 782, granting a right-of-entry and easement for utility purposes.  
  
The interest of Citizens Communications Company, formerly known as Citizens Utilities Company, a Delaware corporation, has been assigned to Kauai Island Utility Co-Op, a Hawaii cooperative association, by instrument dated November 1, 2002, recorded in said Bureau, as Document No. 2002-194848.
6. Grant in favor of Citizens Utilities Company, a Delaware corporation, dated November 7, 1986, recorded in said Bureau, in Book 20255, Page 152, granting an easement for utility purposes over said Easement "E-8".
7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Waiver and Release Agreement dated November 4, 2005, in re: building permit and county-supplied water service, recorded in said Bureau, as Document No. 2005-236999.
8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Cotenancy Agreement dated ---, effective August 5, 2005, recorded in said Bureau, as Document No. 2005-026200.
9. The covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in the Declaration of Condominium Property Regime dated April 7, 2006, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-086127.

10. Condominium Map No. 4224, recorded in said Bureau, State of Hawaii.

11. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the By-Laws of the Association Apartment Owners dated April 7, 2006 recorded as Document No. 2006-086128.

12. Joinder of Exchange Accommodators, Inc. dated May 18, 2006, recorded in said Bureau, as Document No. 2006-096785.

13. For real property taxes, your attention is directed to the Director of Finance, County of Kauai.

## EXHIBIT "D"

### Summary of Sales Contract

The Sales Contract contains the purchase price, description and location of the apartment and other terms and conditions under which a Purchaser will agree to buy an apartment in the Project.

Among other things, the Sales Contract:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Purchaser will pay the purchase price.
2. Identifies the escrow agent and states that purchaser's deposit will be held in escrow until the Sales Contract is closed or canceled.
3. Requires that Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
4. Permits the Developer without the consent or approval of a purchaser to modify the Declaration, By-Laws Condominium Map or other documents provided that purchaser may cancel the Sales Contract and obtain a refund if such modification:
  - a. substantially and materially impairs the use and enjoyment of the apartment;
  - b. substantially and materially alters the arrangement of the rooms or usable space of an apartment or building;
  - c. renders unenforceable a purchasers' loan commitment;
  - d. increases the purchaser's share of common expenses or maintenance fees;
  - e. reduces the obligations of Developer of common expenses on unsold apartments.
5. Provides that the Developer is selling the apartments in "AS-IS WHERE-IS" condition. This means that the Developer is not making any warranties or representations with respect to the apartments and Project.
6. If purchaser dies (any one of them) prior to closing, Developer has the right to return purchaser's funds, less any escrow cancellation fees and cost, and cancel the Sales Contract.

7. Provides that the closing cost shall be paid as follows:

a. By purchaser: title insurance, drafting of any note and mortgage, purchaser notary fees, recording fees, one half of escrow fees, and also a start fee for common expenses, if any.

b. By Developer: drafting of apartment deed and Developer notary fees, conveyance taxes, preliminary title report, and one half of escrow fees.

8. Provides the following remedies, in the event of default under the Sales Contract:

by purchaser:

- a. Developer may bring an action against purchaser for breach of contract;
- b. Developer may retain initial deposit;
- c. Purchaser shall be responsible for expenses incurred.

by Developer:

- a. Purchaser may bring an action against Developer for breach of Contract;
- b. Purchaser may bring an action compelling Developer to perform under contract;
- c. Developer shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

9. Provides that purchaser may not assign his/her interest in the Sales Contract without the prior written consent of Developer.

10. Claims Against Contractor. The following is provided by Hawaii law which Purchaser has reviewed and accepts:

"Chapter 672E of the Hawaii Revised Statutes contains important requirements you must follow before you may file a lawsuit or other action for defective construction against the contractor who designed, repaired, or constructed your home or facility. Ninety days before you file your lawsuit or other action, you must serve on the contractor a written notice of any construction conditions you allege are defective. Under the law, a contractor has the opportunity to make an offer to repair and/or pay for the defects. You are not obligated to accept any offer made by a contractor.

There are strict deadlines and procedures under the law, and failure to follow them may negatively affect your ability to file a lawsuit or other action.”

The Sales Contract contains various other provisions which purchaser should become acquainted with. If there is any conflict between the terms of this summary and the Sales Contract, the latter shall control.

## EXHIBIT "E"

### Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Escrow is TITLE GUARANTY ESCROW SERVICES, INC. Under the Escrow Agreement dated May 11, 2006, these things will or may happen:

(a) Developer or Escrow will let purchasers know when payments are due and all monies received from a purchaser will be deposited in Escrow. Any interest earned on the deposits will belong to Developer.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement specifies when purchaser funds may be disbursed upon closing of a sale. The conditions include:

i) Escrow receives the purchasers' signed "Receipt for Public Report(s) and Notice of Right to Cancel";

ii) Escrow receives a certification from the Developer that the Sales Contract is effective and that the rescission right requirements in favor of purchasers have been complied with by the Developer; and

iii) The apartment deed conveying the unit to the purchaser has been recorded in the Bureau of Conveyances.

(d) The Escrow Agreement says under what conditions a refund will be made to a purchaser. Refunds can occur under the following situations:

i) If Purchaser elects to cancel the transaction in accordance with the "Receipt for the Final Public Report and Notice of Right to Cancel". The Receipt provides that purchasers may cancel the Sales Contract and purchaser is the Receipt is mailed or sent by telegram to Developer before (1) the apartment unit is conveyed to purchaser or (2) midnight of the 30th day after delivery of the Public Report(s) to me, whichever is earlier.

ii) The Developer and purchaser agree to terminate the Sales Contract;

iii) if the Developer exercises any right to cancel the transaction which it may have reserved.

NOTE: If a transaction is cancelled, the purchaser must return all documents to the Developer.

(e) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract. If a purchaser defaults, all deposits previously placed into Escrow will be forfeited by purchaser and Escrow may release such funds to Developer. See paragraph 11 of Escrow Agreement.

NOTE: Section 514A-63, Hawaii Revised Statutes, provides rescission rights to a purchaser under a binding contract if there is a material change in the project which directly, substantially and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project for such purchaser's use.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted. If there is any conflict between the terms of this summary and the Escrow Agreement, the latter shall control.

EXHIBIT "F"

HUI O HIHIMANU  
SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

THAT I, \_\_\_\_\_, whose address is \_\_\_\_\_, have made, constituted and appointed and by this act and these presents, do make, constitute and appoint as my agent \_\_\_\_\_, whose address is \_\_\_\_\_, and their successor in interest to the grantee of unit \_\_\_\_\_ in the HUI O HIHIMANU condominium project, TMK (4) 5-3-008-020 (Lot 20), my true and lawful attorney with full power to act in my stead and in my behalf, to make and do the following, to wit:

To apply for and obtain a building permit for a single farm dwelling located at Unit No. \_\_\_\_\_, \_\_\_\_\_, TMK No. (4) 5-3-008-020 (Lot 20), which is further described in Exhibit "A", upon such terms and conditions as my attorney shall think fit; to execute any and all applications, certificates, receipts, grants of easements, licenses, and similar instruments necessary for obtaining any utility service, and other documents or instruments necessary or convenient for such purposes, including any other documents or agreements that may be required by any governmental authority over the issuance of building permits or utility service provider

The power of our attorney to act in accordance with the foregoing shall not be affected by any disability or incapacity suffered by me subsequent to my execution of this instrument. All acts done by my attorney pursuant to this power during any period of disability or incompetency shall have the same effect and inure to the benefit of and bind me, my heirs, devisees and personal representatives as if I were alive, competent and not disabled.

GIVING AND GRANTING to my said Attorney full power and authority as set forth above, to do and perform any and all acts and deeds as aforesaid as I might or could do if personally present, the powers enumerated above being in said of the special powers herein granted and not in limitation thereof; and hereby ratifying all that my said Attorney shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

STATE OF HAWAII )  
 ) ss.  
ISLAND AND COUNTY OF KAUAI )

On this \_\_\_\_\_ day of \_\_\_\_\_, 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.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires:

EXHIBIT "G"

Agricultural Restrictions on Uses  
(County of Kauai)

The following restrictions on uses are encumbrances which shall run with the land (duplicated in its entirety):

1. Pursuant to Act 13, Session Laws of Hawaii 1977, the use of the subject parcels shall be primarily in pursuit of agricultural activities and only for those uses permissible in an agricultural district as contained in Chapter 205, Hawaii Revised Statutes, as amended, which provides as follows:

"Section 205-4.5 - Permissible Uses Within the Agricultural Districts.

(a) Within the agricultural district all lands with soil classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage fruits, forage and timber;
- (2) Game and fishing propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry; Farming dwelling as used herein shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.
- (5) Public institutions and buildings which are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses including day camps, picnic grounds, parks, and riding

stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

- (7) Public, private and quasi-public utility lines and roadways, transformer stations, communications equipment building, solid waste transfer stations and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, materials, vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures.
- (8) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-mentioned uses; or
- (11) Agricultural parks."

2. All of the aforementioned restrictive covenants and conditions shall run with the land until such time as the land is re-classified to a Land Use District other than Agriculture.

3. Any violation of the above restrictive covenants and conditions shall be subject to a citation and a fine of not more than \$5,000 pursuant to Chapter 205, Hawaii Revised Statutes, as amended.

EXHIBIT "H"

\*\*\*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: \_\_\_\_\_