



REAL ESTATE COMMISSION
 STATE OF HAWAII
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
 PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
 1010 Richards Street - P. O. Box 3469
 Honolulu, Hawaii 96801

CONDOMINIUM PUBLIC REPORT

on

KIMOLANA ESTATES
 Kahili Makai Street
 Kilauea, Kauai, Hawaii

Registration No. 1984

Issued: August 24, 1990
 Expires: September 24, 1991

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of July 24, 1990, and is issued by the Commission for informational purposes only. It represents neither approval nor disapproval of the project. Buyers are encouraged to read this report carefully. This report also includes information submitted by the Kauai County Planning Department
Type of Report: dated November 14, 1988.

 PRELIMINARY: The developer may not as yet have created the condominium but has filed with the
(yellow) Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued when complete information is filed.

 X **FINAL** The developer has legally created a condominium and has filed complete information
(white) with the Commission.

- No prior reports have been issued
- Supersedes all prior public reports
- Must be read together with _____

 SUPPLEMENTARY: Updates information contained in the
(pink) Prelim. Public Report dated _____
 Final Public Report dated _____
 Supp. Public Report dated _____

- And Supersedes all prior public reports
 Must be read together with _____
- This report reactivates the _____
 public report(s) which expired on _____

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required Not Required - disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

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

[] No prior reports have been issued by the Commission.

[X] Changes made are as follows: (Please see next page)

```
*****
*   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 RESIDEN-
*   TIAL 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 nor that all County
*       Codes, Ordinances and subdivision requirements
*       have been complied with.
*
*   2.  This project does not involve the sale of
*       individual subdivided lots.  The dotted lines
*       on the Condominium Map (Exhibit A) are for
*       illustration purposes only.
*
*   3.  Facilities and improvements normally associated
*       with County approved subdivisions may not
*       necessarily be provided for and services such as
*       County street maintenance, enhanced water
*       facilities, fire service and related services
*       may not be available, and trash collection
*       will not be available for interior roads.
*
*   4.  Read Exhibit D (Protective Covenants)
*       and Exhibit J (Letter from County of Kauai)
*       with care.
*
*   5.  James Wetherill, Developer, retains a right to
*       purchase any unit if an owner wants to re-sell
*       in the future, for the same price someone else
*       is willing to pay.  See Exhibit D.
*
*   THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY
*   REVIEW THE DOCUMENTS FOR FURTHER INFORMATION WITH
*   REGARD TO THE FOREGOING.
*****
```

CHANGES FROM PRELIMINARY TO FINAL PUBLIC REPORT:

<u>Page</u>	<u>Description of Changes</u>
3.....	Exhibit Titles Changed for A and B
6.....	Developer's phone number has changed. Managing Agent changed to Association of Owners.
7.....	Inserts recording information for condominium documents.
10.....	All Fee Owners are now listed.
14.....	Limited common element description language clarified.
15.....	New date in Encumbrances Against Title of title policy
18-18a...	New pages replace old page 18; the substance of old page 18 is kept in the first four paragraphs of new page 18; a paragraph is added at the bottom of 18 explaining how a unit owner must engage in agriculture before being allowed to build a residence. Page 18a advises review of the Kauai County Planning Department letter, Ex. J, Discloses that there is an "Elevation Agreement" with the County of Kauai and possible water pressure problems that might necessitate the construction of a water tank for the project, and shows the agreement is attached to the Public Report. It also discloses some of the risks of development, the potential lack of some County Services, the risk of shortage of utility services, and that land use rules may change over time, possibly thwarting expectations.

New Exhibits replace old to update map showing actual locations of improvements (Exhibit A), deletes old Exhibit B for unit location; updated descriptions of as-built improvements to the units (Exhibit B), clarified Exhibit C, adding description of permitted uses, ability to alter units and cautionary comments (Exhibit C); title of Exhibit D changed, signature blocks and notaries deleted (NOTE: Please read Exhibit D [Declaration of Protective Covenants and Building Rules] very carefully, noting changes required by Kauai County Planning Department letter dated November 14, 1988 and other changes); Exhibit E changed to reflect language of Declaration of Condominium Property Regime in description of Limited Common Elements and Common Elements of Project. Updated Encumbrances On Title (Exhibit F).

TABLE OF CONTENTS

	page
Report Purpose	1
Type of Report	1
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Summary of the Condominium Project	5
I. PEOPLE CONNECTED WITH THE PROJECT	6
Developer	
Real Estate Sales Agent	
Escrow Company	
Managing Agent	
Attorney for Developer	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	7
B. Condominium Map (File Plan)	7
C. Bylaws	7
D. House Rules	8
E. Changes to Condominium Documents	8
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	9
B. Underlying Land	10
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	14
E. Encumbrances Against Title	15
F. Management of the Common Elements	15
G. Maintenance Fees	16
H. Utility Charges	16
I. Construction Warranties	16
J. Status of Construction	17
K. Project Phases	17
L. Sales Documents Filed with the Real Estate Commission	17
IV. ADDITIONAL INFORMATION NOT COVERED ABOVE	18
Buyer's Right to Cancel Sales Contract	19
Signature of Real Estate Commission Chairman	20
EXHIBIT A: Condominium Map and Limited Common Element Locations	
EXHIBIT B: Floor Plans and Elevations	
EXHIBIT C: Schedule of Apartments and Common Interests	
EXHIBIT D: Protective Covenants and Building Rules	
EXHIBIT E: Common Elements and Limited Common Elements of Project	
EXHIBIT F: Encumbrances Against Title	
EXHIBIT G: Estimate of Initial Maintenance Fees and Disbursements	
EXHIBIT H: Summary of Sales Contract	
EXHIBIT I: Summary of Escrow Agreement	
EXHIBIT J: Letter from Kauai Planning Department to Real Estate Commission dated November 14, 1988.	

GENERAL INFORMATION ON CONDOMINIUMS

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of Hawaii's "*Condominium Property Act*" (Chapter 514A, Hawaii Revised Statutes) must be followed.

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

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

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

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

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 owner/tenant) 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. The 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.

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 a vote of the owners. Some of these actions may significantly impact the quality of life for all apartment owners.

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

SUMMARY OF THE CONDOMINIUM PROJECT

Interest to be Conveyed to Buyer:

- Fee simple interest in an apartment and an undivided feehold interest in the common elements.
- Leasehold interest in an apartment and an undivided leasehold interest in the common elements.
- Fee simple interest in an apartment and an undivided leasehold interest in the common elements.

Types of Project:

1. New Building(s) Conversion
 Both New Building(s) and Conversion
2. Residential Commercial
 Mixed Residential and Commercial
 Other Agricultural and Residential
3. High Rise (5 stories or more) Low Rise
4. Single or Multiple Buildings
5. Apartment Description

<u>Apt. NO.</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Storage Sheds (sf)</u>
<u>A</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>90</u>
<u>B</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>96</u>
<u>C</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>96</u>
<u>D</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>96</u>
<u>E</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>128</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.

6. Parking:

	<u>Number of Stalls</u>
Assigned Stalls (Individual Units)	<u> </u>
Guest Stalls	<u> </u>
Unassigned Stalls	<u> </u>
Extra Stalls Available for Purchase	<u> </u>
Other: <u>Each unit has ample parking area for parking within its limited common element, but shall have at least two stall areas at all</u>	
<u>Total Parking Stalls</u>	<u> </u>

7. Recreational amenities:

NONE

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: JAMES WETHERILL
Name
P.O. Box 729
Business Address
Kilauea, HI 96754

Phone: (808) 828-1313
(Business)

Names of officers or general partners of developers who are corporations or partnerships:

NONE

Real Estate Sales Agent: JAMES F. DAVIS, dba 1st Choice Realty
Name
4-356A Kuhio Highway
Business Address
Kapaa, HI 96746

Phone: (808) 822-5850
(Business)

Escrow: TITLE GUARANTY ESCROW SERVICES, INC.
Name
4290 Rice Street
Business Address
Lihue, HI 96766

Phone: (808) 245-3381
(Business)

Managing Agent: Self-Managed by the Association of
Name Unit Owners *

Business Address

Phone: _____
(Business)

* Provided all condominium managing agent laws are complied with

Attorney for Developer: STEVEN R. LEE
Name
2959 Umi Street, Suite 300
Business Address
Lihue, HI 96766

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.

- 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 - Book 23715 Page 716
 Filed - Land Court - Document Number _____

Amendment date(s) and recording/filing information:

April 13, 1990. Recorded at Document # 90-057663.

- 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 Conveyance Condo Map No. 1246
 Filed - Land Court Condo Map No. _____

Amendment date(s) 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 way in which meetings will be conducted, and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed
 Recorded - Bureau of Conveyances - Book 23715 Page 737
 Filed - Land Court - Document Number _____

Amendment date(s) and recording/filing information:

June 26, 1990. Recorded at Document # 90-096199.

The Condominium Statute (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to 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.

- D. **House Rules.** The Board of Directors may adopt house rules to govern the use and operation of the common elements and individual apartments. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais, keeping of pets, and occupancy limits. 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>NONE</u>

The percentages for individual condominium projects may be more than the minimum set by law.

2. **Developer:** The developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws, or House Rules:

See paragraph K on page 17 hereof and Exhibit H, paragraph 4 (d).

B. Underlying Land:

Address: Kahili Makai Street Tax Map Key: (4) 5-2-21-4
Kilauea, Kauai, Hawaii (TMK)

Address TMK is expected to change because each unit not yet assigned an
address.

Land Area: 24.51 square feet acre(s) Zoning: Agricultural

Fee Owner: JAMES WETHERILL, LANA WETHERILL, JEFFREY F. MILLER, VALERI A.
Name MILLER, MICHAEL CHANDLER, SHELLEY CHANDLER, RUSSELL McCLUSKEY
SUSAN McCLUSKEY, VINCE N. GOODWIN, NEDRA FRUEH
P.O. Box 729
Address
Kilauea, HI 96754

Sublessor: _____
Name

Address

C Buildings and Other Improvements:

1. New Building(s) Conversion of Existing Building(s)
 Both New Building(s) and Conversion

2. Buildings: 5 Floors Per Building 1
 Exhibit _____ contains further explanations.

3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other _____

4. Permitted Uses:

	<u>No. of Apts.</u>		<u>No. of Apts.</u>
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Industrial	_____
<input type="checkbox"/> Residential	_____	<input checked="" type="checkbox"/> Agricultural	<u>5</u>
<input type="checkbox"/> Timeshare/Hotel	_____	<input type="checkbox"/> Recreational	_____
<input checked="" type="checkbox"/> Other: <u>See Page 18 for further explanations</u>			_____

5. Special Use Restrictions:

The Declaration, Bylaws, and House Rules may contain restrictions on the use and occupancy of apartments. Restrictions for this condominium project include but are not limited to:

Pets Certain animals are not allowed. See paragraph 8 of Declaration of Protective Covenants and Building Rules (Exhibit D).

Number of Occupants: _____

Other: An owner must engage in agriculture actively to be permitted to construct a residence.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Total Apartments 5

Elevators 0

Stairways 0

Trash Chutes 0

<u>Apt. NO.</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Storage Shed (sf)</u>
<u>A</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>90</u>
<u>B</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>96</u>
<u>C</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>96</u>
<u>D</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>96</u>
<u>E</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>128</u>
_____	_____	_____	_____	_____

*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:

See Exhibit A. Within the requirements of the zoning ordinances and Building Rules, each unit owner may place improvements where desired, and subsequently relocate improvements, provided such improvements comply with the building and zoning requirements of the County of Kauai.

Permitted Alterations to Apartments:

As allowed by Kauai Zoning Ordinance and said Protective Covenants and Building Rules (Exhibit D), upon construction of each permanent improvement, an amendment to the Declaration of Condominium Property Regime and Condominium File Plan (Exhibit A) by the Association of Unit Owners will be required to disclose actual improvements as a matter of record.

7. Parking Stalls:

Total Parking Stalls: Each unit has ample parking area for parking within its common element, but shall have at least two stall areas at all times.

	<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 (for individual units)	_____	_____	_____	_____	_____	_____	_____
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra Available for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total	_____	_____	_____	_____	_____	_____	_____
Covered & Open	_____ 0 _____		_____		_____		_____

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 their use.

- Commercial parking garage permitted in condominium project.
- Exhibit _____ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities.

- There are no recreational or common facilities.
- Swimming pool
- Recreation Area
- Tennis Court
- Other: _____
- Storage Area
- Laundry Area
- Trash Chute

9. Present Condition of Improvements

(For conversions of residential apartments in existence for at least five years): Not Applicable

a. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

b. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

10. 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 intended to be used by all apartment owners. They are owned jointly by all apartment owners.

Exhibit E describes the common elements.

As follows:

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

There are no limited common elements in this project.

The limited common elements and the apartments which may use them are:

described in Exhibit E

as follows:

The portion of land set aside for the use of each owner of a Unit is set forth in Exhibit A, subject to the roadway and utility easement.

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 often used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium. It may also be used for other purposes, including voting on matters requiring action by apartment owners.

Exhibit C describes the common interests for each apartment.

As follows:

E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property.

Exhibit F describes the encumbrances against the title contained in the title report dated July 17, 1990 and issued by Security Union Title Ins. Co.. The Developer represents that since the date of the report, there has been no change as to condition of title except the recording of an amendment to the Bylaws dated June 26, 1990 (see pg. 7) and recording of Restated Protective **Blanket Liens:** Covenants dated June 26, 1990.

A blanket lien is a mortgage on a condominium project that secures a construction loan. It is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

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

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

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. Buyer's interest will be affected only if the developer defaults prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest If Developer Defaults</u>
Mortgage (Amount: \$262,500.00)	If foreclosed, Buyer's deposit will be refunded, and contract for purchase of unit will be cancelled.

F. **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 managing agent to assist the Association in managing the condominium project.

Initial Managing Agent: When the developer or the developer's affiliate is the initial 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 managing agent for this condominium is:

not affiliated with the Developer.

the Developer or the Developer's affiliate.

self-managed by the Association of Apartment Owners.

other _____

G. 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 to each apartment.

Exhibit G contains a schedule of maintenance fees and maintenance fee disbursements.

H. 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:

- | | |
|--|---|
| <input type="checkbox"/> Electricity | <input type="checkbox"/> Television Cable |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Water & Sewer |
| <input type="checkbox"/> Other _____ | |
| <input checked="" type="checkbox"/> Not applicable | |

I. Construction Warranties:

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

1. Building and Other Improvements:

NONE

2. Appliances:

NONE

J. Status of Construction and Estimated Completion Date:

All construction is complete.

K. Project Phases:

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

Summary of Developer's Present Plans for Future Development:

As per the Declaration of Condominium Property Regime, Section 22.0, the Developer may add abutting parcels to this project provided the addition bears its fair share of expenses.

L. 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 H contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated October 13, 1988

Exhibit I contains a summary of the pertinent provisions of the escrow contract.

Other Registration Forms

IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

Prospective Purchaser:

This is a condominium project, not a subdivision. Units purchased are not subdivided lots. You will be required to comply with zoning codes to be allowed to construct a residence on your limited common element.

To determine whether your expectations can be realized, you should carefully review this Report, especially Exhibit D, Protective Covenants and Building Rules. Among other things, the Protective Covenants and Building Rules state what you may and may not do with the property, what is required of you, and what is and is not available. You should also conduct your own investigations and ascertain the validity of information provided. There is an Architectural Review Committee which must approve of all building plans. Please remember that issuance of this Report does not mean the Real Estate Commission has approved the project.

The County of Kauai Planning Department has advised that, in order to process the necessary permits for the construction of a farm dwelling and the processing of a farm dwelling agreement, authorization from at least 75% of the legal and equitable ownership of the entire project shall be required, consistent with the Declaration of Condominium Property Regime, the Bylaws, and the Protective Covenants and Building Rules.

Except as limited specifically by the Declaration of Condominium Property Regime, the Bylaws and the Protective Covenants and Building Rules, all uses permitted in the Agricultural Zone are permitted. Such uses include, but are not limited to growing crops, raising animals, residence, diversified agriculture, forestry, orchards and nurseries and wildlife management. See Kauai County Comprehensive Zoning Ordinance, Article 8.7.

With reference to page 10 of this report, specifically the permitted uses of buildings and other improvements, structures shall only be occupied or used for agriculture, associated residential uses, and/or other uses permitted under the Kauai County Zoning Ordinances and the Protective Covenants and Building Rules (Exhibit D), herein referenced. An agricultural residence may not be constructed unless the Unit Owner demonstrates to the County his ability to derive income and/or agricultural products from his property. Agricultural use must be established and verified prior to any building permit approval.

Please see cautionary and advisory letter from Kauai County Planning Department attached as Exhibit J.

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

Buyer's Right to Cancel Sales Contract:

A. Rights Under the Condominium Statute:

Preliminary Report: Sales made by the Developer are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

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

Final Report, Supplementary Report to a Final Report: Sales made by the Developer are binding if:

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

1. There is a material change in the condominium which directly, substantially, and adversely affects (a) the use or value of the buyer's apartment or its limited common elements; or (b) the amenities available for buyer's use; and
2. 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.

B. Rights Under the Sales Contract:

Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the condominium. These include but are not limited to the:

1. Condominium Public Reports issued by the Hawaii Real Estate Commission.
2. Declaration of Condominium Property Regime and Condominium Map.
3. Bylaws of the Association of Apartment Owners.
4. House Rules.
5. Escrow Agreement.
6. Hawaii's Condominium Law (Chapter 514A, HRS, as amended; Hawaii Administrative Rules, Chapter 16-107, adopted by the Real Estate Commission).
7. Other _____

If these documents are not in final form, the buyer should ask to see the most recent draft.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS, and Hawaii Administrative Rules, Chapter 16-107) are available at the Department of Commerce and Consumer Affairs.

This Public Report is a part of Registration No. 1984 filed with the Real Estate Commission on October 14, 1988.

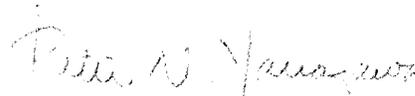
Reproduction of Report. When reproduced, this report must be on:

yellow paper stock

white paper stock

pink paper stock

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



PETER N. YANAGAWA, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

Bureau of Conveyances

Department of Finance, County of Kauai

Planning Department, County of Kauai

Federal Housing Administration

Escrow Agent



ESAKI SURVEYING and MAPPING, INC.
This work was prepared by me or
under my direct supervision

Registered Professional Land Surveyor
Certificate Number 1388
Lihue, Kauai, Hawaii

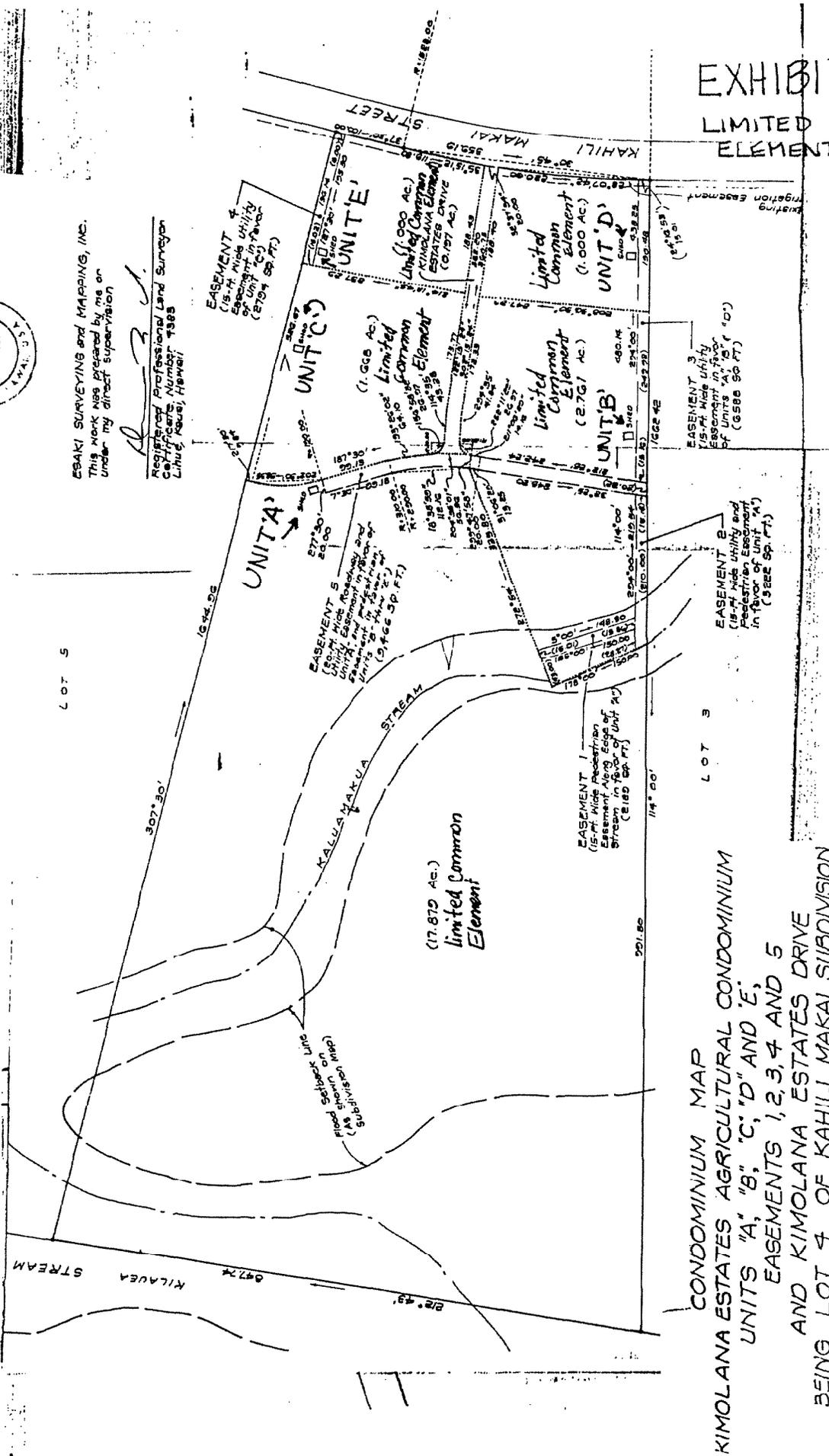


EXHIBIT A

LIMITED COMMON ELEMENT LOCATIONS

CONDOMINIUM MAP
KIMOLANA ESTATES AGRICULTURAL CONDOMINIUM
UNITS "A", "B", "C", "D" AND "E",
EASEMENTS 1, 2, 3, 4 AND 5
AND KIMOLANA ESTATES DRIVE
BEING LOT 4 OF KAHILI MAKAI SUBDIVISION
KAHILI, KILAUEA, HANAUEI, KAUAU, HAWAII

Tax Map Key: 5-2-21:4
Owner: Jim Wetherill

Sears metal bldg. #68536

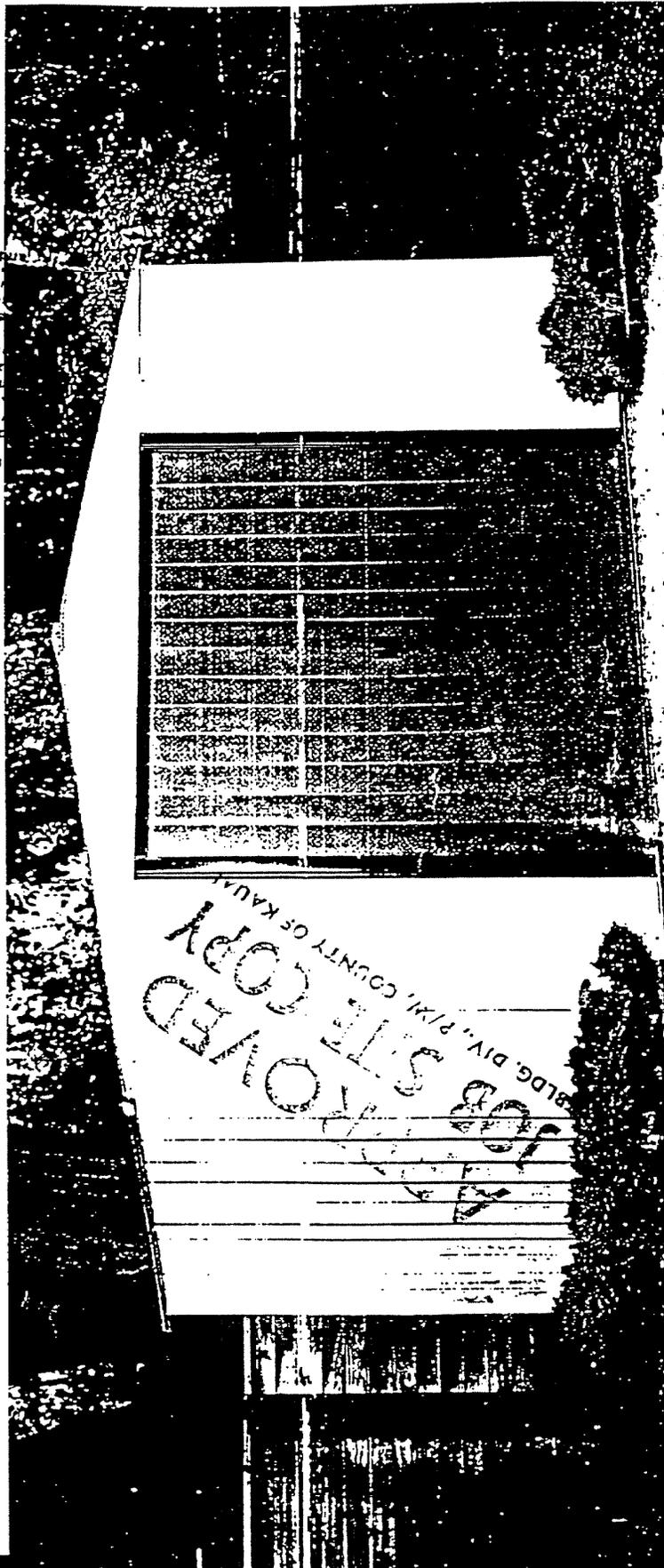
EXHIBIT B PLANS - UNIT A

Owner
Wetherill

- ✓ Corrosion resistant 7-step finish is baked-on polyester enamel paint over galvanized steel.
- ✓ Long-lasting, 100% galvanized steel doors, wall and roof panels.
- ✓ Smooth, gliding Teflon[®] coated slides and full lower door glides assure positive fit.
- ✓ Easy-to-assemble; pre-cut, precision drilled and numbered parts.
- ✓ Designed for security with padlockable doors.
- ✓ Conveniently accepts full range of accessories, see pages 12 and 13.
- ✓ 2 year limited warranty, see back panel.

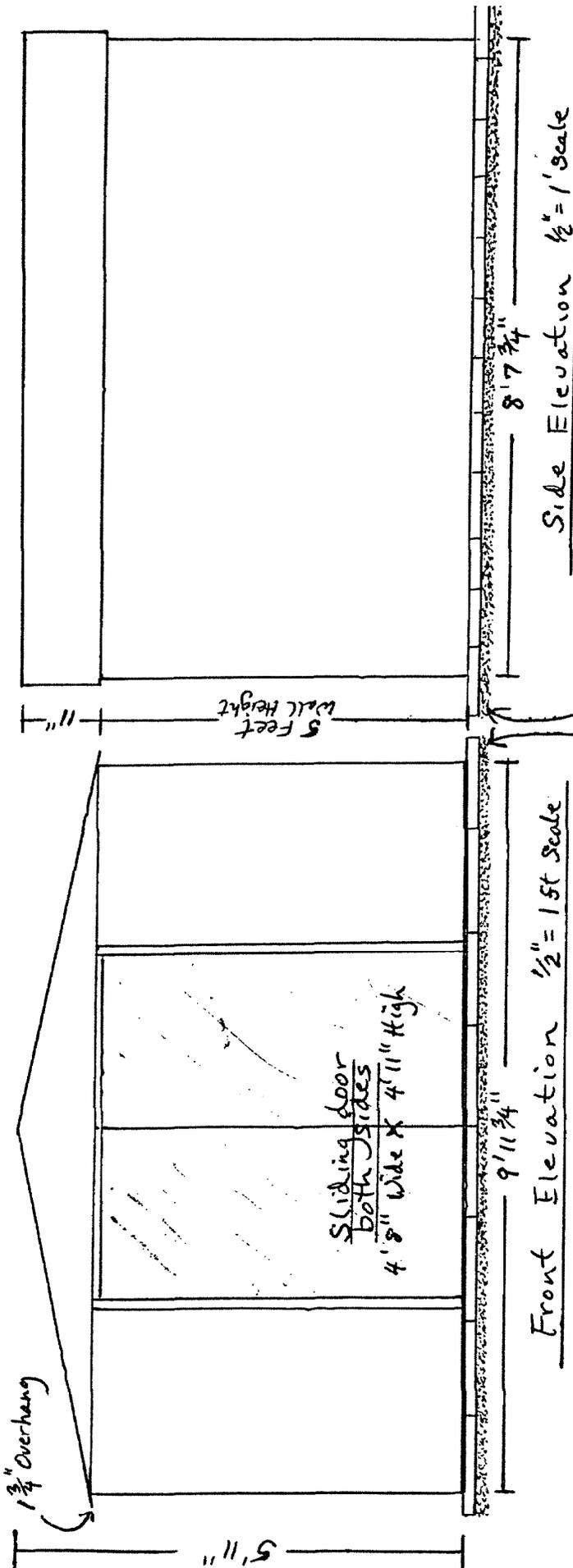
MAR 03 1989

NOTICE TO OWNER/CONTRACTOR
 All construction shall be in accordance to this approved plan. (i.e. setbacks, heights, etc.)
 Any changes are made to this plan, a re-submission shall be submitted for approval. (i.e. setbacks, heights, etc.)
 All requirements shall conform to all applicable ordinances, regulations, codes, and County rules.



FOR APPROVED
 BLDG. DIV. P.M. COUNTY OF KAUAI

Storage area	Wall height	Center height	Door style	Door opening	Exterior dimensions (in.)	Interior dimensions (in.)	Slab size (in.)
84 sq. ft. (454 cu. ft.)	5 feet	5 ft. 10 ¹ / ₄ in.	Inside sliding	4 ft. 8 in. W 4 ft. 11 in. H	Including roof overhang: 123Wx107 ¹ / ₂ D 71 H w/out roof overhang: 119 ³ / ₄ Wx103 ³ / ₄ D 71 H	118 ¹ / ₄ W 102 ¹ / ₄ D 70 ¹ / ₄ H	121W 105D



Note - Foundation is solid concrete blocks over gravel over excavated earth. Blocks are 15 7/8" x 7 7/8" x 1 1/8" and are joined with mortar cement (joints 1/4" to 3/8"). Building is fastened to concrete w/ lags and anchor. Floor surface is the concrete block.

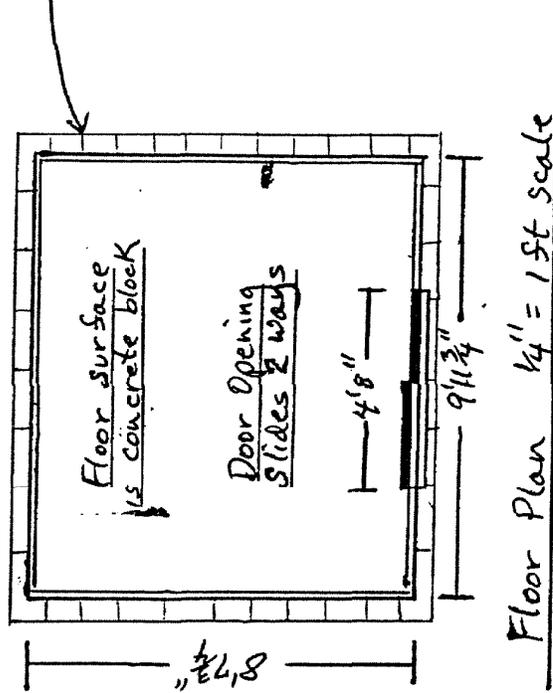
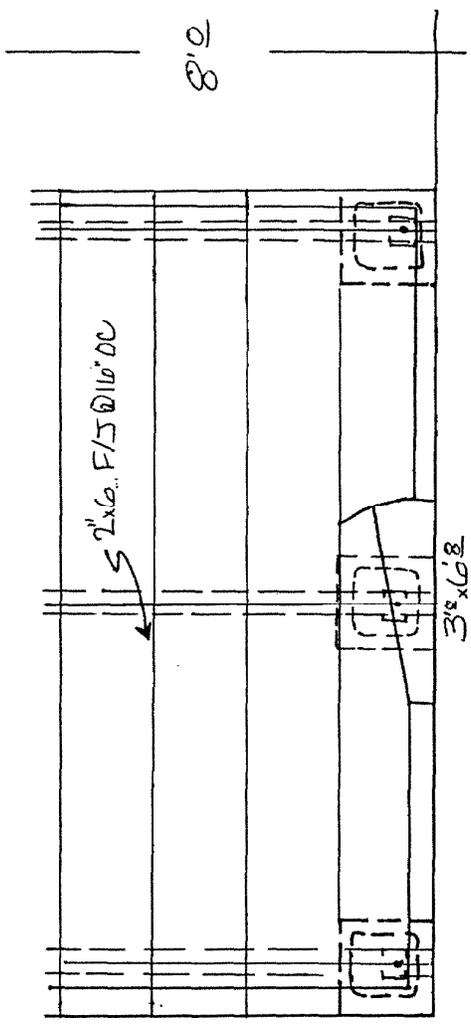


EXHIBIT B
PLANS - UNIT A

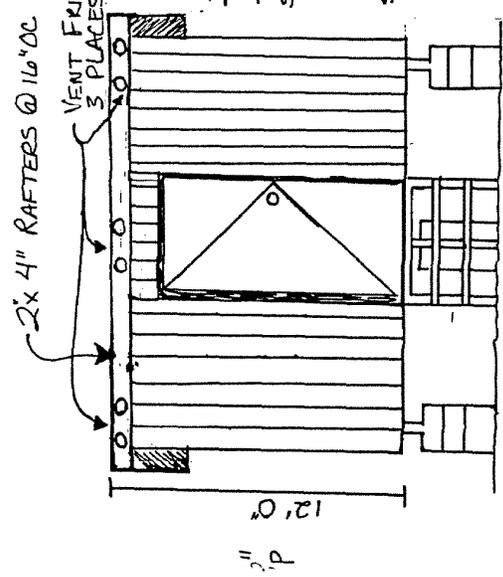
NAME - Wetherill, James + Lana
Property - TMK 4/5/2/21/4
"Kimolana Estates" CPR
Unit # - A
Bldg - Tool Shed
Date - March, 1989

STATE OF HAWAII
 DEPARTMENT OF HEALTH
 HEALTH SERVICES DIVISION
 DIVISION OF ENVIRONMENTAL HEALTH
 1000 Kalia Road, Room 300
 Honolulu, Hawaii 96813
 DATE: _____



FLOOR PLAN

FRONT & BACK ELEVATIONS



RIGHT & LEFT ELEVATIONS

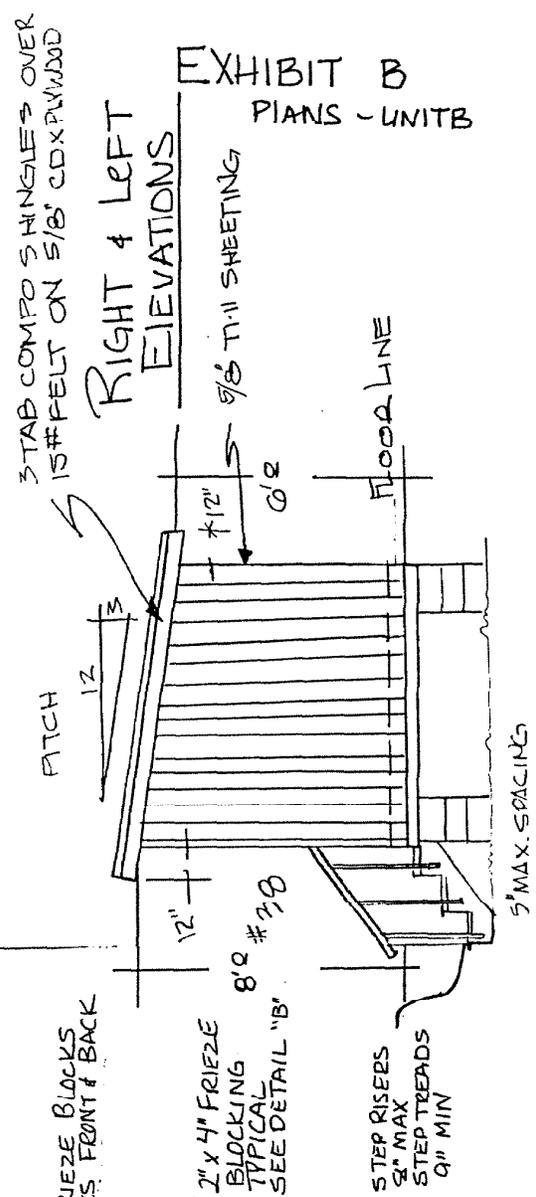
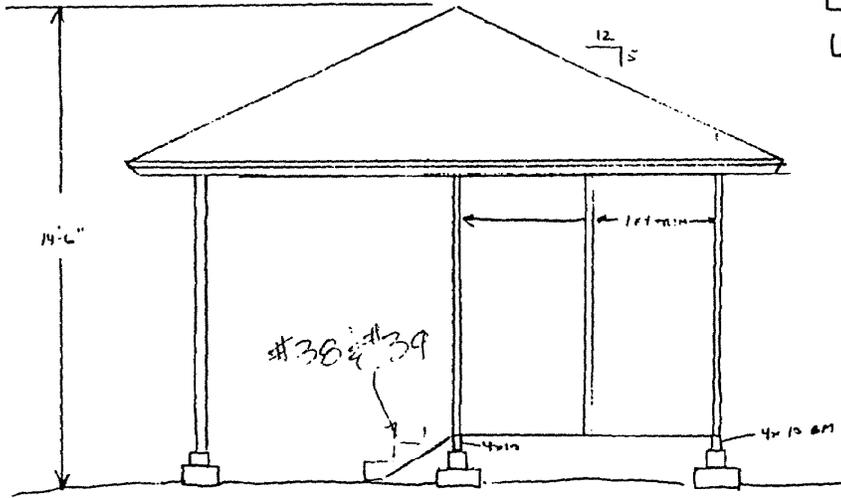
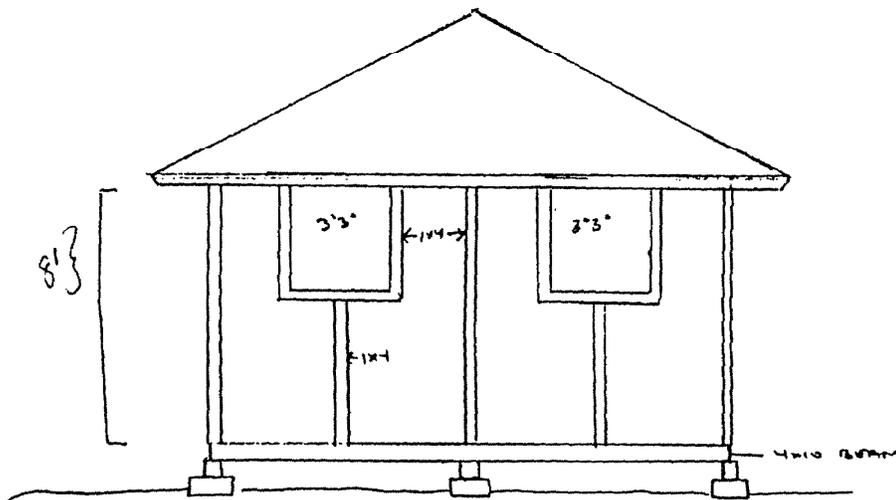


EXHIBIT B
PLANS - UNIT B

EXHIBIT B.
UNIT C - PLANS
J
F



ELEVATION (A) $\frac{1}{4}" = 1'-0"$



ELEVATION (B) $\frac{1}{4}" = 1'-0"$

EXHIBIT B
UNIT C - PLANS

DEPARTMENT OF PUBLIC WORKS
DIVISION OF BUILDINGS

NOTICE TO OWNER AND CONTRACTOR

1. Building Construction shall be in accordance with the adopted Uniform Building Code, Uniform Plumbing Code, National Electrical Code and all other County of Kauai Building, Plumbing and Electrical Ordinances.

2. Approval of plans shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of these codes.
A. Approved "Job Site Copy" shall not be changed, modified or altered without authorization from the Building Official.

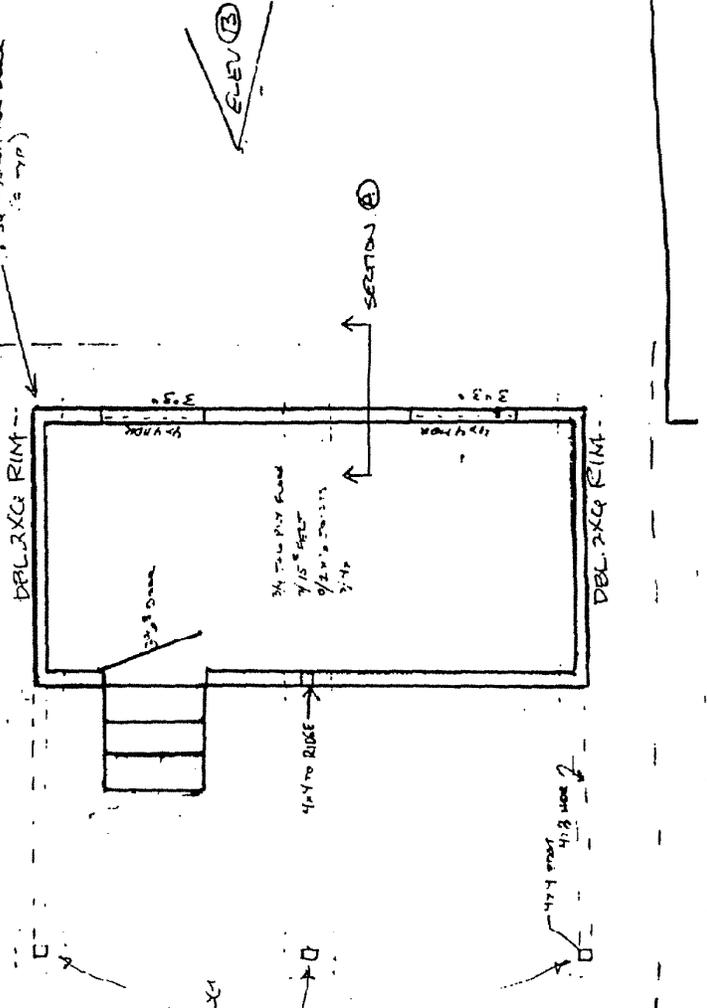
NOTICE TO BUILDERS

PLEASE OBTAIN SEPARATE PERMIT FOR:

1. ELECTRICAL INSTALLATION
2. PLUMBING INSTALLATION

CALL THE BUILDING DIVISION FOR ROUGH-IN INSPECTION. DO NOT ENCLOSE UNTIL INSPECTION IS MADE.

APPROVED
JOB SITE COPY
BLDG. DIV., P/W, COUNTY OF KAUAI



TREKIDE 2X4
KNEE BRACING

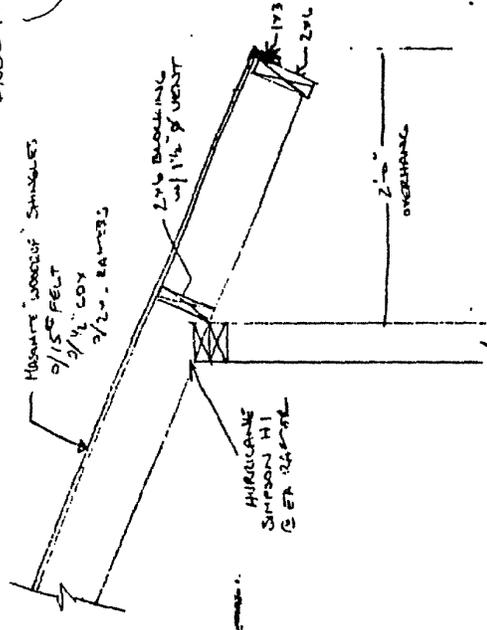
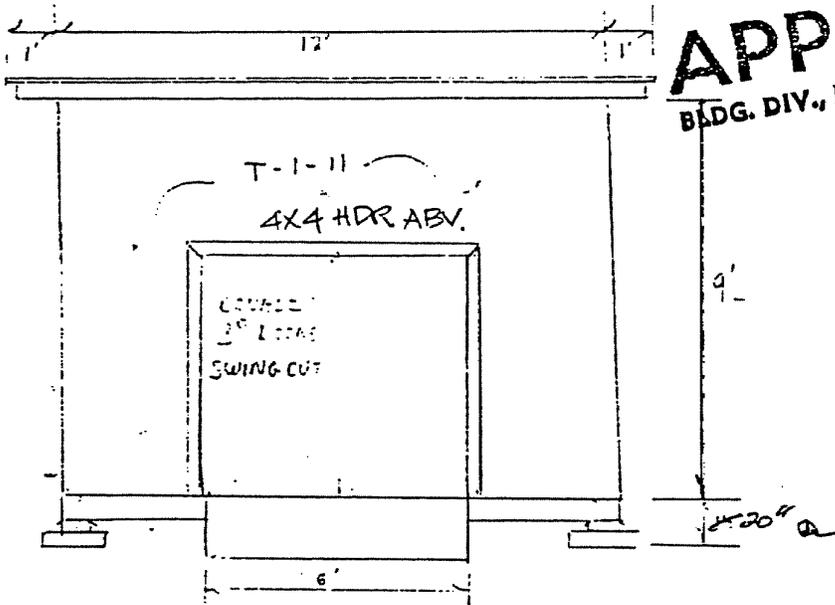


EXHIBIT B
PLANS - UNIT D

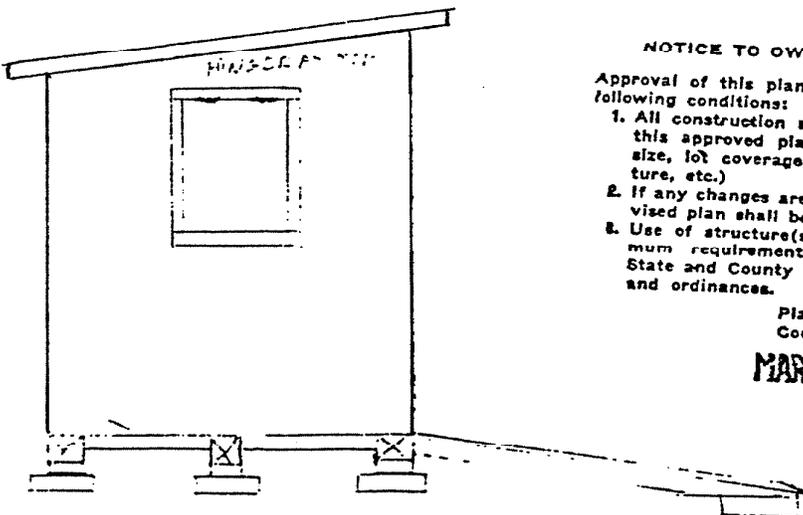
APPROVED
BDG. DIV., P/W, COUNTY OF KAUI



FRONT VIEW 1/4" = 1' SCALE

DEPARTMENT OF HEALTH
Notice to Owner: There shall be a minimum spacing of 20 inches between highest point in grade and lower portion of floor joist.

(SEE ATTACHED FIG. DETAIL)



SIDE VIEW 1/4" = 1' SCALE

NOTICE TO OWNER/CONTRACTOR

Approval of this plan is given subject to the following conditions:

1. All construction shall be in accordance to this approved plan. (i.e. setbacks, height, size, lot coverage, parking, use of structure, etc.)
2. If any changes are made to this plan, a revised plan shall be submitted for approval.
3. Use of structure(s) and lot and all minimum requirements shall conform to all State and County rules, regulations, codes, and ordinances.

Planning Department
County of Kauai

MAR 14 1989

TOOL SHED
RUSSELL McCLUSKEY
LOT NO.

EXHIBIT B
PLANS - UNIT E

NOTE DOORS WILL REMAIN OPEN
WHEN WORKING

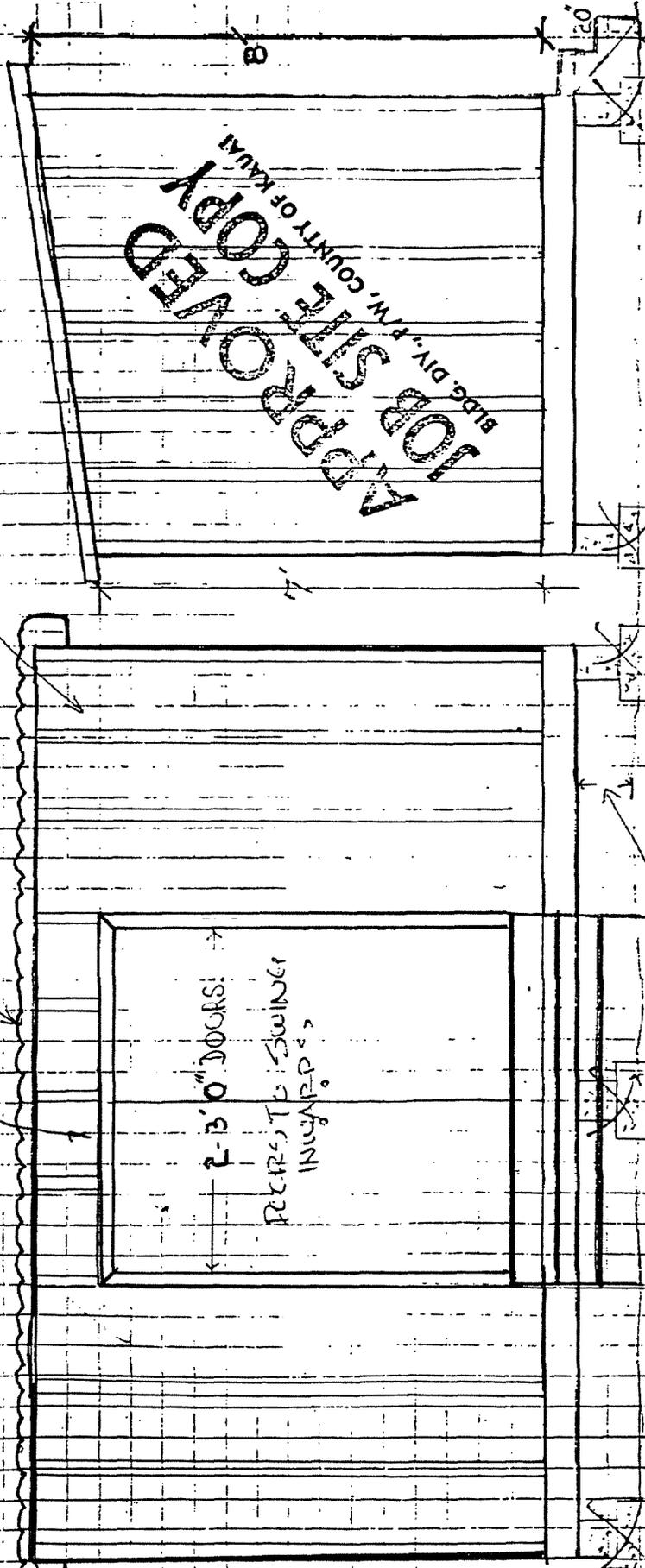
11/2" dia

4x4 HTR. ARCHIE
CORR. FIBERGLASS
ROOFING

3/4" PLYWOOD SIDING

2-3'0" DOORS
REAR TO SWINGER
INWARDS

APPROVED
JOB SITE COPY
BLDG. DIV., P.W. COUNTY OF KAUAI



NOTICE TO OWNER-CONTRACTOR
Approval of this plan is given subject to the following conditions:
1. The contractor shall be responsible for obtaining all necessary permits and licenses.
2. The contractor shall be responsible for obtaining all necessary insurance.
3. The contractor shall be responsible for obtaining all necessary bonds.
4. The contractor shall be responsible for obtaining all necessary approvals.
5. The contractor shall be responsible for obtaining all necessary clearances.
6. The contractor shall be responsible for obtaining all necessary easements.
7. The contractor shall be responsible for obtaining all necessary rights of way.
8. The contractor shall be responsible for obtaining all necessary encroachments.
9. The contractor shall be responsible for obtaining all necessary setbacks.
10. The contractor shall be responsible for obtaining all necessary setbacks.

OWNER: V. GOODWIN

PH 8 6 1249

SCALE: 3/8" = 1'

16'

EXHIBIT C

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS
FOR KIMOLANA ESTATES CONDOMINIUM**

Qty.	Apt. No.	Area of Limited Common Element	No. of BR/BATH	Appx Net Living Area (Sq. Ft.)	Appx Farm Shed Area (Sq. Ft.)	% of Common Int.
1	A	17.879 AC	0	0	90	30
1	B	2.761 AC	0	0	96	20
1	C	1.668 AC	0	0	96	20
1	D	1.000 AC	0	0	96	15
1	E	1.000 AC	0	0	128	15

Subject to the possible addition of an adjoining lot to this Project, the common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration, each unit owner may use his unit, alter or add to its farm structure in any manner he deems desirable, so long as it is permitted by County zoning laws and building codes and the Declaration of Protective Covenants and Restrictions. If adjoining unit owners desire to alter and/or transfer portions of their respective units, they can do so by the filing of an amendment to the Condominium Map and the Declaration together with their respective signatures. See Exhibit J for cautionary comments from the County of Kauai Planning Department.

Each unit will pay an equal share for roadway and common element maintenance. The undivided interests have been based on a combination of size, price and burden to be borne by each Unit. Voting is according to common interests.

END OF EXHIBIT C

EXHIBIT D

DECLARATION OF PROTECTIVE COVENANTS FOR KIMOLANA ESTATES CONDOMINIUM

1. CONSTRUCTION. Each building or other structure shall be constructed, erected and maintained according to the covenants herein, and in accordance with the plans and specifications approved by the County of Kauai. All sheds, barns and other agricultural out buildings shall be constructed only when they serve a bona fide purpose consistent with zoning and these protective covenants. All references to "Lot 3" herein refer to Lot 3 of the Kahili Makai Subdivision, and not to any unit in this Condominium Property Regime Project.

Unit A shall have the sole right to construct a guest house and/or second dwelling if permitted by the Kauai County Comprehensive Zoning Ordinance. Each unit shall be entitled to construct a primary residence upon compliance with zoning requirements, which includes verification of actual agricultural use before issuance of a building permit. To the extent additional residential structures may be permitted by law, and a sufficient majority of the unit owners so votes, the right to construct any additional residential improvements shall be determined by the owners of Units B through E drawing the numbers "1" through "4" and units B through E will have priority based on the number drawn. However, as to Units B, C, D & E, under no circumstances shall an "Ohana-type" or any other additional residential dwelling be allowed without the consent of three of the five (5) all unit ownership interests.

2. DWELLING COST AND QUALITY. No primary residence shall be permitted on any homesite at a building cost or value of less than FIFTY DOLLARS (\$50.00) per square foot, not to include the cost of landscaping, fences, other permissible structures or the cost of the homesite. Each home shall have at least 1600 square feet of livable space, excluding garages, porches, decks, and lanais. It is the intent and purpose of the covenants to assure that all dwellings shall be of quality workmanship and materials, substantially the same or better than that which can be produced at the date these covenants are recorded at the stated minimum cost. Plans for all residential structures must be submitted to Declarant James Wetherill in advance.

No less than a completed 650 square foot portion of any planned residential structure of at least 1600 square feet of livable interior space may be occupied by any unit owner or designee.

3. BOUNDARIES. No building shall be located on any homesite nearer than 30 feet to any limited common element or lot boundary, with the exception of Unit A, except with the

written approval of the owners of 75% of the undivided interests.

With the exception of the area along the boundaries of Units D and E facing Kahili Makai Street, the owner of Units B through E shall not construct any continuous fence or other structure or plant (or maintain or allow growth of) any continuous vegetation over eight feet high without the prior consent of at least a 75% common interest majority, and will further comply with all Kauai County Ordinances. Also, the other exception to this height limit is along the common boundary of Unit D and Kahili Makai Subdivision Lot 3 (the southwest boundary of Unit D which serves as the boundary between Lots 3 and 4 of Kahili Makai Subdivision), provided Unit D has approval of majority ownership interest of said Lot 3.

4. AMENDMENTS TO BOUNDARIES. So long as each limited common element is at least 1 acre in area, unit boundaries as described in Exhibit B to the Declaration of Condominium Property Regime may be amended by parties whose boundaries are affected thereby, upon written agreement, and without consent of the other unit owners. However, the boundaries along Kahili Makai Street are not to be amended without the approval of 75% of the undivided interests. The cost of such amendment shall be borne by the parties seeking the boundary adjustment, including the recordation of an amendment to the Declaration of Condominium Property Regime and Exhibits attributable thereto and attached thereto.

5. STANDARD EXTERIOR ARCHITECTURAL RESTRICTIONS.

(a) All vertical exterior surfaces shall be made of natural material.

(b) The roofs of structures constructed on any homesite shall be covered with materials of earth tones (including blue), and limited to wood shake, tile, composition shingle or nonreflective architecturally designed metal (not to include standard, conventional corrugated metal). Roofs shall not exceed a maximum pitch of 12:12 or 45 degrees.

(c) Each outbuilding on any homesite must be of quality workmanship and materials, and conform inconspicuously with the primary residence of that homesite.

(d) Laundry facilities and any service or utility area, including any area for hanging clothes, must be reasonably inconspicuous and shielded from public view. Any storage areas shall be non-offensive and reasonably inconspicuous.

(e) The residential building height restriction is twenty-five feet, measured from the highest natural grade at any point on the perimeter of the foundation of the structure to the highest point of construction. Out buildings and barns on Units B, C, D, and E may not exceed 16 feet in height without the written consent of 75% of the common interest of the Project.

(f) The owner of each structure constructed on the homesites shall maintain the structure in good repair at all times and shall cause all external surfaces to be maintained as to prevent the structure from detracting from the beauty of the community.

(g) Each homesite owner shall cause the land to remain in a non-offensive state at all times.

(h) No noxious or offensive activity shall be carried on upon any homesite, nor shall anything be done thereon which may be or may become an annoyance to the neighborhood.

(i) No existing tree with a trunk diameter in excess of 12" shall be removed or cut (except for a reasonable amount of pruning) along the rim of Units B and C, or along the sides of Kimolana Drive. No clear-cutting of other vegetation may occur at any such locations (to the end that existing privacy and existing mountain and ocean viewplanes will be maintained), without the approval of 65% of the undivided interests plus the approval of every Unit Owner affected by the removal or cutting in question.

6. ARCHITECTURAL CONTROL. In the event any dispute arises as to the conformance of any proposed plans with these Protective Covenants, the question shall be resolved by a vote of the holders of majority interests in three of the five units in the Project. All plans and elevations for construction upon the property shall be presented to each unit owner prior to the commencement of construction and minimum of 10 calendar days shall be given for review and approval of same.

7. CLEANLINESS. No homesite shall be used as a storage or dumping ground for rubbish, trash, garbage or other waste. Such materials shall be disposed of in a clean, sanitary manner. No unit shall be used for the visible (from other units) storage of farm or construction equipment. In the event of such storage, all such areas shall be tastefully screened from public view and the view of other unit owners.

All homesite dwellers shall maintain the respective areas of each unit in a clean and sanitary condition.

All homesites shall be maintained to meet State of Hawaii Health Department requirements.

8. PETS/ANIMALS. The following animals, livestock and activities shall not be permitted or allowed to be kept by any owner or tenant on the property without the consent of all Unit Owners whom can see, hear or smell the effects of possession of such animals.

- (a) Pigs, hogs, pitbull dogs, or peafowl;
- (b) More than two permitted dogs which are owned and kept as pets;
- (c) Any dogs or cats kept for commercial breeding or kennel purposes;
- (d) More than three horses;
- (e) More than three sheep or cattle (in the aggregate);
- (f) Roosters or commercial chicken-raising.

9. TEMPORARY STRUCTURES. Except for temporary construction (for not more than six months), no temporary buildings, tents or trailers shall be erected, altered, placed or permitted to remain on any homesite. Temporary construction structures or trailers shall remain upon the homesite only during a reasonable period of construction of permanent improvements thereon and must be removed within thirty (30) days after completion of such construction.

10. TAXES. All unit owners shall cooperate in maintaining the existing agricultural zoning, so as to maintain Kauai County agricultural property tax rates. Each unit will be responsible for all real property taxes assessed on structures placed on their respective units. To the extent the County of Kauai does not tax the structures separately, the parties will fairly allocate real property taxes. Failing agreement on those property taxes, the matter shall be resolved by appraisal by an appraiser selected by the parties by agreement. Failing agreement on the appraiser, the appraiser shall be selected under the arbitration rules hereinafter provided.

11. EASEMENTS. Easement A-1 over Lot 3 and easement 2 on the Condominium map are exclusively for the benefit of unit A (its owners, invitees and permittees), and may not be otherwise utilized by other unit owners. Easement 5 on the condominium map is for roadway, utility and pedestrian purposes of Unit A (its owners, invitees and permittees), and for pedestrian purposes only by other unit owners. Unit A shall be allowed to place a gate (at Unit A owners expense) at the point where

Easement 5 ends at the boundary between Lots 3 and 4 of Kahili Makai Subdivision and may extend 5' into Unit B. The gate shall not exceed 25' long and 8' in height.

12. RIGHT OF FIRST REFUSAL. James G. Wetherill or his designee has and shall retain a right of first refusal to purchase any unit in the project upon resale by the owner of such unit (except to a spouse or child of the immediate family of the unit owner, a family trust or other estate-planning entity or to a corporation of which the Unit Owner of successor-in-interest holds a majority interest). Such rights shall be exercisable (by written notice) no less than 30 days after receipt of written notice of the pending sale, together with the full disclosure of all terms and conditions of the proposed sale; or, providing the unit owner supplies written notice of interest to resell (complete with asking price and terms), at least 2 weeks prior to accepting a contract to purchase (said contract to disclose the Right contained herein), no less than 10 business days after said receipt. Closing shall be no less than 30 days after exercise of the right to purchase, or the date specified in the third party offer, whichever is later, and shall be on the terms of the third-party offer. The failure of any unit owner to conclude such a specified sale on the terms offered after James G. Wetherill or his designee declines to purchase shall cause the right of first refusal to be reinstated as to that sale. The right shall further apply to any future or further sale or conveyance of any unit.

13. UTILITIES. Each unit owner shall be responsible for bringing water, power, telephone and television cable service to their individual units from the point designated and the condominium map as utility access. All utilities shall be underground. The individual unit owners shall provide their own private meters to permit fair allocation of utility expense among them. If it becomes impossible to install separate meters, then the unit owners will undertake such action as necessary to determine a fair allocation of utility expense. Unit E will be entitled to utilize the existing water meter on the property. If any units are not allowed to install separate water meters, such units will be connected to the meter utilized by Unit E and reasonable steps will be taken for additional private metering to determine the fairness of allocation of expense. All lines for such water useage shall be placed within the utility easement(s) of the project.

14. ROAD ACCESS. Access to Kahili Makai Street from each unit shall be only over Kimolana Estates Drive. Specifically, neither Unit D nor Unit E shall be permitted to place a driveway on Kahili Makai Street without the approval of 75% of the undivided interests.

15. REPEAL OR MODIFICATION. The foregoing covenants and conditions shall continue in force and effect for at least twenty years of their initial term, and thereafter until such time as the subject property is reclassified to a state land use district classification other than the "Agricultural" district classification or for fifty-five (55) years from the date these covenants and conditions are recorded, whichever is later. However, after 25 years, all restrictions are removed with a 65% vote, so long as any unit adversely affected is among those voting affirmatively or such units rights are maintained in revised Protective Covenants.

Please see Exhibit B, attached hereto and incorporated herein by this reference, which gives approval to Developer for amendments by signature of all owners.

These Covenants may be repealed or modified by the affirmative vote of the holders of 65% of the common interests in the Project; however, no provision for the benefit of one or more units may be amended without the express consent of the benefited unit.

16. DISPUTES. In the event of any violation or threatened violation of this Declaration, or in the event there shall arise any claim, dispute or other matter in question concerning this Declaration, its application or interpretation (herein referred to as a "Dispute"), such violation, threatened violation or dispute shall be decided by arbitration according to the following terms and conditions:

(a) Regarding a violation or threatened violation of this Declaration, any of the Declarants, or their respective successors and assigns, shall first notify the party in violation or threatening violation, in writing, of the nature thereof and shall demand the cessation or removal of the violation or threatened violation. If the party receiving the notice fails or refuses to cease or remove the violation or threatened violation within thirty (30) days after his receipt of the written notice, or fails or refuses within that period to take reasonable action or give acceptable assurances that the violation will cease or be removed as soon as possible, then the party making the demand shall, within thirty (30) days thereafter give notice of demand for arbitration in writing to the other party, subject to the general terms contained in sub-paragraphs (c) and (d) below. If the arbitrator determines that a violation or threatened violation exists and that reasonable action or acceptable assurances to cease or remove the same were not taken within the 30-day period mentioned above, the costs of arbitration, including all arbitrator's fees and reasonable attorney's fees incurred by the complaining party(ies), shall be assessed against the party found to be in violation, and the arbitrator shall be authorized to order the cessation or removal of the violation,

to enjoin further or threatened violations and/or to award damages if appropriate to the circumstances.

(b) Regarding any dispute not covered by sub-paragraph (a) above, notice of demand for arbitration shall be given in writing by any of the Declarants, or their respective successors and assigns, to the other party(ies) to the dispute within a reasonable time after the dispute has arisen, but in no event after institution of legal or equitable proceedings based upon the dispute would be barred by the applicable statute of limitations.

(c) All matters referable to arbitration hereunder shall be arbitrated by a single arbitrator. The parties to the arbitration shall initially attempt to agree on an arbitrator who is acceptable to all concerned parties. If the parties are unable to agree on an arbitrator, the matter shall be referred to the American Arbitration Association in Honolulu, Hawaii and decided according to its rules and procedures then in effect. Any party to the arbitration may file a written notice of the demand for arbitration with the American Arbitration Association.

(d) This agreement to arbitrate, and any arbitrator's decision or award, shall be specifically enforceable under the prevailing arbitration laws of the State of Hawaii. Except as is otherwise stated in sub-paragraph (a) above, (i) costs and fees, incurred to arbitrate (exclusive of attorney's fees and costs) shall be divided equally between the parties to the arbitration unless otherwise ordered by the arbitrator, and (ii) each party shall be solely responsible for his own attorney's fees and costs unless otherwise ordered by the arbitrator.

END OF EXHIBIT D

EXHIBIT E

Common Elements of the Project

The common elements of the project are:

- (a) Land in fee simple;
- (b) The common access and utility easement;
- (c) All future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone;
- (d) Any and all other elements and facilities in common use or necessary to the existence, upkeep and safety of the Project.

Limited Common Elements of Project

Certain parts of the common elements, herein referred to as the "limited common elements" are hereby designated and set aside for the exclusive use of one or more units, and such unit(s) shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved as follows:

(a) That certain land area upon and around which Units A, B, C, D and E are located, shown and designated on the Condominium Map and the table below, are deemed a limited common element appurtenant to and for the exclusive use of each respective unit.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
A	17.879 acres
B	2.761 acres
C	1.668 acres
D	1.000 acres
E	1.000 acres

(b) The following easements:

1. Easement 1 is a 15 foot wide pedestrian easement along the edge of stream in favor of Unit A.

2. Easement 2 is a 15 foot wide utility and pedestrian easement in favor of Unit A.

3. Easement 3 is a 15 foot wide utility easement in favor of Units A, B and D.

4. Easement 4 is a 15 foot wide utility easement in favor of Unit C.

5. Easement 5 is a 20 foot wide roadway, utility and pedestrian easement in favor of Unit A; and a pedestrian easement in favor of Units A, B, C, D and E.

All costs of every kind pertaining to the aforesaid limited common elements, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne solely by the owner of the unit to which said limited common elements are appurtenant.

END OF EXHIBIT E

EXHIBIT F

Encumbrances Against Title

1. Real property taxes, a lien not yet due and payable. However, check with the Kauai County Tax Assessor.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Flood setback line as shown on Final Subdivision Map.
4. Any rights that may exist by reason of the fact that Kilawa Stream passes through a portion of the land herein described.
5. Easement "D-6" (10-foot wide), containing an area of 0.11 acre, as shown on Final Subdivision Map.
6. The terms and provisions of that certain Agreement To Incorporate Agricultural Restrictions Into Instruments Of Conveyance dated February 18, 1982, made by and between Beta Pacific, Inc., a Hawaii corporation, as "Subdivider", and the County of Kauai Planning Department, as "Commission", recorded in the Bureau of Conveyances of the State of Hawaii in Book 16378 Page 307, to which reference is hereby made.
7. Restrictions, covenants and conditions as contained in:

DECLARATION OF RIGHTS OF USE

Dated: April 6, 1982
Book: 16378
Page: 358
to which reference is hereby made

8. Reservations as contained in:

WARRANTY DEED

Dated: May 25, 1982
Book: 16378
Page: 360
to which reference is hereby made

9. **RIGHT-OF-ENTRY**

In Favor Of: Citizens Utilities Company, a Delaware corporation, duly authorized to do business in the State of Hawaii, and Hawaiian Telephone Company, a Hawaii corporation, now known as GTE Hawaiian Telephone Company Incorporated
Dated: April 27, 1982
Book: 17511
Page: 488
Purpose: Easement for utility purposes over, under, across and through the land herein described (also affects other property)

10. **MORTGAGE**

Mortgagor: James G. Wetherill and Lana R. Wetherill, husband and wife; Russell P. McCluskey and Susan M. McCluskey, husband and wife; Michael H. Chandler and Shelley Dee Chandler, husband and wife; Vince Noel Goodwin and Nedra Rae Frueh, husband and wife; and Jeffrey Frank Miller and Valeri Ann Miller, husband and wife
Mortgagee: First Hawaiian Creditcorp, Inc., a Hawaii corporation
Dated: November 25, 1988
Book: 22642
Page: 88
To Secure: \$262,500.00
and any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to

11. The terms and provisions of that certain Farm Dwelling Agreement dated February 27, 19____, made by and between Vincent N. Goodwin and Nedra Frueh, as the "Applicants", and the County of Kauai Planning Department, as the "Department", recorded in the Bureau of Conveyances of the State of Hawaii in Book 22972 Page 433, to which reference is hereby made.

12. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF "KIMOLANA ESTATES CONDOMINIUM":

Dated: September 6, 1989
Book: 23715
Page: 716

Condominium Map No. 1246, to which reference is hereby made.

The foregoing Declaration of Condominium Property Regime was amended by the following:

<u>Dated</u>	<u>Document No.</u>
Undated	90-057663

13. **BYLAWS OF "KIMOLANA ESTATES CONDOMINIUM":**

Dated: September 6, 1989
Book: 23715
Page: 737

The foregoing Bylaws was amended by the following:

<u>Dated</u>	<u>Document No.</u>
Undated	90-096199

14. Restrictions, covenants and conditions as contained in:

DECLARATION OF PROTECTIVE COVENANTS FOR KIMOLANA ESTATES CONDOMINIUM

Dated: August 31, 1989
Book: 23715
Page: 773
to which reference is hereby made

The foregoing Declaration was amended and restated by the following:

<u>Dated</u>	<u>Document No.</u>
Undated	90-096200

15. The terms and provisions of that certain Farm Dwelling Agreement dated September 8, 1989, made by and between Jeffrey F. Miller, Valeri A. Miller, James G. Witherill, Lana R. Witherill, Russell P. McCluskey, Susan M. McCluskey, Michael H. Chandler, Shelley Dee Chandler, Vince Noel Goodwin, and Nedra Rae Frueh, as the "Applicants, and the County of Kauai Planning Department, as the "Department", recorded in the Bureau of Conveyances of the State of Hawaii in Book 23874 Page 162, to which reference is hereby made.

END EXHIBIT F

EXHIBIT G

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
Unit A	\$100.00 \$1,200.00
Unit B	\$100.00 \$1,200.00
Unit C	\$100.00 \$1,200.00
Unit D	\$100.00 \$1,200.00
Unit E	\$100.00 \$1,200.00

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

Estimate of Maintenance Fee Disbursements:

Monthly x 12 months = Yearly Total

Utilities and Services

Air Conditioning

Electricity

common elements only

common elements
and apartments

0

0

Gas

0

0

Refuse Collection

0

0

Telephone

0

0

Water (if common metering)

140

1680

Maintenance, Repairs and Supplies

Building

0

Grounds

50

600

Management

Management Fee

100

1200

Payroll and Payroll Taxes

0

0

Office Expenses

10

120

Legal & Audit

50

600

Insurance

75

900

Reserves

50

600

Taxes and Government Assessments

Audit Fees

Other

Bookkeeping Service

25

300

TOTAL

500

6000

I James G. Wetherill, as
developer for the condominium project, hereby certify that the above estimates of initial
maintenance fee assessments and maintenance fee disbursements were prepared in accordance
with generally accepted accounting principles.

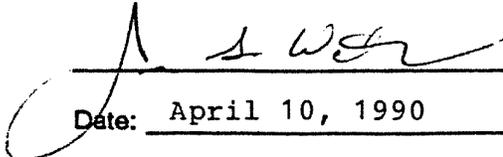

Date: April 10, 1990

EXHIBIT H
SUMMARY OF SALES CONTRACT

The KIMOLANA ESTATES Purchase Agreement, (the "contract") contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. The method of payment of the purchase price to the escrow agent, subject to other terms.

2. The purchase price does not include the closing costs, prorations and additional costs provided in other sections of the contract.

3. If at the time of execution of the contract, a final public report has not been issued, the contract is merely a reservation agreement and it may be cancelled at any time by either the Buyer or Seller.

4. The terms and conditions of the sale which include, among other provisions, the following:

(a) Buyer has received the Declaration of Horizontal Property Regime, Bylaws of the Association of Apartment Owners, form of Apartment Deed, and Escrow Agreement and acknowledges that he has had adequate opportunity to read those documents and to examine the project plans and accepts them with such changes and modifications as the project architect may deem necessary.

(b) Buyer agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow Agreement.

(c) Risk of loss to the apartment and percentage interest in the common elements will be borne by Seller until the date of closing as defined in the contract. Buyer will not be entitled to possession of the apartment until the date of closing.

(d) Seller has reserved the right to make certain modifications to the Declaration, Bylaws, Residential Apartment Deed and other documents as may be required by law, a title insurance company, any institution, mortgagee or governmental agency.

(e) Until the Apartment Deed conveying title is delivered to Buyer, the Seller may exercise all of the powers of the Association and of the Buyer as a member thereof.

(f) After issuance of the Final Public Report and Buyer's waiver of its right to cancel under Hawaii Revised Statutes

Section 514A-62, Buyer shall have the right to rescind the contract only if there is a material change in the project which directly, substantially and adversely affects the use or value of Buyer's apartment or appurtenant limited common elements or those amenities of the project available for the Buyer's use subject to waiver by the Buyer pursuant to the terms set forth in the contract and Hawaii Revised Statutes Section 514A-63.

(g) Time is of the essence of the obligations of Buyer under the contract.

(h) Neither Seller nor any of its representatives has made any representations as to the rental income to be derived from the unit.

(i) Developer makes NO WARRANTIES regarding construction and appliances.

(j) The contract shall not be construed as a present transfer of any interest in the property but it is an agreement to transfer in the future.

* * * * *

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

END OF EXHIBIT H

EXHIBIT I

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between Title Guaranty and Escrow Services, Inc. (the "Escrow") and James G. Wetherill (the "Seller") contains, among other provisions the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.

2. Escrow will receive payments under the sales contracts and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project.

3. Escrow will release from the Trust Fund and disburse Buyer's funds at closing. No disbursements will be made from Buyer's fund until: (a) the Real Estate Commission has issued a Final Public Report on the project and forty-eight (48) hours have elapsed since Buyer's receipt of a copy of the Final Public Report; (b) Buyer has waived its right to cancel the sales contract; and (c) Seller has notified Escrow that all other requirements of Sections 514A-39 and 514A-63, Hawaii Revised Statutes, have been met. Where sales contracts are entered into Escrow will disburse funds upon presentation by Seller of Buyer's signed receipt for the Final Public Report and with notification by Seller that all of the requirements of Sections 514A-39 and 514A-63, Hawaii Revised Statutes, have been met. Escrow will call for payments by the Buyer upon receipt of notice from seller that any payments are due under any sales contract.

4. Escrow will return deposited sums to the Buyer without interest if Seller gives Escrow written notice to return the funds to Buyer, or with respect to a Buyer whose funds were obtained before the issuance of a Final Public Report, Escrow receives from the Buyer a written request to cancel the sales contract or after issuance of the Final Public Report and Buyer's waiver of his right to cancel the sales contract in accordance with Section 514A-62, Hawaii Revised Statutes, there shall be any material change in the project which directly, substantially and adversely affects the use or value of the Buyer's apartment or appurtenant common elements or those amenities of the project available for Buyer's use, of a nature entitling the Buyer to cancel his sales contract pursuant to Section 514A-

63, Hawaii Revised Statutes. These funds shall be returned to Buyer less Escrow's cancellation fee, if any, any mortgagee's cancellation fee and all other costs incurred in connection with the Escrow, but in the aggregate shall not exceed \$250.00.

5. Escrow will arrange for and supervise the signing of all documents which are to be signed subsequent to an contemplated by the sales contract.

6. As Escrow's compensation for its performance under this Agreement, Escrow will receive \$300.00 for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents.

* * * * *

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

END OF EXHIBIT I

TONY T. KUNIMURA
MAYOR

EXHIBIT J



TOM H. SHIGEMOTO
Planning Director

ROLAND D. SAGUM, III
Deputy Planning Director

Telephone (808)245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766

November 14, 1988

Mr. Calvin Kimura, Executive Secretary
Real Estate Commission
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

SUBJECT: Comments on Kimolana Estates, Reg. No. 1984
TMK: 5-2-21: 4

Thank you for allowing us this opportunity to comment.

After reviewing the Notice of Intention, Questionnaire form, and draft of the Public Report for Kimolana Estates, Reg. No. 1984, TMK: 5-2-21: 4, we have the following comments to offer:

- a. The amount of limited common elements corresponds to the allowable unit density.
- b. In relation to item no. 6 in the Summary of the Condominium Project (page 5), parking, we feel that each limited common element should have at least two (2) parking stalls; requirements of the Comprehensive Zoning Ordinance stipulate two (2) parking stalls per dwelling unit.
- c. In Exhibit D, Declaration of Protective Covenants, page 3, item 4. e., a building height restriction of "thirty (30) feet measured from the highest natural grade at any point on the perimeter of the foundation of the structure to the highest point of construction" is provided for.

Mr. Calvin Kimura
November 14, 1988
Page 2

This is in conflict with the County of Kauai's North Shore Development Plan, and should be revised accordingly. The North Shore Development Plan reads, in part:

"Heights. Except as provided under Ordinance No. 416 (Flood Hazard Areas) Section 15-1.5(c)(4), height limits shall be established in the Comprehensive Zoning Ordinance; provided, however, that no structure shall be higher than twenty-five feet unless a greater height is authorized by the Planning Commission pursuant to a use permit after review (and recommendation) by the North Shore Improvement Advisory Committee."

- d. In Exhibit D, Declaration of Protective Covenants, page 6, item 10., Units B through E are restricted from constructing, among other things, "any continuous fence...or other structure over eight feet high without prior consent of at least a 75% interest majority." Departmental policy has been that any fence over six (6) feet must either observe setback requirements for residential structures or obtain the consent of the landowner of the abutting lot.
- e. There should be a disclaimer provision written into this and all ensuing condominium reports stating that approval of the report should not be misconstrued to mean that all County Codes and Ordinances have been complied with. Subsequent development and use shall comply to all applicable County Codes and Ordinances. It should also be made clear that the Horizontal Property Regime (HPR) does not necessarily mean that all County requirements pertaining to subdivision of lands have been met. Therefore such facilities/improvements that are normally associated with County-approved subdivisions such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emerging traffic, drainage facilities, etc. may not necessarily be provided for. Further, such services as County street maintenance and trash collection will not be available for interior road/driveways.

Mr. Calvin Kimura
November 14, 1988
Page 3

- f. Also of concern are the declaration of protective covenants, wherein certain types of agricultural activities are restricted. While this is a private matter, it appears to detract from the stated purpose of agriculture-zoned lands.

Should you have any questions, please contact Peter Nakamura of my staff at 245-3919.


TOM H. SHIGEMOTO
Planning Director

END OF EXHIBIT J