



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.

Changes made are as follows:

SPECIAL ATTENTION

The Developer has disclosed the following:

1. This is CONDOMINIUM PROJECT, not a subdivision. The land area beneath and immediately appurtenant to each unit is designated a LIMITED COMMON ELEMENT and is not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.
2. The Developer has submitted a non-surety performance bond for \$80,000, which is one hundred percent of the Developer's verified estimate of the cost of construction to complete this project. A copy of the bond issued by Double Phoenix Corporation was included in the filing submitted by the Developer for the issuance of an effective date for this public report. Before signing a sales contract, a prospective purchaser may review this bond and the entire submission.
3. See Exhibit I for a summary of the escrow agreement restricting the Developer's use of the funds of a purchaser of Unit 51-419A.

This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency, nor does it ensure that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

## 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: Developer's Reserved Rights to Change Condominium Documents	
EXHIBIT B: Description of Buildings	
EXHIBIT C: Use Restrictions for Apartments and Common Elements	
EXHIBIT D: Permitted Alterations to Apartment	
EXHIBIT E: Description of Common Elements and Limited Common Elements	
EXHIBIT F: Encumbrances Against Title	
EXHIBIT G: Construction Warranties	
EXHIBIT H: Summary of Pertinent Provisions of Sales Contract	
EXHIBIT I: Summary of Pertinent Provisions of Escrow Agreements	
EXHIBIT J:	

## **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.

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.

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.

### **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  Ohana  
 Mixed Residential and Commercial  Agricultural  
 Other \_\_\_\_\_
3.  High Rise (5 stories or more)  Low Rise
4.  Single or  Multiple Buildings
5. Apartment Description

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>51-419</u>	<u>1</u>	<u>3/3</u>	<u>2,448</u>	<u>N/A</u>
<u>51-419A</u>	<u>1</u>	<u>3/2</u>	<u>1,172</u>	<u>N/A</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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>4 (2 per unit)</u>
Guest Stalls	_____
Unassigned Stalls	_____
Extra Stalls Available for Purchase	_____
Other: _____	_____
<b>Total Parking Stalls</b>	<u>4</u>

**7. Recreational amenities:** None

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: Kaaawa Venture Group  
Name  
975 Waimanu Street, Suite 610  
Business Address  
Honolulu, HI 96813

Phone: (808) 591-0580  
(Business)

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

Ronald Chrapko, partner  
Hiroyuki Fujioka, partner  
Tony Thomas, partner  
Norman Wood, Agent for Partners of Kaaawa Venture Group

Real Estate

Broker: Marlene's Realty, Inc.  
Name  
54-316 Kamehameha Highway  
Business Address  
Hauula, HI 96717

Phone: (808) 293-2413  
(Business)

Escrow: Title Guaranty Escrow Services, Inc.  
Name  
235 Queen Street  
Business Address  
Honolulu, HI 96813

Phone: (808) 521-0211  
(Business)

General

Contractor: H & R Construction  
Name  
1151 Mapunapuna Street  
Business Address  
Honolulu, HI 96819

Phone: (808) 839-7712  
(Business)

Condominium

Managing Agent: Developer (NOTE: The Developer is not a registered condominium managing agent (CMA) and does not have the required bond as specified under Chapter 514A, Hawaii Revised Statutes. The Developer will not be able to operate as a CMA until it is properly licensed and registered with the Real Estate Commission. If the Developer does not register as a CMA or a registered CMA is not appointed, then the project will be considered to be self-managed by the Association of Apartment Owners.)

Phone: (Business)

Attorney for Developer: Foley Maehara Judge Nip & Chang  
Name Attn: Edward R. Brooks, Esq.  
737 Bishop Street, Suite 2700  
Business Address  
Honolulu, HI 96813

Phone: (808) 526-3011  
(Business)

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

- Proposed  
 Recorded - Bureau of Conveyances - Document No. 91-097452  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

July 9, 1992 -- Recorded as Document No. 92-110299

- 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. 1529  
 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 - Document No. 91-097473  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

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>By the Board</u>

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

2. **Developer:**

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

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

SEE EXHIBIT "A"



For Subleaseholds:

- Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is
  - Cancelled
  - Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is cancelled or foreclosed.

**B. Underlying Land:**

Address: 51-419 Maumauluuka Street Tax Map Key: (1) 5-1-14-18  
Kaaawa, HI 96730 (TMK)

Address  TMK is expected to change because \_\_\_\_\_

Land Area: 13,500  square feet  acre(s) Zoning: R5

Fee Owner: Kaaawa Venture Group  
Name  
975 Waimanu Street, Suite 610  
Address  
Honolulu, HI 96813

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 2  
 Exhibit B contains further explanations.

3. Principal Construction Material:

- Concrete  Hollow Tile  Wood
- Other \_\_\_\_\_

4. Permitted Uses by Zoning:

	<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>		<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>
<input type="checkbox"/> Commercial	_____	_____	<input type="checkbox"/> Industrial	_____	_____
<input checked="" type="checkbox"/> Residential	<u>2</u>	<u>yes</u>	<input type="checkbox"/> Agricultural	_____	_____
<input type="checkbox"/> Timeshare/Hotel	_____	_____	<input type="checkbox"/> Recreational	_____	_____
<input type="checkbox"/> Other: _____					

Is/Are this/these use(s) specifically permitted by the project's declaration or bylaws?

Yes  No

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:

No livestock, poultry, rabbits, pets or other animals of any kind shall

**Pets:** be allowed or kept in any part of the Project without the prior written consent of the Board.

**Number of Occupants:** \_\_\_\_\_

**Other:** SEE EXHIBIT "C"

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators 0 Stairways 2 Trash Chutes 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>51-419</u>	<u>1</u>	<u>3/3</u>	<u>2,448</u>	<u>n/a</u>
<u>51-419A</u>	<u>1</u>	<u>3/2</u>	<u>1,172</u>	<u>n/a</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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.*



9. Present Condition of Improvements

(For conversions of residential apartments in existence for at least five years): N/A -- One apartment was constructed in 1988 and the other is to be constructed.

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

N/A

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

N/A

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>XX</u>	<u>                    </u>	<u>                    </u>
Structures	<u>XX</u>	<u>                    </u>	<u>                    </u>
Lot	<u>XX</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:

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 \_\_\_\_\_ describes the common interests for each apartment.

As follows: Each apartment has an undivided fifty-percent (50%) interest in all the common elements.

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  March 29, 1993  and issued by  T. I. of Hawaii, Inc. .

**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.

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>
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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 \* contains a schedule of maintenance fees and maintenance fee disbursements.

\* See Disclosure Abstract

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:

Not applicable

Electricity

Television Cable

Gas

Water & Sewer

Other \_\_\_\_\_

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:**

SEE EXHIBIT "G"

2. **Appliances:**

SEE EXHIBIT "G"

J. **Status of Construction and Estimated Completion Date:**

51-419 was constructed in 1988. 51-419A is scheduled to begin construction in May, 1993, and will be completed in 120 days.

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:

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 Not applicable per Section 514A-108, HRS.

Specimen Sales Contract

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

Escrow Agreement dated  July 8, 1992

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

Other \_\_\_\_\_

#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

The Declaration of Covenants, Conditions and Restrictions for Kaaawa Beach Owners Association's pertinent provisions are as follows:

Article IV, Section 1 provides that each and every Owner and Lessee is deemed to covenant, by acceptance of a conveyance or lease of any Residential Lot to pay to the Association (a) annual assessments or charges, (b) special assessments for capital improvements, and (c) special assessments levied on specific Residential Lots. All such assessments shall automatically constitute a lien on the Owner's Residential Lot, or on the leasehold interest of the Lessee, as the case may be, from the date the assessment is made. All interest, late payment fees and costs of collection, including attorneys' fees, shall likewise constitute a lien on the Residential Lot or the leasehold estate of any Lessee.

Article IV, Section 6 provides that the assessments levied by the Association shall be used exclusively for the improvement, maintenance, construction, replacement and repair of the Roads, including but not limited to, the payment of insurance on the Roads; for labor, equipment, materials, management and supervision thereof; for expenses (including, without limitation, the costs of accounting, legal and engineering services), overhead and administrative costs of the Association incurred in connection therewith; and for reserves for all of the foregoing.

Article VII provides that if there shall be taking of the Roads, all compensation and damages shall be payable to the Board of Directors and shall be used promptly by the Board of Directors to the extent necessary for restoring or replacing any improvements on the remainder of the Roads.

Article VIII, Section 1 provides that the Board of Directors of the Association has the power to adopt and publish rules and regulations governing the use of the Roads and the improvements thereon and the personal conduct of the Owners and Lessees, their tenants, licensees and invitees thereon. Such regulatory powers of the Board includes the power to regulate or restrict parking on the Roads.

THIS IS A SUMMARY OF PERTINENT PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAAAWA BEACH OWNERS ASSOCIATION. PROSPECTIVE PURCHASERS ARE INVITED TO REVIEW THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAAAWA BEACH OWNERS ASSOCIATION IN ITS ENTIRETY.

**Buyer's Right to Cancel Sales Contract:**

**A. Rights Under the Condominium Statute:**

**Preliminary Report:** Sales made by the Developer are not binding on the prospective buyer. Sales made by the Developer may be binding on the Developer unless the Developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any 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 Covenants, Conditions and Restrictions for Kaaawa Beach Owners Association.

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

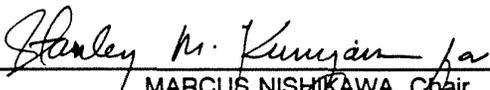
Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS, and Hawaii Administrative Rules, Chapter 16-107) are available at the Department of Commerce and Consumer Affairs, 1010 Richards Street, P. O. Box 541, Honolulu, HI 96809.

This Public Report is part of Registration No. 2688 filed with the Real Estate Commission on  
July 15, 1992.

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.

  
\_\_\_\_\_  
MARCUS NISHIKAWA, Chair  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

Department of Finance, City & County of Honolulu  
Planning Department, City & County of Honolulu  
Federal Housing Administration

EXHIBIT A

DEVELOPER'S RESERVED RIGHTS  
TO CHANGE CONDOMINIUM DOCUMENTS

Following is a brief summary of certain provisions in the Declaration, By-Laws and the apartment sales contract, as indicated, wherein the Developer has reserved the right to change the condominium documents, including the Declaration, By-Laws; Rules and Regulations ("House Rules") and the Condominium Map;

I. DECLARATION

In Paragraph U of the Declaration, the Developer reserves the right for itself and its agents, until such time as all the apartments in the Project are sold, to:

1. To maintain development facilities and conduct sales of apartments on and at the Project, including, but not limited to, maintaining model apartments, operating a sales office, conducting advertising, placing signs, using parking spaces and erecting lighting in connection with such sales; provided, however, that Developer shall not use any apartment (or its limited common elements) with respect to which an apartment deed or condominium conveyance document has been recorded (other than in the name of Developer as grantee); provided, further, that in exercising such right, Developer shall not interfere with the rights of any apartment owner to the use of, or access to, his apartment or any of the common elements or limited common elements appurtenant thereto.

2. Developer, its successors and assigns, also reserves for a period of fifty (50) years from the date of filing hereof, all rights and privileges in and to the airspace above the Project as it is constructed on the date of filing hereof. The foregoing reservation (in addition to all other covenants, conditions, restrictions and reservations herein contained) shall apply to and run with the Project land and shall be binding upon all apartment owners and occupants of the Project.

3. Developer, its successors and assigns, also reserves the right to grant to any public or governmental authority rights-of-way and other easements which are for the sole benefit of the Project or which do not materially interfere with the use nor materially impair the value of, any apartment, over, across, under and through the common elements and limited common elements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and other public services and utilities, and rights to enter for the purpose of installing, repairing, altering and removing such lines and

facilities and trimming any trees in the way thereof; provided that the Association, through the Board, with the consent or agreement of any holder of any then existing easement affected thereby, is authorized to grant, convey, transfer, cancel, relocate and other deal with any an all such easements now or hereafter located on or affecting the Project.

## II. BY-LAWS

In Article II, Section 2 of the By-Laws, the Developer reserves the right to exercise the powers, vote and/or act for the Association and the Board on all matters until the first apartment of the Project is conveyed to a buyer. Thereafter, the Developer, as the owner of any unsold apartment, shall be entitled to vote the interest of each such apartment.

## III. APARTMENT SALES CONTRACT

The Developer has filed a specimen Deposit Receipt and Sales Contract with the Hawaii Real Estate Commission.

In paragraph 17 the Developer, as Seller, reserves the right to modify all documents related to the Project, including the Declaration, By-Laws, Condominium Map, Apartment Deed, Rules and Regulations, the Seller's Disclosure Abstract, and any exhibits to such documents.

The Seller also reserves the right to make changes to the apartments in the Project and in the common elements or limited common elements; provided that all material changes which directly, substantially and adversely affect the use or value of any apartment or the common elements is disclosed to the buyer.

THIS EXHIBIT CONTAINS ONLY A BRIEF SUMMARY OF THE PROVISIONS CONTAINED IN THE DECLARATION, BY-LAWS AND THE SALES CONTRACT RESPECTING THE DEVELOPER'S RESERVED RIGHTS. PROSPECTIVE OWNERS SHOULD READ AND UNDERSTAND ALL OF THE PROVISIONS RELATING TO THE DEVELOPER'S RESERVED RIGHTS CONTAINED IN THE AFORESAID DOCUMENTS.

EXHIBIT B

DESCRIPTION OF BUILDINGS

The Project consists of two (2) apartments designated on the Condominium File Plan as Units 51-419 and 51-419A, respectively (the "apartments"). Unit 51-419 is an existing two-story structure and comprises one (1) apartment. Unit 51-419A will be constructed as a two-story structure and will comprise one (1) apartment. Unit 51-419 is constructed, and Unit 51-419A will be constructed, principally of wood and related building materials. There will be four (4) parking stalls in the Project, two (2) for each apartment. Both apartments will have decks surrounding a portion of the apartments. None of the apartments has any basement.

## EXHIBIT C

### USE RESTRICTIONS FOR APARTMENTS AND COMMON ELEMENTS

The following provisions in the Declaration and By-Laws, as indicated, contain restrictions on the use of the apartments and the common elements of the Project:

#### I. DECLARATION

Pursuant to Paragraph J of the Declaration, each residential apartment shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests. No apartment shall be used as a tenement or rooming house or for or in connection with the carrying on of any business, trade or profession whatsoever. The respective apartments shall not be rented by the apartment owners thereof for transient or hotel purposes, which shall be defined as (i) rental for any period less than thirty (30) days; or (ii) any rental in which the occupants of the apartment are provided customary hotel services, such as room service for food and beverage, maid service, furnishing of laundry and linen, and bellboy service. Neither the apartments nor any interest therein shall be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so-called "vacation license", "travel club membership" or "time-interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess an apartment or apartments in the Project rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise. Other than the foregoing restrictions, the apartment owners of the respective apartments shall have the absolute right to lease the same, provided that such lease covers an entire apartment, is in writing and is made subject to the covenants and restrictions contained in this Declaration and in the By-Laws.

#### II. BY-LAWS

Article VIII, Section 5 of the By-Laws lists a variety of restrictions affecting the use of the apartments and common elements, including, without limitation, restrictions as to the posting of advertisements, posters or other signs on or about the Project; noise; loitering or playing in areas not intended for such use; disposal of garbage; uses which may cause an increase in the

ordinary premium rates or cancellation or noxious or offensive activities; the storage of furniture, packages or other objects which could obstruct transit through the common elements; the improper or offensive use of the owner's or occupant's apartment; the construction or placement in the Project of any building or structure; the alteration of any common elements of the Project that would in any way hinder the full use and enjoyment of any owner or occupant; and the keeping of pets.

THIS EXHIBIT CONTAINS ONLY A SUMMARY OF CERTAIN USE PROVISIONS STATED IN THE DECLARATION AND BY-LAWS. PROSPECTIVE OWNERS SHOULD READ AND UNDERSTAND ALL OF THE USE RELATED PROVISIONS CONTAINED IN THE AFORESAID DOCUMENTS.

EXHIBIT D

PERMITTED ALTERATIONS TO APARTMENTS

The Declaration and By-Laws permit alterations to the apartments as follows:

I. DECLARATION

Paragraph Q of the Declaration provides that the restoration or replacement of any apartment or construction of any additional improvements or structural alterations or additions to any apartment different in any material respect from the Condominium File Plan of the Project shall be undertaken by an apartment owner, only pursuant to an amendment of the Declaration, duly executed by the owner and accompanied by the written consent of the holders of all liens affecting the apartment, and subject to the conditions set forth in said paragraph Q.

II. BY-LAWS

Article VIII, Section 1 of the By-Laws provide that each apartment owner shall keep such owner's apartment and all fixtures and equipment therein in good order, condition and repair and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of the apartment. All maintenance, repairs and improvements to any apartment (other than maintenance of and repairs to any common elements contained therein, and not necessitated by the negligence, misuse or neglect of the owner or such apartment) shall be performed by the owner of such apartment at such owner's sole expense. Each owner shall be responsible for all loss and damage caused by such owner's failure to perform promptly all maintenance, repair and alteration work within such owner's apartment, the omission of which would affect any common element or any other apartment.

THIS EXHIBIT CONTAINS EXCERPTS OF THE PROVISIONS  
CONTAINED IN THE DECLARATION AND BY-LAWS RESPECTING PERMITTED  
ALTERATIONS TO THE APARTMENT. PROSPECTIVE OWNERS SHOULD READ AND  
UNDERSTAND ALL OF THE PROVISIONS RELATING TO PERMITTED ALTERATIONS  
CONTAINED IN THE AFORESAID DOCUMENTS.

EXHIBIT E

DESCRIPTION OF COMMON  
ELEMENTS AND LIMITED COMMON ELEMENTS

I. COMMON ELEMENTS

Paragraph E of the Declaration provides:

"One freehold estate is hereby designated in all of the remaining portions of the Project (the "common elements"), which shall include the limited common elements described in paragraph F hereinbelow. Said common elements shall include, but shall not be limited to the following:

1. The land described in Exhibit "A".
2. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, and normally in common use and which are not part of any apartment."

II. LIMITED COMMON ELEMENTS

Paragrah F of the Declaration provides:

"Certain parts of the common elements (the "limited common elements") are hereby set aside and reserved for the exclusive use of certain apartments, which apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside for each apartment are as follows:

1. The parking area designated on the Condominium File Plan for each apartment;
2. The yard area designated on the Condominium File Plan bearing the same number as each apartment; and
3. One (1) mailbox bearing the same number as each apartment.
4. The area shown on the Condominium File Plan as "Driveway Easement" shall be a limited common element for the exclusive use of Unit 51-419.

Notwithstanding any provisions herein or in the By-Laws to the contrary, all costs of every kind pertaining to each limited common element, including but not limited to, costs of landscaping, maintenance, repair, replacements, additions and improvements, shall be charged to and borne entirely by the owner(s) of the apartment(s) to which it is appurtenant. Any expense which cannot be separately identified or attributed to a limited common element shall be charged as a common expense."

EXHIBIT F

ENCUMBRANCES AGAINST TITLE

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent No. 357.

2. Declaration of Covenants, Conditions and Restrictions for Kaaawa Beach Owners Association dated August 17, 1982, recorded in Book 16521 at Page 395. Said Declaration was assigned by instrument dated November 8, 1984, recorded in Book 18268 at Page 562. (See Page 18 for summary of the Declaration of Covenants, Conditions and Restrictions for Kaaawa Beach Owners Association.)

3. Condominium File Plan No. 1529 filed on July 19, 1991.

4. The covenants, agreements, obligations, conditions and other provisions set forth in Declaration of Condominium Property Regime entitled "SILVA GARDENS" dated July 18, 1992, recorded on July 19, 1991, as Document No. 91-097472, and the By-Laws recorded as Document No. 91-097473, to which reference is hereby made. Said Declaration was amended by instrument dated July 9, 1992, recorded as Document No. 92-110299.

5. Any and all easements encumbering the apartment herein identified and described, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, and/or as delineated on said Condominium File Plan No. 1529.

EXHIBIT G

CONSTRUCTION WARRANTIES

Paragraphs 8 and 9 of the Deposit Receipt and Sales Contract used in connection with the Project provide:

"8. Apartment Being Sold "AS IS" With "ALL FAULTS". 51-419 Maumauluuka Street was constructed in 1988. 51-419A Maumauluuka Street will be constructed in October, 1992. The Apartment is now being sold in "AS IS" condition with "ALL FAULTS". This means that Seller shall not correct any defects in the Apartment or anything installed or contained therein. The existence of any defect in the Apartment or anything installed or contained therein shall not excuse Buyer's obligation to perform all of Buyer's obligations under this Agreement.

9. Seller's Disclaimer of Warranties.

(a) No Warranties of Seller. Buyer understands and agrees that Seller is disclaiming any warranties, either express or implied, including any implied warranties of habitability, merchantability or fitness for a particular purpose, with respect to the Apartment or anything installed or contained therein. The Apartment will be deemed to be sold "AS IS" with "ALL FAULTS", and Seller will not be liable to Buyer for any construction or other defects, including any latent or hidden defects in the Apartment or anything installed or contained therein. This means that Buyer will not have the right to file any lawsuit for damages against Seller for any defects later discovered by Buyer.

(b) Hazardous Materials and Condition of Project. Seller has made no independent investigation as to asbestos or other hazardous substances in the apartments or in, under or around the Project, including but not limited to,

radioactive materials, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and any and all other substances or materials defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under, or for the purposes of hazardous materials laws. Buyer acknowledges that there may be asbestos or other hazardous substances in the apartments, or in, under or around the Project. Because of the possible presence of asbestos and other hazardous substances, Buyer and the Association should have the Apartment and the Project inspected to determine the extent of such contamination and any necessary remedial action. This means that Seller will not correct any defects in the apartments or in the Project or anything installed or contained therein and that Buyer expressly releases Seller from any liability to Buyer if any hazardous materials are discovered."

THIS EXHIBIT CONTAINS EXCERPTS OF PROVISIONS CONTAINED IN THE DEPOSIT RECEIPT AND SALES CONTRACT RESPECTING CONSTRUCTION WARRANTIES. PROSPECTIVE OWNERS SHOULD READ AND UNDERSTAND ALL OF THE PROVISIONS CONTAINED IN THE AFORESAID DOCUMENTS RELATING TO SUCH WARRANTIES.

EXHIBIT H

SUMMARY OF PERTINENT  
PROVISIONS OF SALES CONTRACT

Developer has filed a Deposit Receipt and Sales Contract ("DRSC") with the Hawaii Real Estate Commission. The terms of the DRSC contain the following provisions:

"4. SELLER'S CANCELLATION RIGHTS. In addition to any other rights of cancellation or termination reserved to Seller herein, if (a) Buyer's initial deposit check is returned for insufficient funds, (b) Buyer (or any one (1) of them if Buyer is more than one (1) person) should die prior to closing, or (c) Seller is not able, using its best efforts, to complete the conversion of the Project for any reason, THEN, in any such event, Seller reserves the right to instruct Escrow Agent to return Buyer's check or deposits, without interest, and less the processing and cancellation fee imposed by Escrow Agent and any other actual expenses incurred by reason of Buyer's execution of this Agreement. Until Seller so elects to cancel this Agreement, it shall remain in full force and effect.

5. USE OF ESCROW FUNDS. Seller agrees and Buyer acknowledges that the funds deposited by Buyer with Escrow Agent for the Apartment shall not be released or disbursed by Escrow Agent until the conditions set forth in paragraph 3 of the Condominium Escrow Agreement have been satisfied, including recordation of Buyer's apartment deed. Buyer agrees that unless otherwise provided in this Agreement, any interest derived from such deposits shall be the property of Seller.

7. BUYER'S ACKNOWLEDGEMENTS.

(a) Buyer does hereby acknowledge that Buyer has examined and does hereby approve the form of the Apartment Deed, Declaration and any amendments thereto, By-Laws, House Rules and any amendments thereto, Seller's Disclosure Abstract, Condominium Escrow Agreement, the proposed Final Public Report to be issued by the Commission, as set forth above, and the Condominium File Plan, true copies of these documents being on file in the office of the Commission. Buyer acknowledges that the Condominium File Plan is intended to show only the layout, location, apartment numbers and dimensions of the apartments and the same is not intended by Seller to contain or to be any other representation or warranty.

(b) Buyer acknowledges the reservation by Seller of the right for Seller and its agents, until the sale of the last

apartment, to conduct sales of apartments on and at the Project, including, but not limited to, conducting advertising, placing signs and using parking spaces in connection with such sales; provided, however, that Seller shall not use any apartment (or the limited common elements thereof) with respect to which an apartment deed or condominium conveyance document has been recorded (other than in the name of Seller as grantee); provided, further, that in exercising such right, Seller shall not interfere with the rights of any apartment owner to the use of, or access to, such owner's apartment or any of the common elements or limited common elements appurtenant thereto.

(c) Buyer acknowledges that Buyer has received and has carefully read a copy of Seller's Disclosure Abstract for the Project, and the exhibits thereto, which is filed in the office of the Commission. No representations are made by Seller with respect to the expected useful life of the structural components or the mechanical and electrical installations in the Project.

Because the Project is being sold by Seller in "AS IS" condition with "ALL FAULTS", Buyer should carefully review Seller's Disclosure Abstract in its entirety. Furthermore, Buyer should have the Project inspected by Buyer or Buyer's own experts to Buyer's complete satisfaction.

8. APARTMENT BEING SOLD "AS IS" WITH "ALL FAULTS". The Apartment and the Project are being sold in "AS IS" condition with "ALL FAULTS". This means that Seller shall not correct any defects in the Project, the Apartment or anything installed or contained therein. The existence of any defect in the Project, the Apartment or anything installed or contained therein shall not excuse Buyer's obligation to perform all of Buyer's obligations under this Agreement.

#### 9. SELLER'S DISCLAIMER OF WARRANTIES.

(a) No Warranties of Seller. Buyer understands and agrees that Seller is disclaiming any warranties, either express or implied, including any implied warranties of habitability, merchantability or fitness for a particular purpose, with respect to the Project, the Apartment or anything installed or contained therein. Each apartment of the Project will be deemed to be sold "AS IS" with "ALL FAULTS", and Seller will not be liable to Buyer for any construction or other defects, including any latent or hidden defects in the Project, the Apartment or anything installed or contained therein. This means that Buyer will not have the right to file any lawsuit for damages against Seller for any defects later discovered by Buyer.

(b) Hazardous Materials and Condition of Project. Seller has made no independent investigation as to asbestos or other hazardous substances in the apartments or in, under or around the Project, including but not limited to, radioactive materials, organic compounds known as polychlorinated biphenyls, chemicals

known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and any and all other substances or materials defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under, or for the purposes of hazardous materials laws. Buyer acknowledges that there may be asbestos or other hazardous substances in the apartments, or in, under or around the Project. Because of the possible presence of asbestos and other hazardous substances, Buyer and the Association should have the Apartment and the Project inspected to determine the extent of such contamination and any necessary remedial action. This means that Seller will not correct any defects in the apartments or in the Project or anything installed or contained therein and that Buyer expressly releases Seller from any liability to Buyer if any hazardous materials are discovered.

10. RIGHT OF INSPECTION. Buyer shall inspect the Apartment at such time and on such date as shall be specified by Seller in a written notice to Buyer. Since the Apartment may be occupied by tenants, Buyer might not be able to change the date Seller specifies. Buyer acknowledges that the Apartment is being sold in "AS IS" condition with "ALL FAULTS", and Seller will not correct any defects or deficiencies that Buyer discovers in the Apartment at the time of inspection. Buyer agrees to indemnify Seller for damages or losses, including interest and reasonable attorneys' fees, resulting from Buyer's refusal to accept the Apartment from Seller.

13. ACTUAL POSSESSION. Notwithstanding anything contained herein to the contrary, Buyer acknowledges that the Apartment may be occupied by tenants and that Seller cannot ensure that such tenants vacate the Apartment on or before the Closing Date. Buyer hereby expressly releases Seller from any responsibility to evict any tenant from the Apartment.

18. BUYER'S RIGHT TO RESCIND. Notwithstanding anything contained in paragraph 17 hereinabove:

(a) Except for any additions, deletions, modifications and reservations made pursuant to the terms of the Declaration, if there is a material change in the Project which directly, substantially and adversely affects the use or value of (1) Buyer's Apartment or appurtenant limited common elements, or (2) those amenities of the Project available for Buyer's use, Buyer shall have the right to rescind the sale made under this Agreement and to receive a prompt and full refund of any monies paid or deposited.

(b) Buyer's right of rescission under subparagraph (a) above shall be waived upon (1) delivery to Buyer, either personally or by registered or certified mail, return receipt

requested, of a disclosure document which describes the material change and contains a provision for Buyer's written approval or acceptance of such change, and (2) Buyer's written approval or acceptance of the material change, or the lapse of ninety (90) days since Buyer has accepted the Apartment, or the occupancy of the Apartment by Buyer; provided, however, that if Buyer does not rescind this Agreement or execute and return the written approval or acceptance of such change as provided in the disclosure document within thirty (30) days from the date of delivery of such disclosure document in the aforementioned manner, Buyer shall be deemed to have approved and accepted such change; provided, further, that the deemed approval and acceptance shall be effective only if at the time of delivery of the disclosure document, Buyer is notified in writing of the fact that Buyer will be deemed to have approved and accepted the change upon Buyer's failure to act within the thirty (30) day period; provided, further, that if, prior to delivery of such disclosure document, ninety (90) days have lapsed since Buyer has accepted the Apartment, or Buyer has occupied the Apartment, then Buyer's right of rescission under subparagraph (a) above shall not be waived unless Buyer shall execute the written approval or acceptance of such change as provided in the disclosure document within thirty (30) days from the date of delivery of such disclosure document or Buyer is deemed to have approved and accepted such change as set forth above. A copy of the form of disclosure document shall be delivered to the Commission prior to delivery to Buyer.

19. DEFAULT.

(a) Time is of the essence of this Agreement, and if Buyer shall default in any payment when required or fail to perform any other obligations required of Buyer hereunder and shall fail to cure such default within ten (10) days after receipt of written notice thereof from Seller, Seller may, at Seller's option, terminate this Agreement by written notice to Buyer. In the event of such default, the parties hereto understand and agree that in view of (i) Seller's financial commitments with respect to the Project, (ii) the connection between sales, cancellation or default with respect to one (1) apartment and the sale, cancellation or default with respect to other apartments in the Project, and (iii) the nature of the real estate market in Hawaii, the injury to Seller will be uncertain as to nature and amount and difficult to ascertain. As a reasonable estimate of Seller's damages resulting from such default, the parties agree that the sums deposited by Buyer hereunder prior to such default shall belong to Seller as liquidated damages. At Seller's option, Seller may also pursue any other remedy at law or in equity for specific performance, damages or otherwise. All costs, including reasonable attorneys' fees, incurred by reason of default by Buyer shall be borne by Buyer.

(b) If Seller shall default in the performance of any obligation required of Seller hereunder, Buyer shall be

entitled to specific performance of this Agreement or Buyer shall have the right to cancel and terminate this Agreement. In the event of such cancellation and termination, Seller shall return to Buyer all sums deposited by Buyer to Seller or Escrow Agent pursuant to the provisions hereof, and, in addition, Seller shall pay Buyer ONE HUNDRED AND NO/100 DOLLARS (\$100.00) as liquidated damages for Seller's default. Buyer expressly waives any right or remedy against Seller which now exists or which hereafter may exist for the default of Seller under this Agreement, except for the foregoing right to specific performance or to cancel and terminate this Agreement, and to receive all sums paid to Seller and Escrow Agent and the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00).

21. PRE-PAID ITEMS. Buyer acknowledges that Buyer will be required to prepay: (a) real property taxes for a period of six (6) months, and (b) insurance premiums to the extent required by any first mortgage lender. Real property taxes, insurance and maintenance expenses shall be prorated by Escrow Agent as of the Closing Date or the date of actual possession, whichever sooner occurs. Buyer further agrees that all insurance and other expenses shall also be prorated between Seller and Buyer as of such proration date for real property taxes. Buyer understands and agrees that any amount to be paid by Buyer under this paragraph 21 is in addition to, and is not part of the total purchase price set forth hereinabove.

22. CONDITION TO BINDING EFFECT OF AGREEMENT.

(a) Anything herein to the contrary notwithstanding, this Agreement shall not be binding upon Buyer and any obligation to purchase the Apartment under this Agreement shall not be enforceable against Buyer until:

(1) A true copy of the Commission's Final Public Report on the Project has been delivered to Buyer, either personally or by certified mail with return receipt requested, together with a true copy of all other public reports on the Project, if any, issued prior to the date of such delivery and not previously delivered to Buyer (unless the Final Public Report supersedes all prior public reports or a supplementary public report has been issued which supersedes the Final Public Report and any other public reports, in which case a true copy of the Commission's supplementary public report shall be delivered instead);

(2) Buyer has been given an opportunity to read the aforementioned reports; and

(3) Two (2) copies of the form of the receipt and notice set forth in Section 514A-62 of the Hawaii Revised Statutes, as amended, have been delivered to Buyer and Buyer (i) executes the receipt and notice, and (ii) waives Buyer's right to

cancel; provided, however, that if Buyer does not execute and return the receipt and notice within thirty (30) days from the date of delivery of such reports, or if the Apartment is conveyed to Buyer prior to the expiration of such thirty-day period, Buyer shall be deemed to have receipted for the reports and to have waived Buyer's right to cancel.

(b) Unless such right has previously been waived pursuant to subparagraph (a) hereinabove, Buyer shall have the right to cancel this Agreement at any time prior to the earlier of (1) the conveyance of the Apartment to Buyer or (2) midnight of the thirtieth (30th) day following the date of delivery of said Final Public Report to Buyer, and, upon any such cancellation, shall be entitled to a prompt and full refund of all monies paid, less any escrow cancellation fee and other costs associated with the purchase up to a maximum of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00).

23. BUYER'S RECOGNITION OF PERMITTED APARTMENT USES. Buyer acknowledges that the apartments in the Project shall be used only for residential purposes and may not be used as a tenement or rooming house or for or in connection with the carrying on of any business, trade or profession whatsoever. The apartments shall not be rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than thirty (30) days, or (ii) any rental in which the occupants of the apartment are provided customary hotel services. The apartments shall not be sold, leased, rented or used for any "timesharing" or related or similar purpose.

Seller and all entities, persons and agents related to or affiliated with Seller, have no program at this time, nor is any program planned or contemplated, to offer a rental service of any kind to the owners of apartments, either individually or in any form of pooling arrangement, nor have any representations been made by Seller or its agents as to the feasibility of renting the apartments. Purchasers of apartments who desire to rent their apartments must therefore make their own rental arrangements. Buyer hereby acknowledges receipt of written notice that use of the apartments for time-sharing is specifically prohibited in the Project.

Neither Seller nor its agents have made any representation regarding either economic benefits to be derived from rentals or tax treatment of any purchaser of an apartment. The tax treatment and economic benefits may vary with individual circumstances and Seller, and its agents, recommend that Buyer consult Buyer's own attorney, accountant or other tax counsel for advice regarding appropriate tax treatment.

Buyer hereby acknowledges receipt of written notice that Seller has not authorized any agents, salesmen or brokers for the Project to make any representations as to rentals of an apartment, income from an apartment or any other economic benefit to be derived from the rental of an apartment in said Project, and if any such representations are made, they are hereby expressly disclaimed by Seller.

25. AGENCY DISCLOSURE. Marlene's Realty, Inc., (the "Broker") and all licensees employed by or associated with Broker represent Seller. Buyer acknowledges that oral or written disclosure of such representation was provided to Buyer prior to the execution hereof. In the event that Buyer is represented by a cooperating broker or salesperson, Buyer agrees and acknowledges that Broker is not an agent or sub-agent of Buyer's cooperating broker or salesperson.

THIS EXHIBIT CONTAINS EXCERPTS OF PERTINENT PROVISIONS CONTAINED IN THE DEPOSIT RECEIPT AND SALES CONTRACT. PROSPECTIVE OWNERS SHOULD READ AND UNDERSTAND ALL OF THE PROVISIONS CONTAINED IN THE AFORESAID DOCUMENTS.

EXHIBIT I

SUMMARY OF PERTINENT  
PROVISIONS OF ESCROW AGREEMENT

Among other provisions, the Condominium Escrow Agreement dated July 8, 1992 (the "Escrow Agreement"), executed by and between Title Guaranty Escrow Services, Inc., as Escrow, and Kaaawa Venture Group, as Developer, provides that a purchaser shall be entitled to a return of his funds and Escrow shall pay such funds to such purchaser, without interest, if any one of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Final Public Report, the purchaser has exercised his right to cancel the sales contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or

(d) A purchaser has exercised his right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

(e) In any of the foregoing events, Escrow shall, upon the occurrence of the event described in subparagraph (a) or (b) above or upon receipt of a written request for a refund from purchaser upon the occurrence of an event described in subparagraph (c) or (d) above, unless the purchaser has waived or has been deemed to have waived the right to a refund, pay said funds to said purchaser (less a cancellation fee of Escrow of not less than TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) per unit or a cancellation fee commensurate with the work done by Escrow prior to such cancellation, whichever fee is greater) and thereupon said sales contract and any conveyance document theretofore delivered to Escrow shall be returned to Developer and shall be deemed no longer held hereunder; provided, however, that no refund shall be made to a purchaser at purchaser's request prior to receipt by Developer of written notice from Escrow of its intent to make such refund.

(f) Notwithstanding any other provision in this Agreement to the contrary, Escrow further agrees to make refunds to purchasers, in accordance with Part VI, Chapter 514A, Hawaii

Revised Statutes, out of the funds then on deposit with Escrow, if Developer and purchaser shall so request in writing and any one of the following events has occurred:

(i) no sales contract has been offered to the purchaser who has been placed on Developer's reservation list of owner-occupant applicants; or

(ii) purchaser has been unable to obtain adequate financing, or a commitment for adequate financing, for his unit within forty-five (45) calendar days following the end of the ten (10) calendar day period during which Developer is limited to selling to owner-occupant; or

(iii) the purchaser desires to cancel the contract on account of hardship circumstances such as those set forth in Section 514A-104(1), Hawaii Revised Statutes; or

(iv) the purchaser indicates an intent not to become an owner-occupant of such unit.

Except for cancellations under subparagraph (i) above, Escrow may deduct from any such refund made to a purchaser a cancellation fee as set forth above.

(g) A purchaser's funds shall not be disbursed from escrow to pay for construction costs until both the completion of the apartment to be conveyed and the closing of the sale. If closing is to occur prior to the expiration of the applicable mechanics' lien period, Developer shall provide:

(i) the purchaser with an owner's title insurance policy with a mechanic's lien endorsement protecting the purchaser against all future mechanics' and materialmen's liens, and

(ii) the Commission with a release by the general contractor of the contractor's lien rights.

No disbursement of purchasers' funds held in escrow shall be made unless and until the apartment deed relating to the disbursements have been filed.

THIS EXHIBIT CONTAINS EXCERPTS OF PERTINENT PROVISIONS CONTAINED IN THE ESCROW AGREEMENT. PROSPECTIVE PURCHASERS SHOULD READ AND UNDERSTAND ALL OF THE PROVISIONS CONTAINED IN THE DOCUMENT.