



**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

KALIHIWAI PALMS CONDOMINIUM

Kahilihoholo Road  
 Kalihiwai, Kilauea, Kauai, Hawaii

Registration No. 2138

Issued: July 25, 1991  
 Expires: August 25, 1992

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of May 17, 1991, 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 20, 1989.

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

  X   **FINAL:**              The developer has legally created a condominium and has filed complete information with the Commission.  
 (*white*)  
                                   [ ] No prior reports have been issued  
                                   [X] 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              [ X ] 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: See page 2a.

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*****
*   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, related services and *
*   trash collection will not be available for     *
*   interior roads.                                *
*   *                 *
*   4. Read Exhibit J (Letter from County of Kauai) *
*   with care.                                     *
*   *                 *
*   THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY *
*   REVIEW THE DOCUMENTS FOR FURTHER INFORMATION WITH *
*   REGARD TO THE FOREGOING.                         *
*   *                 *
*****
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**CHANGES FROM PRELIMINARY TO FINAL PUBLIC REPORT:**

<u>Page</u>	<u>Description of Changes</u>
1.....	Change type of report to Final.
2a.....	Page added for changes to Report.
5.....	New apartment descriptions for each unit.
6.....	Developer's address has changed. Managing Agent changed to Association of Owners.
7.....	Inserts recording information for condominium documents.
10.....	Address of property corrected. Fee Owner's address has changed. Building number changed.
11.....	New interior descriptions. Descriptions clarified in "Boundaries of Each Apartment".
15.....	Encumbrances Against Title updated.
17.....	Construction status changed to show completion of improvements.
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.

New Exhibits replace old to update map showing actual locations of improvements (Exhibit A), Updated descriptions of as-built improvements to the units (Exhibit B), changed Exhibit C to reflect new acreages and shed sizes, (Exhibit C); Exhibit E changed to reflect new acreages; updated Encumbrances On Title (no substance change) (Exhibit F).

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## GENERAL INFORMATION ON CONDOMINIUMS

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of 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
- 3.  High Rise (5 stories or more)  Low Rise
- 4.  Single or  Multiple Buildings
- 5. Apartment Description

Apt. NO.	Quantity	BR/Bath	Net Living Area (sf)*	Storage Shed(s) (sf)
1	1	0	0	64
2	1	0	0	64

Total Apartments: 2

*\*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>0</u>
Guest Stalls	_____
Unassigned Stalls	_____
Extra Stalls Available for Purchase	_____
Other: _____	_____
Total Parking Stalls	<u>0</u>

Each unit has ample parking area within its limited common element, but shall have at least two (2) stall areas at all times.

**7. Recreational amenities:**

NONE

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: SHAWN O. STUSSY  
Name [REDACTED]  
Business Address [REDACTED]

Phone: [REDACTED]  
(Business)

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

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

Real Estate Sales Agent: HARRINGTON'S PARADISE PROPERTIES  
Name P.O. Box 1345  
Business Address Hanalei, HI 96714

Phone: (808) 826-9655  
(Business)

Escrow: TITLE GUARANTY ESCROW SERVICES, INC.  
Name 235 Queen Street, Condo Section  
Business Address Honolulu, HI 96813

Phone: (808) 521-0211  
(Business)

Managing Agent: Self-Managed by the Association of  
Name Unit Owners  
Business Address \_\_\_\_\_

Phone: \_\_\_\_\_  
(Business)

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



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:

NONE



**B. Underlying Land:**

Address: Kahilihoho Road Tax Map Key: (4) 5-2-17:08  
Kalihiwai, Kilauea, Kauai, Hawaii (TMK)

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

Land Area: 9.235  square feet  acre(s) Zoning: Agricultural

Fee Owner: SHAWN OWEN STUSSY and VICKIE LOU STUSSY  
Name

[REDACTED]  
Address

[REDACTED]

Sublessor: N/A  
Name

Address

**C Buildings and Other Improvements:**

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

2. Buildings: 2 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>2</u>
--------------------------------------	-------	--	----------

<input type="checkbox"/> Timeshare/Hotel	_____	<input type="checkbox"/> Recreational	_____
--	-------	---------------------------------------	-------

Other: Please see Page 18 for further explanation.

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 See Exhibit D. Protective Covenants may apply.

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 2

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(s) (sf)</u>
<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>64</u>
<u>2</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>64</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.

**Permitted Alterations to Apartments:**

As allowed by Kauai County zoning ordinances and recorded restrictions on the project, if any. Upon construction of each permanent improvement, an amendment to the Declaration of Condominium Property Regime and the Condominium Map (Exhibit A) will be required to disclose actual improvements as a matter of public record.

7. Parking Stalls:

Total Parking Stalls: At least two (2) parking stall areas will be required in each unit's limited common element.

	<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:	_____	_____	_____	_____	_____	_____	<u>0</u>
Total Covered & Open	<u>0</u>	_____	_____	_____	_____	_____	_____

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

- [ ] Commercial parking garage permitted in condominium project.
- [ ] Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities.

- [ X ] There are no recreational or common facilities.
- [ ] Swimming pool
- [ ] Storage Area
- [ ] Recreation Area
- [ ] Laundry Area
- [ ] Tennis Court
- [ ] Trash Chute
- [ ] Other: \_\_\_\_\_

9. Present Condition of Improvements

(For conversions of residential apartments in existence for at least five years): N/A

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 as 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 December 31, 1990 and issued by TITLE GUARANTY OF HAWAII. Developer represents that since that date there have been no further encumbrances.

**Blanket Liens:**

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.

[X] 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	If foreclosed, Buyer's deposit will be refunded and the contract 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.

[ X ] 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:

NONE

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     March 6, 1989    

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. No new improvement may be made nor many any existing improvement be materially altered unless the plans are approved by the Kalihiwai Ridge Environmental Committee.

You should also conduct your own investigations and ascertain the validity of information provided. Please remember that issuance of this Report does not mean the Hawaii Real Estate Commission has approved the project. The uses on the limited common elements shall be limited to those listed as permissible within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Farm dwellings on the lot shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

The County of Kauai Planning Department has advised that, in order to process the necessary permits for the construction and the processing of a farm dwelling agreement on agriculturally zoned parcels, 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 Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge Subdivision.

Except as limited by the Declaration of Condominium Property Regime, the Bylaws, and the Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge Subdivision, and other documents of record, 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. In relation to specifically permitted uses of buildings and other improvements, structures shall only be occupied or used for agriculture, associated residential uses, and/or other uses permitted by law and the recorded project documents. 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 the advisory letter from Kauai County Planning Department attached as Exhibit J.

A buyer should understand that development and use of the properties shall comply with all County Codes and Ordinances. If County of Kauai facilities are not already in place, the prospective purchaser is advised that owners in this project will not necessarily receive the same County benefits as owners of approved subdivided lots; owners who develop their properties later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations. Zoning and land use restrictions are subject to change and each purchaser should maintain awareness of such conditions.

**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 Declaration of Protective Covenants, Restrictions and Conditions for Kalihiwai Ridge Subdivision.

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. 2138 filed with the Real Estate Commission on October 5, 1989.

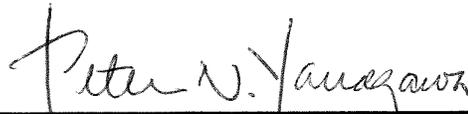
Reproduction of Report. When reproduced, this report must be on:

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.



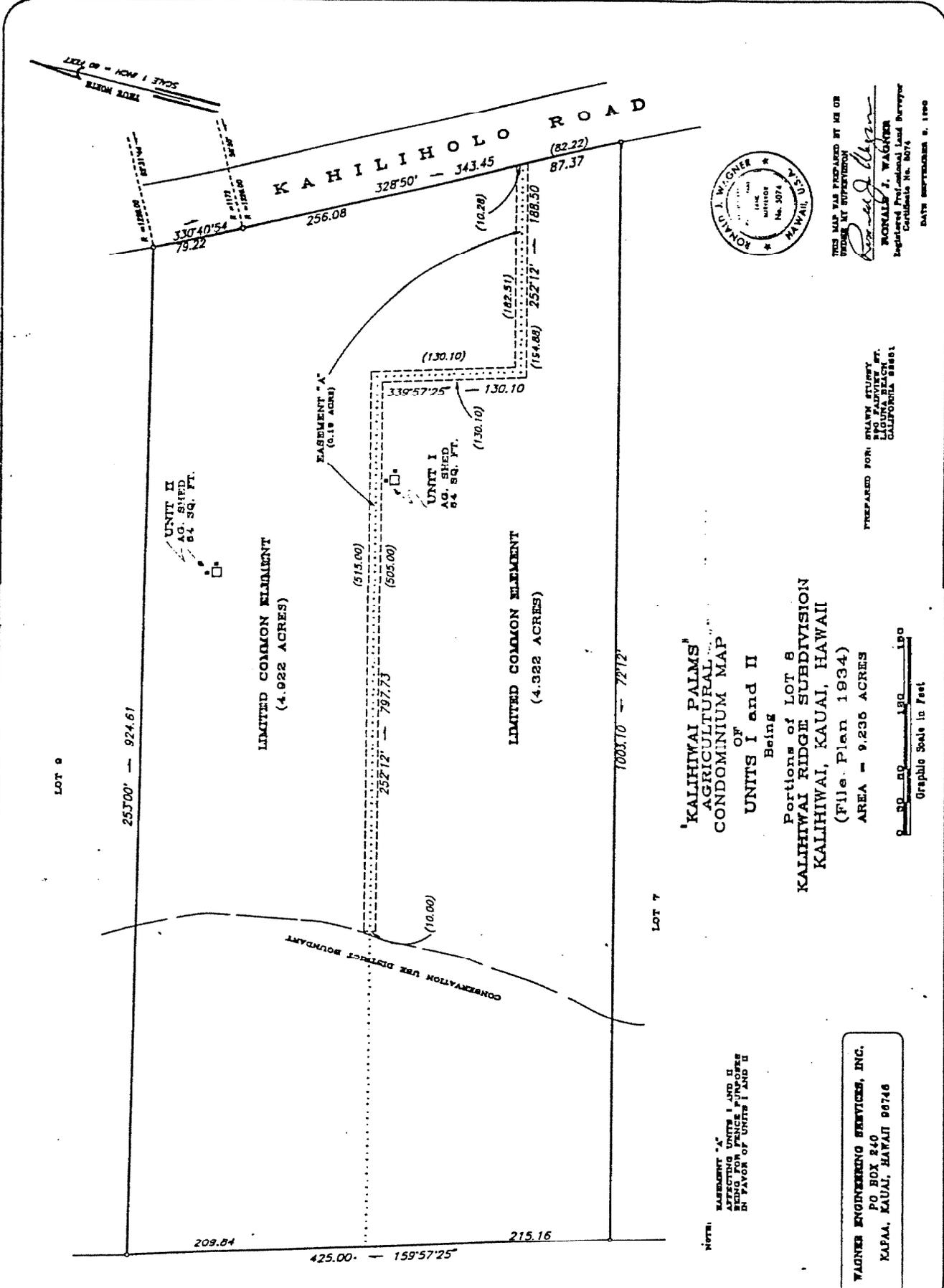
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PETER N. YANAGAWA, Chairman  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

Bureau of Conveyances  
Department of Finance, County of Kauai  
Planning Department, County of Kauai  
Federal Housing Administration

EXHIBIT A  
 CONDOMINIUM MAP AND LIMITED  
 COMMON ELEMENT LOCATIONS



THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION  
*Ronald J. Wagner*  
 RONALD J. WAGNER  
 Registered Professional Land Surveyor  
 Certificate No. 3074  
 DATE SEPTEMBER 8, 1990

PREPARED FOR: SHAWM STURDY  
 180 PALMVIEW CT.  
 CALIFORNIA 92661

'KALIHUWAI PALMS'  
 AGRICULTURAL  
 CONDOMINIUM MAP

UNITS I and II  
 Being

Portions of LOT 6  
 KALIHUWAI RIDGE SUBDIVISION  
 KALIHUWAI, KAUAI, HAWAII  
 (File Plan 1934)

AREA = 9.295 ACRES

Graphic Scale in Feet  
 0 50 100 150 190

NOTE:  
 EASEMENT "A"  
 AFFECTING UNITS I AND II  
 IS A REVERSE EASEMENT  
 IN FAVOR OF UNITS I AND II

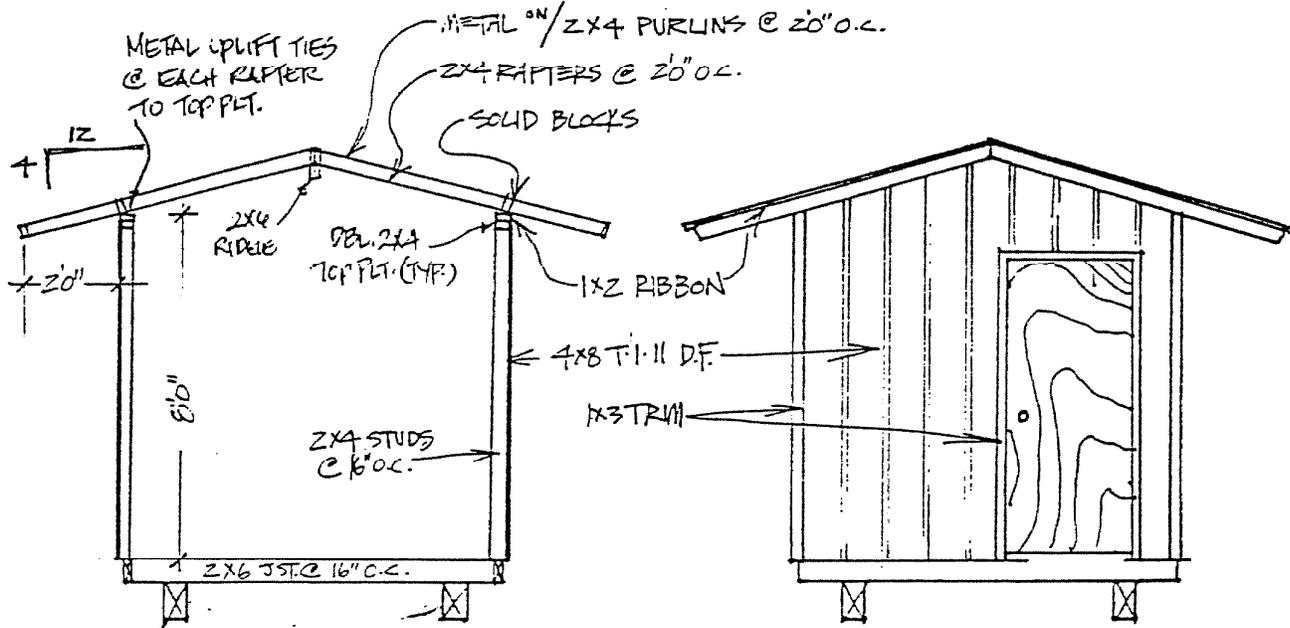
WAGNER ENGINEERING SERVICES, INC.  
 P.O. BOX 240  
 KAPAA, KAUAI, HAWAII 96746

PROJECT No. 0177

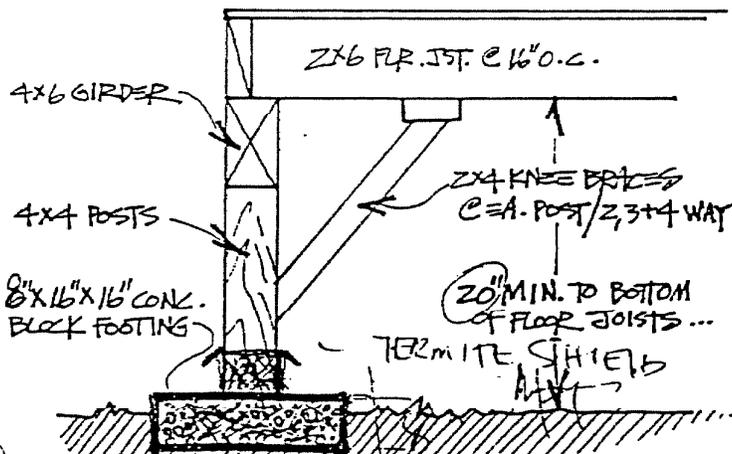
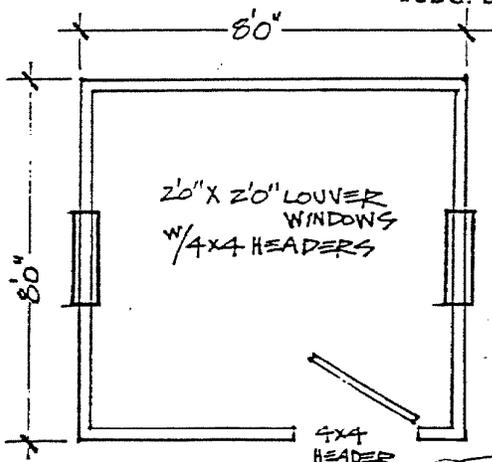
T.M.K. 8-2-17: 8 (4th REV)

EXHIBIT B  
FLOOR PLANS AND ELEVATIONS

# STORAGE SHED / KALIHUAI RIDGE LOT (8)



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



FLOOR PLAN - #29  
FOUR OR MORE RISERS, HANDRAILS REQUIRED #28

FOOTING DETAIL

- 28. Handrails:  
Handrails shall be placed not less than 30" nor more than 34" and continuous above the nosing of threads. Handrails shall be no less than 1-1/4" nor more than 3-3/4" in width. 5" MAX. SPACING BETWEEN INTERMEDIATE RAILS
- 29. Stairways:  
8" maximum rise; 9" minimum run; 8'0" minimum headroom; 30" minimum width; handrails required, 3-1/2" maximum projection into required width.

**EXHIBIT C**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS  
FOR KALIHIWAI PALMS CONDOMINIUM**

Qty.	Apt. No.	Area of Limited Common Element (Sq. Ft.)	No. of BR/BATH	Appx Net Living Area (Sq. Ft.)	Appx Storage Shed Area (Sq. Ft.)	% of Common Int.
1	1	4.332 AC	0/0	0	64	50
1	2	4.922 AC	0/0	0	64	50

The common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration of Condominium Property Regime, each unit owner may use his unit, alter or add to it in any manner he deems desirable, so long as it is permitted by law and the Declaration of Protective Covenants and Building Rules. 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 of Condominium Property Regime together with their respective signatures. See Exhibit J for cautionary comments from the County of Kauai Planning Department.

END OF EXHIBIT C

## **EXHIBIT D**

### **SUMMARY OF PROTECTIVE COVENANTS AND RESTRICTIONS OF KALIHIWAI RIDGE SUBDIVISION**

This Project is located on one of the lots of the Kalihiwai Ridge Subdivision. The Subdivision is affected by a "Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge" (herein called the "Protective Covenants") recorded on October 11, 1988 at Book 22452, Page 429 of the records of the State of Hawaii Bureau of Conveyances.

This is a summary of the types of restrictions applicable to the subdivision as a whole, and to the Lot upon which this Project is located. This is not meant to completely recite the actual provisions of the Protective Covenants, nor to cover every issue in which a purchaser might have interest. The prospective purchaser is urged to obtain a full copy of the Protective Covenants from the Developer prior to entering into an agreement to purchase a unit in this Project.

#### **ARTICLE II CONTROL OF REAL PROPERTY USE**

Article II of the Protective Covenants has to do with the organization of the Subdivision, including identifying the subdivision's developer and architects, the creation of an Association of Lot Owners, Bylaws, common area designations, Environmental 10H Design Rules, limitation to single family residential and agricultural uses and explaining the underlying purpose controlling the use of the subdivision to enhance agricultural potential and orderly growth and development of the subdivision. Control of the subdivision by an architectural review committee includes control of structure siting, architectural style, agricultural development, drainage and landscaping. It is also necessary to receive environmental committee approval before any construction occurs.

#### **ARTICLE III THE ASSOCIATION**

This Article discusses the Lot Owner's Association, election of Boards of Directors, voting rights, notices regarding Association meetings and similar matters.

#### **ARTICLE IV**

##### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

This Article deals with the right of the Association to govern the lots, enter onto lots to determine compliance with rules, and to manage and maintain Association Property. It includes the right to incur expense on behalf of the Association and acquire and hold necessary personal property to perform its functions. The Association also has the power to implement rules and regulations to enhance the value of the property and prohibit noxious and offensive activities. Each Owner is entitled to a copy of every rule and regulation passed. The Association also has the power to levy fines and collect them.

#### **ARTICLE V ASSESSMENTS**

Each Lot Owner, in this case the Project itself, will be required to pay Association fees. Payment for such fees is contemplated in the Common Expenses to be assessed for the project. This Article also deals with the method of establishing a budget and assessments. Additional assessments may be made when the need arises.

#### **ARTICLE VI RIGHTS AND RESTRICTIONS**

No Lot owner will be allowed to engage in activities which would risk removal of liability insurance coverage, nor may they violate the law of the State of Hawaii or ordinances of the County of Kauai. This Article also prohibits subdivision of lots or consolidation of lots without the consent of the environmental committee in compliance with certain procedures.

Condominiums must have approval under Article VI of the developer, C. Brewer Properties, Inc. No timesharing is permitted. There are specific limits on the nature and number of vehicles and other activities that would be deemed "unsightly" as well as preclusion of other activities such as unusual accumulations of trash, garbage, refuse, lumber and other bulky materials, including farm implements which are not consistent with the use of the land or not adequately screened from public view. There is also a limitation on excessive noise and light. Agricultural animals are limited to those approved by the environmental committee for the subdivision. Animals must be properly cared for, particularly livestock, poultry, fish and game. No storage shed may be used for residential purposes. No temporary buildings are permitted.

No new improvement may be made nor may any existing improvement be materially altered unless the plans are approved by the Kalihiwai Ridge Environmental Committee.

This Article limits the nature and size of signs. The Article precludes mining and drilling. Clearing and grading are subject to prior approval by the environmental committee and the County of Kauai. Cultivation of crops must be performed in a good, safe manner with environmental approval on methods used to control dust, insects, weeds, and drainage. Unit Owners must protect against flooding and erosion and dangerous chemicals. They must also maintain their lots at all times so that they do not become overgrown and unsightly. Owners causing damage to Association property will be required to pay for it.

#### **ARTICLE VII LAKE LOTS**

This Article deals with the regulation of lots that surround subdivision lake, including the operation of boats and the utilization of lots fronting the lake.

#### **ARTICLE VIII EASEMENTS**

Easements are to be granted through each Lot for emergency repair and other items needed for the benefit of the subdivision.

#### **ARTICLE IX THE COMMITTEE**

This Article discusses the creation and maintenance of the environmental committee, including its initial members and subsequent members. It outlines committee functions, including design review for all improvements to the subdivision lots and project limited common elements. This includes the requirement of the posting of improvement bonds in the amount of \$10,000.00 per Lot. The committee cannot assess a fee exceeding \$500.00 for the review of proposed plans. The committee can also adopt rules for its own procedures. Fines are discussed, including fines of over \$2,500.00 for engaging in construction without proper clearance and permission. These fines may be enforced as liens against individual lots for violative activity.

**ARTICLE X  
INSURANCE**

This outlines insurance requirements for the project, including minimum One Million Dollar liability coverage. Individual Owners will be required to maintain insurance on their own Lot.

**ARTICLE XI  
DESTRUCTION/CONDEMNATION AND RESTORATION**

This dealt with the condemnation of subdivision improvements by public authorities.

**ARTICLE XII  
EXPANSION OF KALIHIWAI RIDGE**

This Article deals with the right of the Declarant to annex additional property, up to approximately three thousand acres of adjacent lands to the Kalihiwai Subdivision, and the means by which this may be accomplished. This right to annex land shall expire on or before the twentieth anniversary date of the covenants which were recorded on October 11, 1988.

**ARTICLE XIII  
ENFORCEMENT**

This Article deals with the method by which the rules of the Subdivision may be enforced.

**ARTICLE XIV  
MISCELLANEOUS**

This Article has to do with many miscellaneous items. It includes the duration of the covenant, being initially for twenty years and an automatic extension for ten year terms unless and until seventy-five percent (75%) of the Owners of lots vote to the contrary at least one year prior to the scheduled termination of the Covenants. It also deals with amendments to the Covenants requiring a two-thirds majority of the voting power of the Association. The amendment does not apply to the duration of the Covenants, which can only be amended by One hundred percent (100%) vote. The same is true as to expansion of Kalihiwai Ridge. Other miscellaneous provisions are enclosed including the means by which the Covenants would be interpreted in a court of law, assignability of rights, severability of clauses that might be found illegal in similar matter.

**END OF EXHIBIT D**

**EXHIBIT E**

**COMMON ELEMENTS OF THE PROJECT**

The common elements of the project are:

- (a) Land in fee simple;
- (b) All future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone;
- (c) 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 1 and 2 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>
1	4.322 acres
2	4.922 acres

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. Check with the Kauai County Tax Assessor for further information.
2. A 25-foot wide building setback line, as shown on File Plan No. 1934.
3. Agreement dated March 16, 1977, recorded in Liber 12110 at Page 330, by and between the State of Hawaii and C. Brewer and Company, Limited; re: use of the land described herein, besides other land, for agricultural purposes
4. Covenants, conditions and restrictions set forth in DECLARATION dated October 3, 1988, recorded in Liber 22452 at Page 429.
5. Unrecorded Kalihiwai Ridge Environmental Design Rules and Guidelines Pursuant to Declaration of Protective Covenants, Conditions and Restrictions for Kalihiwai Ridge dated October 12, 1988.
6. Declaration Affecting Conservation District Lands dated October 3, 1988, recorded in Liber 22452 at Page 486 made by C. Brewer Properties, Inc., as Declarant.

7. Agreement to Incorporate Agricultural Restrictions into Instruments of Conveyance dated September 30, 1988, recorded in Liber 22452 at Page 491, between C. Brewer Properties, Inc., a Hawaii corporation, and the County of Kauai Planning Department.
  
8. A Certified Land Use District Boundary, February 6, 1987 of Conservation District, as shown on File Plan No. 1934.
  
9. Reservation in DEED dated December 19, 1988, recorded in Liber 22855 at Page 530, to-wit:

"EXCEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, easements for landscape and setback purposes, for electrical, gas, waterline, communications and other utility purposes and for sewer, drainage, irrigation, and water facilities and vehicle access over, under, across, along, upon, and through any easements within the granted premises as designated on said File Plan 1934, together with rights of reasonable access thereto for the exercise of any said easement rights, with the right to grant to the State of Hawaii, County of Kauai, Kalihiwai Ridge Community Association or other appropriate governmental agency or to any public or private utility or other corporation, partnership, individual or entity easements for said purposes within said easements so designated.

EXCEPTING AND RESERVING, ALSO, HOWEVER, unto Grantor, its successors and assigns, all water and water rights within and/or appurtenant to the granted premises, including, without limitation, all surface and subterranean waters on and under the granted premises, and all rights, if any, to wells, springs, streams, and percolating waters located on or under the granted premises, with the right to assign and transfer any such water and/or water rights to the State of Hawaii, County of Kauai, Kilauea Irrigation Co., Inc., Kalihiwai Ridge Community Association or other appropriate governmental agency, or any public or private utility or other corporation, partnership, individual or entity; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have

the right to drill for water or otherwise disturb the surface of the land of the granted premises or any improvements thereon.

EXCEPTING AND RESERVING ALSO, HOWEVER, unto Grantor, its successors and assigns, forever, as appurtenant to the lands which are located adjacent to or in the vicinity of the granted premises and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operations, the unrestricted right to engage in any type of farming operation, including, but not limited to open burning, percolating, evaporating, fertilizing, milling, generating, storing, hauling, spraying pesticides and/or herbicides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration and other nuisances to be discharged or emitted over and upon the granted premises, Grantees hereby agreeing for themselves and their respective heirs, devisees, personal representatives and assigns that Grantor shall not be responsible or liable to Grantees, their respective and assigns devisees, personal representatives and assigns for the consequences from the creation and discharge of such noxious emissions and that Grantees shall indemnify and hold Grantor harmless from any liability or expense arising from any such nuisance, whether claim for such liability or expense is made by Grantees or Grantees' guests or other persons using the granted premises."

10. Covenants, conditions and restrictions set forth in DEED dated December 19, 1988, recorded in Liber 22855 at Page 530.

11. MORTGAGE

MORTGAGOR : JAMES ALAN GANZER, husband of Susan Ganzer,  
and SHAWN OWEN STUSSY and VICKI LOU STUSSY,  
husband and wife

MORTGAGEE : C. BREWER PROPERTIES, INC., a Hawaii  
corporation

DATED : February 7, 1989  
RECORDED : Liber 22855 Page 547  
AMOUNT : \$258,750.00

ABOVE MORTGAGE ASSIGNED

TO : BANCORP FINANCE OF HAWAII, INC., a Hawaii  
corporation

DATED : February 16, 1989  
RECORDED : Liber 22872 Page 450

By ASSUMPTION AGREEMENT AND AMENDMENT TO NOTE, AND  
MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT dated  
April 25, 1990, recorded as Document No. 90-062991, the  
foregoing Mortgage was assumed by SHAWN OWEN STUSSY and  
VICKIE LOU STUSSY, husband and wife.

Said Assumption Agreement was amended by instrument dated  
June 12, 1990, recorded as Document No. 90-098144.

12. The restrictions on use and other restrictions and all  
other of the covenants, agreements, obligations,  
conditions, reservations, easements and other provisions  
set forth in Declaration of Condominium Property Regime  
dated September 4, 1990, recorded in the Bureau of  
Conveyances of the State of Hawaii as Document No.  
90-198600, as the same may hereafter be amended in  
accordance with law or with said Declaration. (Project  
covered by Condominium Map No. 1426.)
  
13. By-Laws of the Association of Apartment Owners of the  
Condominium Project known as "KALIHIWAI PALMS CONDOMINIUM"  
dated September 4, 1990, recorded in the Bureau of  
Conveyances of the State of Hawaii as Document No.  
90-198601, as the same may hereafter be amended.

END OF 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 x 12 months =</u>	<u>Yearly Total</u>
Unit 1	50.00	600.00
Unit 2	50.00	600.00

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

Gas

Refuse Collection

Telephone

Water and Sewer

30.00

360.00

Maintenance, Repairs and Supplies

Building  
Grounds

50.00

600.00

Management

10.00

120.00

Management Fee

Payroll and Payroll Taxes

Office Expenses

Insurance

Reserves

10.00

120.00

Taxes and Government Assessments

Audit Fees

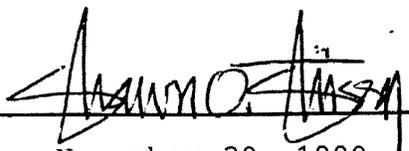
Other

TOTAL

100.00

1200.00

I/We, SHAWN O. STUSSY, 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: November 20, 1990

**EXHIBIT H**

**SUMMARY OF SALES CONTRACT**

The KALIHIWAI PALMS 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 Condominium 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) 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.

(e) 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.

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

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

(h) Developer makes no warranties of any kind.

(i) 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 PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between Title Guaranty Escrow Services, Inc. (the "Escrow") and SHAWN OWEN STUSSY, VICKIE LOU STUSSY, (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. Interest on all funds will be paid to Seller.

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 be less than \$25.00.

5. Escrow will arrange for and supervise the signing of all documents which are to be signed subsequent to and 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. Title insurance will also cost an additional \$300.00.

\* \* \* \* \*

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, ONE 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

EXHIBIT J

Letter From The County of Kauai

JOANN A. YUKIMURA  
MAYOR



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 20, 1989

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

Subject: Comments on Kalihiwai Palms Condominium Report  
Registration No. 2138 at Kalihiwai, Kauai, Hawaii  
Tax Map Key: 5-2-17:08

After reviewing the subject document, we have the following comments to offer:

The amount of limited common elements does not correspond to the allowable unit density permitted by the CZO. The subject property is zoned Agriculture District (A) and Open District (O) and qualifies for two (2) units. A portion of the property is also situated within the State Conservation Land Use District.

When applying for Zoning Permits with the Planning Department, the owners must be made aware that 75% of the owners, or their assignee, are required to sign the permit form(s). Should an assignee be designated, such assignee shall present proof of authorization from the 75% of the owners at the time a permit is applied for. This is a requirement because the Planning Department does not recognize the Condominium Report to be a legal subdivision of land.

The uses on the limited common elements shall be limited to those listed as permissible within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Farm dwellings on the lot shall mean a single-family dwelling located on and used in connection with a farm or

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Page 2  
November 20, 1989

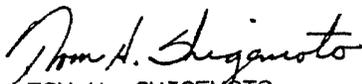
where agricultural activity provides income to the family occupying the dwelling.

There should be a disclosure 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 with 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/roadways.

Because there are more than one farm dwelling proposed/permitted, the landowners pursuant to the County Farm Dwelling Agreement, should be made aware that any dwelling(s) constructed after the first one will require an inspection of the property by the Planning Department to verify whether agricultural activities are being conducted on the property. If not, such permits to construct additional farm dwellings could be denied.

The proposed guest house plans do not conform to CZO requirements. Enclosed herewith are the specific requirements applicable to the design and use of this structure.

Should you have any questions, please feel free to contact Bryan Mamaclay of my staff at 245-3919.

  
TOM H. SHIGENOTO  
Planning Director

Enclosure

NOTE: The Developer will do what is required to make the guest house conform to all CZO requirements.

COUNTY OF KAUAI  
PLANNING DEPARTMENT

GUEST HOUSE REQUIREMENTS

1. It is located on a parcel of land of at least 9,000 square feet.
2. It is physically separate from the dwelling unit and observes all required setbacks.
3. It is used only by guests and may not be rented out as a separate dwelling.
4. It does not contain a kitchen or any room used for cooking or preparing food.
5. It contains no more than 500 square feet of gross floor area, including all living space, storage, decks and garages under a single roof structure.
6. Decks and storage areas which are not covered by a roof need not be included as part of the floor area calculations.
7. If a garage exists on the main dwelling of a lot, an additional garage can be attached to the guest house provided that the garage area be included as part of the gross floor area..
8. If no garage exists on the main dwelling, then a garage or other accessory use to the main dwelling can be added to the guest house without including the added area as part of the gross floor area, provided that the applicant sign a form stating that the garage or accessory use is for the purpose of servicing the main dwelling only.
9. It complies with all applicable State and County laws and regulations, including all of the above requirements.

NOTE: Servants' quarters must conform to the guest house requirements.

5/21/76

END EXHIBIT J