

# REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

1010 RICHARDS STREET  
P. O. BOX 3469  
HONOLULU, HAWAII 96801

## PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

on

KALAWA GARDENS  
75-5709 Kalawa Street  
Kailua-Kona, Hawaii

REGISTRATION NO. 1383

### IMPORTANT — Read This Report Before Buying

#### **This Report Is Not an Approval or Disapproval of This Condominium Project**

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project but may only take reservations therefore after

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: January 29, 1981  
Expires: February 28, 1982

#### SPECIAL ATTENTION

A comprehensive reading of this report is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED January 9, 1981. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT SET FORTH IN CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. KALAWA GARDENS is a proposed fee simple condominium project consisting of fifteen (15) apartments contained in a four-story building. Each apartment will have one parking stall appurtenant thereto. In addition there will be four (4) parking stalls for compact cars which will be

used for guest parking. Five of the nineteen (19) parking stalls are for compact cars.

2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of this condominium project and the issuance of this Preliminary Public Report.

3. The basic documents (Declaration of Horizontal Property Regime, with Bylaws of the Association of Apartment Owners attached, and a copy of the approved Floor Plans) have not yet been executed nor filed in the office of the recording officers.

4. No advertising or promotional materials have been submitted pursuant to the rules and regulations promulgated by the Commission.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes, and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, January 29, 1981, unless a Final or Supplementary Public Report issues, or the Commission, upon the review of the registration, issues an order extending the effective period of this report.

7. This Preliminary Public Report is made a part of the registration on KALAWA GARDENS condominium project. The Developer is responsible for placing this Preliminary Public Report (yellow paper stock) and Disclosure Abstract in the hands of all purchasers and prospective purchasers and for securing a signed copy of the receipt therefor.

NAME OF PROJECT: KALAWA GARDENS

LOCATION: The approximately 15,737 square feet of land to be committed to the Horizontal Property Regime is situated at 75-5709 Kalawa Street, Kailua-Kona, Island, County and State of Hawaii.

TAX MAP KEY: 7-5-22: 47 & 48

ZONING: RM-1 Multi-family Residential

DEVELOPER: GAF CORPORATION, a Hawaii corporation, whose principal place of business and post office address is 615 Piikoi Street, Suite 1001, Honolulu, Hawaii 96814, and whose telephone number is 536-9337. The officers are as follows:

<u>Name</u>	<u>Office</u>	<u>Address</u>
George A. Fan	President	615 Piikoi St., Suite 1001 Honolulu, HI 96814
Winnie W. Y. Fan	Vice President	615 Piikoi St., Suite 1001 Honolulu, HI 96814
Joanna Zane Fan	Secretary-Treasurer	615 Piikoi St., Suite 1001 Honolulu, HI 96814

ATTORNEY REPRESENTING DEVELOPER: Hong and Iwai (Attention: Donald K. Iwai), 2300 Pacific Trade Center, 190 South King Street, Honolulu, HI 96813; Telephone 524-4900.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime reflects that the project will consist of the following:

1. The Land. The land in fee simple shall be submitted to the Horizontal Property Regime.

2. The Building. There will be one 4-story building containing fifteen (15) residential apartment units, without basement. The principal materials to be used in the construction of the building will be reinforced concrete, steel, wood, glass and allied building materials.

3. Other Improvements. The project will also consist of other improvements, including an outdoor patio, spa, outdoor gas grill, equipment room, nineteen (19) parking stalls, and landscaping on the grounds.

4. Apartment Spaces. There will be fifteen (15) separately designated freehold estates consisting of the residential spaces or areas hereinbelow more particularly described and contained in said building, said spaces being defined and referred to herein as "apartment spaces." The apartment spaces shall not be deemed to include the perimeter walls or the interior load-bearing walls or the floors and ceilings surrounding the apartment spaces (except in each such case for the interior decorated or finished surfaces of such perimeter walls, load-bearing walls, floors and ceilings), or any pipes, wires, conduits, or other utility or service lines running through such apartment space which are utilized for or serve more than one apartment space, the same being deemed common elements as hereinafter provided. Each apartment space shall be deemed to include (i) all walls and partitions which are not load-bearing within its perimeter walls, (ii) the interior decorated or finished surfaces of all perimeter and load-bearing walls, floors, ceilings, and stationary glass windows and the frames thereof, (iii) all other window frames and glass, (iv) all entrance doors (except the exterior finished surfaces thereof), (v) all lanais, and (vi) all fixtures contained or installed in each apartment space.

The apartment space number, description, location, approximate gross floor area and other pertinent data relative to the respective apartment spaces are as follows:

(a) The apartment spaces on each floor will be numbered A, B, C or D followed by a number indicating the floor on which the apartment space is located; however, there will be no apartment

space numbered D-1 on the first floor. In each case the sequence of apartment space numbers run clockwise commencing from the northerly corner of the building and terminating on the westerly corner of the building. All apartment spaces having numbers with the same alphabetical designation will be in vertical alignment in the building. The apartment space numbers on each floor correspond to the numbers shown on the plans thereof on file with the Commission.

(b) There will be seven (7) types of apartment spaces in the Project, to-wit, Types I, II, III, IV, V, VI and VII.

Type I Apartment Space. There will be one (1) Type I apartment space located on the north corner of the first floor of the building bearing apartment space number A-1. The Type I apartment space will have two bedrooms, two bathrooms, a living/dining room, a kitchen and a lanai, and will contain a gross floor area of approximately 1,162 square feet, consisting of a living area of approximately 1,058 square feet and a lanai of approximately 104 square feet.

Type II Apartment Space. There will be one (1) Type II apartment space located on the east side of the first floor of the building bearing apartment space number B-1. The Type II apartment space will have two bedrooms, two bathrooms, a living/dining room, a kitchen and a lanai, and will contain a gross floor area of approximately 1,167 square feet, consisting of a living area of approximately 1,063 square feet and a lanai of approximately 104 square feet.

Type III Apartment Space. There will be one (1) Type III apartment space located on the south side of the first floor of the building bearing apartment space number C-1. The Type III apartment space will have two bedrooms, two bathrooms, a living/dining room, a kitchen and a lanai, and will contain a gross floor area of approximately 1,126 square feet, consisting of a living area of approximately 1,022 square feet and a lanai of approximately 104 square feet.

Type IV Apartment Spaces. There will be three (3) Type IV apartment spaces located on the north corner on each of the second through the fourth floors of the building bearing apartment space numbers A-2 through A-4, respectively. The Type IV apartment spaces will have two bedrooms, two bathrooms, a living/dining room, a kitchen and a lanai, and will contain a gross floor area of approximately 1,148 square feet, consisting of a living area of approximately 1,058 square feet and a lanai of approximately 90 square feet.

Type V Apartment Spaces. There will be three (3) Type V apartment spaces located on the east side on each of the second through the fourth floors of the building bearing apartment space numbers B-2 through B-4, respectively. The Type V apartment spaces will have two bedrooms, two bathrooms, a living/dining room, a kitchen and a lanai, and will contain a gross floor area of approximately 1,153 square feet, consisting of a living area of approximately 1,063 square feet and a lanai of approximately 90 square feet.

Type VI Apartment Spaces. There will be three (3) Type VI apartment spaces located on the south side on each of the second

through the fourth floors of the building bearing apartment space numbers C-2 through C-4, respectively. The Type VI apartment spaces will have two bedrooms, two bathrooms, a living/dining room, a kitchen and a lanai, and will contain a gross floor area of approximately 1,153 square feet, consisting of a living area of approximately 1,063 square feet and a lanai of approximately 90 square feet.

Type VII Apartment Spaces. There will be three (3) Type VII apartment spaces located on the west corner on each of the second through the fourth floors of the building bearing apartment space numbers D-2 through D-4, respectively. The Type VII apartment spaces will have two bedrooms, two bathrooms, a living/dining room, a kitchen and a lanai, and will contain a gross floor area of approximately 1,148 square feet, consisting of a living area of approximately 1,058 square feet and a lanai of approximately 90 square feet.

The gross floor area of the apartment spaces hereinabove set forth are approximate. The term "living areas" as used herein includes the bedrooms, the bathrooms, the living/dining room, the kitchen, and such other areas, except the lanai. The approximate area of each living area as set forth above include the space within the exterior face of the perimeter walls and the interior half of the party walls, and all chases, partitions and walls within the perimeter and party walls, whether load-bearing or nonload-bearing. The lanai areas consist of an open-sided room adjoining the living area. For Types I, II and III apartment spaces, the approximate area of each lanai includes the space within the interior face of the lanai walls, the edge of the concrete slabs, and the exterior face of the perimeter walls. For Types IV, V, VI and VII apartment spaces, the approximate area of each lanai includes the space within the interior face of the lanai railings and the exterior face of the perimeter walls.

(c) Each of the apartment spaces will have access to the walkways leading to the elevator and stairways. The elevator and the stairways are common elements.

COMMON ELEMENTS: The proposed Declaration designates one freehold estate consisting of the remaining portions and appurtenances of the project, being the common areas and facilities and herein referred to as "common elements." The common elements will include, but are not limited to, the following:

(a) The Land in fee simple;

(b) All foundations, columns, girders, beams, floor slabs, supports, perimeter walls and load-bearing walls, floors and ceilings (except for the inner decorated or finished surfaces of the perimeter walls, load-bearing walls and floors and ceilings within each apartment space and except as expressly provided otherwise), roofs, hallways, corridors, lobbies, stairs, stairways, fire escapes, walkways, ducts, entrances and exits of the building;

(c) All areas and/or facilities within the building or project which serve more than one apartment space, such as machine and equipment rooms, mailboxes, and all other common facilities;

(d) All driveways, roads and other common ways, planters, landscaping, yards, spa, outdoor patio, outdoor gas grill, fences, retaining walls, refuse collection areas, loading areas, parking areas and parking stalls;

(e) All central and appurtenant installations serving more than one apartment space for power, light, gas, water, ventilation, refuse, telephone, radio and television signal distribution and all pipes, wires, conduits, ducts, vents and other service utility lines which serve more than one apartment space;

(f) All tanks, pumps, motors, fans, elevator, and in general, all apparatus and installations for common use, and all other parts of the project necessary or convenient to its existence, maintenance, or safety and normally in common use;

(g) Parking stalls numbered 16, 17, 18 and 19, which are parking stalls for compact cars, shall be used for guest parking;

(h) All other parts of the project, which are not included in the definition of an apartment space.

LIMITED COMMON ELEMENTS: Certain of the common elements are hereby designated as "limited common elements" and are set aside and reserved for the use of certain apartment spaces, which apartment spaces shall have appurtenant thereto an exclusive easement for the use of such limited common elements. The limited common elements so set aside and so reserved are as follows:

(a) Parking Stalls. Each apartment space will have as an appurtenance one parking stall for the exclusive use of such apartment space. The respective apartment spaces and the parking stalls appurtenant thereto are set forth hereinafter. Each apartment space shall at all times have at least one parking stall appurtenant to it, provided that apartment space owners with the consent of the mortgagee, if any, will have the right to change the designation of parking stalls which are appurtenant to their respective apartment spaces by amendment of the Declaration and the respective apartment deeds involved, such amendment to the Declaration and apartment deeds to be in writing and executed only by the mortgagee, if any, and the respective apartment space owners of the apartment space or apartment spaces seeking such change and to be effective only upon recording of the same in the Bureau of Conveyances of the State of Hawaii; provided, further, that the Developer reserves the right to amend the Declaration for the limited purpose of effecting a change in the designation of parking stalls appurtenant to apartment spaces without the consent or joinder of persons then owning or leasing apartment spaces, except the respective apartment space owners of the apartment space or apartment spaces affected by such change, by recording in said Bureau an amendment to the Declaration. The respective apartment spaces and the parking stalls appurtenant thereto are as follows:

<u>Apartment Space No.</u>	<u>Parking Stall No.</u>
A-1	14
A-2	2
A-3	4
A-4	6
B-1	1
B-2	3
B-3	5
B-4	7
C-1	15-C
C-2	12
C-3	10
C-4	8
D-2	13
D-3	11
D-4	9

NOTE: "C" denotes parking stall for a compact car.

(b) Mailboxes. The mailbox assigned to an apartment space shall be limited to the use of such apartment space.

(c) Other. All other common elements of the project which are rationally related to less than all of the apartment spaces shall be limited to the use of such apartment spaces.

INTEREST TO BE CONVEYED PURCHASER: The interest to be conveyed to a purchaser will be a fee simple title to an apartment space together with an undivided interest in all common elements of the project. Each apartment space shall have appurtenant thereto an undivided interest in all common elements of the project (herein called "common interest") in the proportion hereinafter set forth and the same proportionate share in all common profits and expenses of the project and for all other purpose, including voting:

<u>Apartment Space No.</u>	<u>Percent Common Interest</u>
A-1, A-2, A-3, A-4, B-1, B-2, B-3, B-4, C-2, C-3, C-4, D-2, D-3, and D-4	6.667%
C-1	6.662%

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The purpose for which the apartment spaces are intended and restricted as to use is residential as set forth in the proposed Declaration. The proposed Declaration recites that the apartment spaces shall be occupied and used only as dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and for no other purpose. The owners of the respective apartment spaces shall have the right to lease or rent such apartment spaces for profit to such persons and for such periods as such owners may determine so long as such leasing or renting is for use of such apartment spaces as a place to reside and not

as a place to conduct business or trade; provided, however, that all such leasing or renting shall be subject to provisions of the Declaration and Bylaws of the Association of Apartment Owners.

The proposed House Rules contain certain prohibitions regarding apartment space use, common areas, parking, rentals, pets, and the spa.

OWNERSHIP: A Preliminary Title Report prepared by Long & Melone, Ltd., issued on December 8, 1980, states that title to the land committed to the project is vested in GAF Corporation, a Hawaii corporation and the developer.

ENCUMBRANCES AGAINST TITLE: The aforementioned Preliminary Title Report identifies the following encumbrances on the land:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. Grant of Easement dated March 2, 1971, in favor of the County of Hawaii, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7437, Page 314, for sewer purposes.
3. Mortgage made by GAF Corporation, as Mortgagor, in favor of Amfac Financial, as Mortgagee, dated November 3, 1978, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13264, Page 449, which Mortgage was assigned to GECC Financial Corp. by instrument dated July 31, 1979, recorded as aforesaid in Liber 13904, Page 4.
4. Mortgage made by GAF Corporation, as Mortgagor, in favor of Harumi Hirata, et al., as Mortgagee, dated August 30, 1978, recorded as aforesaid in Liber 13114, Page 766.
5. Real property taxes as may be due and owing. Check with the Tax Assessor, Third Division.

Although not noted in the aforementioned Preliminary Report, the Developer has advised that the land will be made subject to the following additional encumbrance:

"Excepting and reserving unto the Developer, while it owns all of the project, any and all easements as may hereafter be required to serve the project and all easements and/or rights-of-way now or hereafter granted or required by the Developer to construct, install, operate, maintain, repair and replace a sewer treatment plant and lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage, radio and television signal distribution and other services and utilities, the right to enter for such purposes, and to trim any trees in the way of such lines and the right to grant to any public utility or governmental authority such easements, rights, and rights-of-way; provided that such easements hereafter to be granted or required shall not unreasonably interfere with the use and aesthetic enjoyment of the project."

PURCHASE MONEY HANDLING: An Escrow Agreement dated December 23, 1980, has been executed and a copy of same has been filed with the Commission. The Escrow Agent is Long & Melone Escrow, Ltd. Upon examination, the Specimen Reservation, Deposit, Receipt and Sales Contract and the executed Escrow Agreement are found to be consonant with Chapter 514A, Hawaii Revised Statutes, and particularly Sections 514A-39, 514A-40, and 514A-63 through 514A-66.

Subject to such deductions as may be provided in the Reservation and Sales Contract and the escrow cancellation fee, Purchaser shall be entitled to a return of his funds, and Escrow shall pay such funds to such Purchaser, promptly after request for return by Purchaser if one of the following has occurred:

(a) Seller notifies Escrow to return to Purchaser the funds of Purchaser then being held by Escrow; or

(b) Seller notifies Escrow of Seller's exercise of the option to rescind the Reservation and Sales Contract pursuant to any right of rescission stated therein or otherwise available to Seller; or

(c) Purchaser's funds were obtained prior to the issuance of a Final Public Report and subsequent to the execution of Purchaser's sales contract there is a change in condominium building plans requiring the approval of a county officer having jurisdiction over the issuance of permits for the construction of buildings (unless Purchaser has given written approval or acceptance of the specific change); or

(d) The Final Public Report differs in any material respect from the Preliminary Public Report; or

(e) If the Final Public Report is not issued within one year from the date of issuance of the Preliminary Public Report.

Among other provisions, the specimen Reservation, Deposit, Receipt and Sales Contract includes the following:

1. Reservation and Sales Contracts executed prior to the issuance of a Final Public Report for the project shall constitute a "reservation" and not a "binding contract" for the purchase of an apartment.

2. The Seller makes no warranties, express or implied, with respect to the apartments, the project, or consumer products or other things installed therein, including warranties of merchantability, habitability, workmanlike construction, or fitness for a particular purpose.

3. The Seller may cancel the Reservation and Sales Contract if the Purchaser's application for eligibility for a mortgage loan is rejected or not approved within forty-five (45) days after application.

4. The Purchaser will pay for the following closing costs: costs of credit reports, acknowledgments of Purchaser's signature on the Apartment Deed, drafting of Purchaser's mortgage and acknowledgments thereon, mortgage insurance premiums, financing and other fees in connection with Purchaser's mortgage, search of title and title insurance, all recording fees except recording

fees for documents to clear Seller's title and one-half of the escrow fees.

5. The Purchaser agrees to subordinate his interest under the Reservation, Deposit, Receipt and Sales Contract and in and to the apartment to the lien of any construction mortgage made by the Seller to finance the cost of the development and construction of the project.

6. The Purchaser agrees that the Seller shall have the right to conduct construction activities for the completion of the improvements and correction of defects in the project, and such rights shall continue until 12 months after the later of (i) the date of the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of the first conveyance of an apartment to a purchaser, or (ii) "substantial completion" (as the term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the improvements to be completed or corrected.

7. The Purchaser agrees that Seller shall have the right to conduct sales activities on the project, including the use of model apartment units, sales offices, signs and extensive sales displays and activities, and the use of four parking spaces in the project for parking for prospective purchasers, until the earlier to occur of (i) 12 months from the recording of the first conveyance of an apartment to a purchaser, or (ii) the sale of the last unsold apartment in the project.

The prospective purchaser's attention is directed particularly to the provision in the Reservation and Sales Contract which states:

(a) THAT SELLER AND ITS AGENT HAVE NO PROGRAM AT THIS TIME NOR IS ANY PROGRAM PLANNED OR CONTEMPLATED TO OFFER A RENTAL SERVICE OF ANY KIND TO THE OWNERS OF APARTMENTS IN THE PROJECT, EITHER INDIVIDUALLY OR IN ANY FORM OF POOLING ARRANGEMENT, OR BY A THIRD-PARTY DESIGNATED OR ARRANGED FOR BY SELLER, NOR HAVE ANY REPRESENTATIONS BEEN MADE BY SELLER OR ITS AGENT AS TO THE FEASIBILITY OF RENTING THE APARTMENT, OR OTHERWISE GENERATING INCOME OR DERIVING ANY OTHER ECONOMIC BENEFIT FROM OWNERSHIP OF THE APARTMENT.

(b) THAT SELLER AND ITS AGENT HAVE MADE NO REPRESENTATIONS (NOR IS ANYONE AUTHORIZED TO DO SO) CONTRARY TO THIS PARAGRAPH WITH RESPECT TO EITHER BENEFITS TO BE DERIVED FROM THE RENTALS OR OTHER TAX TREATMENT OF ANY PURCHASER OF AN APARTMENT, EXCEPT AS TO THE AVAILABILITY OF INCOME TAX DEDUCTION FOR MORTGAGE INTEREST PAYMENTS AND REAL ESTATE TAXES.

The foregoing are only excerpts from certain paragraphs in the Reservation, Deposit, Receipt and Sales Contract. It is incumbent upon the prospective purchaser that he reads with care the entire Reservation, Deposit, Receipt and Sales Contract and the executed Escrow Agreement. The latter Agreement establishes how the proceeds from the sale of condominium units are placed in trust as well as the retention and disbursement of said funds.

Among other provisions, the Escrow Agreement provides that Escrow shall deposit any or all funds received and held in escrow in federally-insured savings and loan institutions or federally-insured banking institutions designated by Seller, or may use

such funds for the purchase of federal time certificates. Any and all interest earned on such funds during the holding thereof shall accrue to the credit of the Seller in accordance with the agreements and instructions contained in the Reservation and Sales Contracts.

MANAGEMENT AND OPERATIONS: The Bylaws of the Association of Owners vest the Board of Directors with the powers and duties necessary for the administration of the affairs of the project. The Developer proposes that the initial managing agent be Alliance Realty & Management, Inc., 677 Ala Moana Boulevard, Suite 307, Honolulu, Hawaii; however, the Developer has reported that a management agreement has not yet been executed.

FINANCING OF PROJECT: Developer has advised the Commission that it intends to finance the project costs by means of an interim construction loan, equity funds, and to the extent permitted by law and after meeting all statutory requirements, purchasers' funds. The Developer has also advised the Commission that negotiations are presently being conducted with a lending institution for the necessary construction and permanent financing, but that no commitments have been obtained as yet.

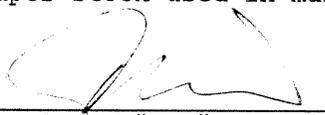
STATUS OF PROJECT: The Developer has advised the Commission that the building plans for the project were approved by the Public Works Department of the County of Hawaii on May 29, 1980. The construction schedule will depend on the success of presales and the obtaining of a construction loan. A construction contract has not yet been executed.

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The purchaser or prospective purchaser should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice of Intention submitted January 9, 1981.

THIS PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1383 filed with the Commission on January 9, 1981.

This report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be yellow.

  
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G. A. "RED" MORRIS, Chairman  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

Department of Taxation  
Bureau of Conveyances  
Planning Department, County of Hawaii  
Federal Housing Administration  
Escrow Agent

REGISTRATION NO. 1383

January 29, 1981