



EXCLUSIVE RIGHT-TO-SELL LISTING AGREEMENT
Hawaii Association of Realtors® Standard Form
Revised 5/05 (NC) For Release 11/05



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Licensee in Brokerage Firm is [X] is not [N/A] a REALTOR® and member of the National Association of REALTORS®. Seller is aware that the National Association of REALTORS® holds its members accountable for their actions through a strict Professional Code of Ethics, which includes a grievance system to address complaints. Non-members are not required to participate in the grievance system.

Property Reference or Address: 91-069 Fort Weaver Road, Ewa Beach, Hawaii 96706

Tax Map Key: Div. 1 /Zone 9 /Sec. 1 /Plat 5 /Parcel 11 /CPR _____ (if applicable).

Hawaiian Island Homes Ltd.

Brokerage Firm

931 University Ave., Suite 105

Address
Honolulu, Hawaii 96826

Smith Foti Development Limited Partnersh

Seller's Name

Seller's Name

Barry D. Kaplan (R)

864-1500

Real Estate Licensee

Phone

1. **AGENCY:** The Buyer and/or Seller in a real estate transaction in Hawaii may retain a real estate Brokerage Firm as their agent. In such case, the Buyer and/or Seller is represented by the Brokerage Firm and all of its licensees. Hawaii law requires real estate licensees to disclose orally or in writing to Seller and/or Buyer whom the licensee represents. The form of representation may be one of the following:
- (a) **Seller's Agent.** Brokerage Firm represents Seller only unless a disclosed dual agency exists. Seller's Agent owes the highest duties to Seller, including confidentiality, loyalty, and utmost care.
 - (b) **Buyer's Agent.** Brokerage Firm represents Buyer only unless a disclosed dual agency exists. Buyer's Agent owes the highest duties to Buyer, including confidentiality, loyalty, and utmost care.
 - (c) **Dual Agent.** Brokerage Firm represents both Buyer and Seller. This commonly occurs when licensees in the Brokerage Firm representing Seller have a Buyer client looking for types of property similar to Seller's property. In such event, the Brokerage Firm and all of its licensees represent both Buyer and Seller and are dual agents. Dual agents must remain neutral in negotiations and must not advance the interest of one party over the other. **A separate written Dual Agency Agreement is required under Hawaii law.**

Seller [X] agrees [N/A] does not agree to Dual Agency

Customer. Seller's Agent can also assist Buyer as a customer. As a customer, Buyer is not represented by Seller's Agent. Seller's Agent can assist Buyer in writing the DROA, can present the DROA to Seller, and can report back any acceptance or request for changes to the DROA.

2. **OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to execute this Agreement and to sell the Property. Exceptions to ownership, title and authority are as follows: N/A
3. **EXCLUSIVE RIGHT TO SELL:** "Exclusive Right To Sell" means that Seller shall list the Property with Brokerage Firm only and that Brokerage Firm is entitled to a commission if the Property is sold by Brokerage Firm, Seller, or anyone else. Seller hereby employs Brokerage Firm as its agent and grants Brokerage Firm the exclusive and irrevocable right to sell or exchange the Property identified above and described on the attached EXHIBIT A.
4. **LISTING PERIOD:** Begins (date) March 13, 2006 and ends at 11:59 PM (HST) on (date) March 12, 2007. Either party may end the listing with 30 calendar days advance written notice to the other. However, neither party may end this listing before 11:59 PM (HST) on (date) December 31, 2006 unless both agree, in writing, to an earlier date.
5. **PROTECTION PERIOD:** 30 calendar days after end of Listing Period or any extension thereof.
6. **ITEMS INCLUDED OR EXCLUDED:** Unless otherwise specified in the sales contract, all fixtures attached to the Property are included. Personal property items are excluded.
7. **LISTING PRICE:** The listing price shall be \$ to be determined by mutual agreement
8. **COMPENSATION TO BROKER:** Seller agrees to pay Brokerage Firm, in US Dollars, to be determined by mutual agreement on the occurrence of any of the following:
- (a) Brokerage Firm, Seller, Cooperating Broker or any other person procures a Buyer (or Buyers) who offers to purchase the Property at the above price, or on any price and terms acceptable to Seller, during the Listing Period or any extension thereof, no matter who (including Seller) procures the Buyer.
 - (b) Brokerage Firm procures a Buyer (or Buyers) ready, willing and able to pay the Listing Price and meet the other terms of this listing, even if Seller refuses to sign the written sales contract.
 - (c) Seller, within the Protection Period specified in Paragraph 5 above, signs a written sale or exchange contract with any prospect to whom the Property was presented and who is included in a written list of prospects delivered to Seller within 10 days of the end of this listing.

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[Signature] 4/13/06
SELLER'S INITIALS & DATE

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- (d) Seller withdraws Property from sale before the end of this listing without consent of the Brokerage Firm.
- (e) **Option.** An agreement to keep open, for a set period, an offer to sell or lease real property. The option must be supported by a premium, separate and independent of the purchase price of the Property. Seller will pay Brokerage Firm one-half of the option premium if Seller gives any person an option during the Listing Period regardless of exercise of the option. If Seller gives an option to any of Brokerage Firm's prospects within the PROTECTION PERIOD, SELLER will likewise pay one-half of the option premium. However, Seller will not pay more than what would have been Brokerage Firm's full commission. Seller will pay the balance of your commission, if any, and any agreed upon general excise tax when the option is exercised, even if after the Listing Period.
9. **ESCROW:** A bonded company shall be employed to help with the conveyance of the Property. Seller hereby irrevocably assigns to Brokerage Firm the above compensation and any agreed upon general excise tax from Seller's funds and proceeds in escrow.
10. **BROKERAGE FIRM'S OBLIGATIONS:**
- (a) **Reasonable Efforts.** Brokerage Firm agrees to exercise reasonable effort and due diligence to achieve the purposes of this contract and keep Seller informed of these efforts. Brokerage Firm is not responsible for the care or control of the Property.
- (b) **Advertising.** Brokerage Firm may advertise the Property by newspaper, radio, TV, Internet, MLS or by placing signs on the Property or any other means which is in compliance with County, State, or Federal law or subdivision/CPR covenants.
- (c) **Buyer's Deposit.** Brokerage Firm may accept deposits from any person. If any deposit is forfeited, Brokerage Firm is entitled to one-half of that deposit, not to exceed what would have been Brokerage Firm's full commission.
- (d) **Fair Housing Laws.** Brokerage Firm shall comply with State and Federal anti-discrimination laws.
- (e) **Sex Offender Registration ("Megan's Law").** Hawaii has enacted a law requiring sex offenders to register with the State Attorney General's office. Brokerage Firm makes no representations as to whether the public has access to this information. Brokerage Firm is not required by law to provide information regarding sex offenders.
11. **SELLER'S REPRESENTATIONS:** Seller represents that, unless otherwise specified in writing, Seller is not aware of any of the following and Seller shall promptly notify Brokerage Firm in writing if Seller becomes aware of any of these items during the Listing Period, or any extension thereof:
- (a) Notice of Default against the Property;
- (b) Delinquent amounts due under any loan or other obligations secured by the Property;
- (c) Bankruptcy, insolvency or similar proceeding affecting the Property;
- (d) Litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and
- (e) Current, pending or proposed special assessments affecting the Property.
12. **SELLER'S OBLIGATIONS:**
- (a) **Assistance.** Seller will prepare the Property for showings and open houses. Seller shall provide all necessary information, documents, and keys and permit inspections by termite inspectors, appraisers, surveyors, etc.
- (b) **Access.** Seller shall allow access as needed during reasonable hours for showings, open houses, and inspections.
- (c) **Lock Box.** Seller agrees to permit and will obtain written permission from any occupant to install a lock box or electronic key device on the Property to allow for showings and inspections.
- (d) **Securing Valuables.** Seller agrees to secure all valuables and will instruct any occupants to secure their valuables. Brokerage Firm will not be responsible for any valuables, or for loss or damage to real or personal property.
- (e) **Professional Advice.** Seller is advised to consult an attorney, accountant, or other appropriate professionals. Seller is not relying upon Brokerage Firm for any such advice.
- (f) **Offers.** Seller agrees to consider all offers presented by Brokerage Firm and to act in good faith to sell the Property.
- (g) **Disclosure of Material Facts.** There is a general obligation under the Hawaii law for a Seller to disclose any fact which could be deemed to be material to a prospective Buyer of any property offered for sale, including vacant land, commercial property, as well as residential property. There is also a specific law in Hawaii (Chapter 508D, Hawaii Revised Statutes) requiring disclosure of material facts in the sale of any residential property. Under Hawaii law, the Seller is obligated and hereby agrees to give a written disclosure statement to a Buyer containing any fact, defect, or condition, past or present, that would be expected to measurably affect the value of the Property to a reasonable person. Such disclosure statement shall be prepared in good faith and with due care and shall disclose all material facts relating to the Property that: (i) are within Seller's knowledge or control; (ii) can be observed from visible, accessible areas; or (iii) are required by Section 508D-15 of the Hawaii Revised Statutes.
- Section 508D-15 of the Hawaii Revised Statutes provides that when the Property lies: (i) within the boundaries of a special flood hazard area as officially designated on Flood Insurance Administration maps promulgated by the appropriate Federal agencies for the purposes of determining eligibility for emergency flood insurance programs; (ii) within the boundaries of the noise exposure area shown on maps prepared by the Department of Transportation in accordance with Federal Aviation Regulation Part 150-Airport Noise Compatibility Planning (14 Code of Federal Regulations Part 150) for any public airport; (iii) within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy or Marine Corps airport as officially designated by military authorities; or (iv) within the anticipated inundation areas designated on the Department of Defense's Civil Defense Tsunami Inundation Maps; subject to the availability of maps that designate the four areas by tax map key, SELLER must include this information in the disclosure statement.
- Seller understands that purposely or negligently failing to comply with this disclosure law may result in liability for damages. Seller further understands that if a written disclosure statement is not provided, or if inspection of the Property by a third party reveals facts inconsistent with or contradictory to Seller's disclosure statement, Hawaii law requires that Brokerage Firm disclose those facts to Seller, Buyer and Buyer's agent. This obligation of disclosure limits Brokerage Firm's agency duty of confidentiality. Seller also understands that if, after Seller's disclosure statement has been delivered to Buyer and prior to closing, Seller becomes aware of information which was not previously disclosed or which makes any statement in the disclosure statement inaccurate and said information directly, substantially, and adversely affects the value of the Property, then Seller shall provide an amended disclosure statement, in writing, to Buyer within ten (10) days after the discovery and in no event later than twelve noon on the last business day prior to the recorded sale of the Property.
- (h) **Leasehold Disclosure.** If the Property is leasehold, Seller agrees to provide, at Seller's expense, a current leasehold disclosure as required by Hawaii State law. Seller authorizes Brokerage Firm to order such a disclosure from a qualified professional, if such professional service is available.

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BROKER'S INITIALS & DATE

4/13/06
SELLER'S INITIALS & DATE

- (i) **Costs.** Seller shall pay the following costs, if incurred: (1) customary closing costs; (2) Seller's legal fees; (3) fees for expert or specialized services; (4) costs of homeowner association documents; and (5) any other costs agreed to by Seller.
- (j) **Prospects From Prior Listings.** When signing this Listing Agreement, Seller shall deliver to Brokerage Firm a copy of any prospect list given to Seller from any earlier listing with another brokerage firm. If another brokerage firm earns a commission because of a sale to any prospect on such a list, Seller will not be obligated to pay current Brokerage Firm any commission.

13. SELLER'S AUTHORIZATIONS:

- (a) **Other Brokerage Firms.** Seller authorizes Brokerage Firm to cooperate and share commissions with other brokerage firms.
- (b) **Release of Information.** (1) Seller authorizes Brokerage Firm and Escrow to obtain any information regarding mortgage balances, lease rents, maintenance fees, property management, collection accounts, property taxes or like items. This information may be provided to any prospective Buyer. (2) Seller hereby consents to publication of listing and other data in the MLS and to the use of this information for market studies, service to the public, and advice to clients or customers. Seller understands that Brokerage Firm is obligated to comply with all applicable MLS rules. MLS rules allow MLS data to be made available by the MLS to additional public Internet sites unless Brokerage Firm gives the MLS instructions to the contrary.

14. SELLER'S AFFIRMATIONS:

- (a) **Property Information.** To the best of Seller's knowledge, the information on EXHIBIT A is correct. If any information on EXHIBIT A is known to Seller to be incorrect or incomplete, Seller shall be fully responsible for any actions and costs to cure.
- (b) **Fair Housing Laws.** Seller understands that it is illegal to discriminate against prospective Buyers on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.
- (c) **Mediation and Arbitration.** If any dispute or claim in law or equity arises out of this Agreement, and the parties are unable to resolve the dispute, Seller agrees to attempt in good faith to settle such dispute or claim by non-binding mediation through the Local Board of REALTORS® or, in the event the Local Board of REALTORS® does not provide mediation services, then through a mutually agreed upon mediator. If the mediation is not successful, then Seller will consider arbitration and may seek legal counsel to make this determination. It is understood that if both parties are involuntarily named as defendants in a lawsuit by a third party in any matter arising out of this Agreement, this paragraph shall no longer be binding on either party.

15. FIRPTA: Withholding Required if Seller Is A Foreign Person. Under the Internal Revenue Code, if Seller is a foreign person or entity (non-resident alien, corporation, partnership, trust or estate), then Buyer is generally required to withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward the amount with the appropriate Internal Revenue Service ("IRS") form to the IRS. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. **Seller must complete the authorized exemption or waiver form, or Escrow will withhold/collect from Seller the required amount at closing and forward it to the IRS.**

16. HARPTA: Withholding Required If Seller Is A Non-Resident Of The State Of Hawaii. Under Hawaii law, if Seller is a non-resident person or entity (corporation, partnership, trust or estate) of the State of Hawaii, Buyer must withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward the amount with the appropriate form to the State Department of Taxation. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. **Seller must complete the authorized exemption or waiver form, or Escrow will withhold/collect from Seller the required amount at closing and forward it to the State Department of Taxation.**

17. CONFLICT IN TERMS: Any handwritten word in this Listing Agreement prevails over any typed or printed word. Any typed word prevails over any printed word. Any special term prevails over any standard term.

18. INDEMNIFICATION: Seller agrees to indemnify, defend and hold Brokerage Firm harmless from all claims, disputes, litigation, judgments, and attorney's fees arising from any incorrect information supplied by Seller, or from any material facts that Seller knows but fails to disclose.

19. ADDITIONAL TERMS: _____

Seller acknowledges that Seller has read, understands, and accepts this Agreement. Seller represents that if Seller is a trust, corporation, partnership, or other legal entity, the person signing below has the authority to sign on behalf of Seller.

4/13/06 _____ Smith Foti Development Limited Partnersh
 Date Signature Name (print or type)

 Address Phone

 Date Signature Name (print or type)

 Address Phone

Hawaiian Island Homes Ltd. _____ By: BDKJL 4/12/06
 Brokerage Firm Phone Principal Broker or Broker-in-Charge Date

Seller acknowledges receipt of a complete copy of this Listing Agreement and attached Exhibit A (Property Information). _____

NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language, but there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).