# CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Schuyler Edward Cole, Trustee, Marilyn Jean Cole, Trustee; and Stuart Herbert Scott, Trustee
Address 2801 N La-i Road, Honolulu, Hawaii 96816

Project Name(*): Palolo Agricultural Terraces Condominium
Address: 2801 N La-i Road, Honolulu, Hawaii 96816

Registration No. 2998 (Partial Conversion) Effective date: April 25, 1995
Expiration date: May 25, 1996

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

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

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

___ PRELIMINARY: (yellow) 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 by the developer when complete information is filed.

X FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[ ] No prior reports have been issued.
[x] This report supersedes all prior public reports.
[ ] This report must be read together with _____

___ SUPPLEMENTARY: (pink) This report updates information contained in the:
[ ] Preliminary Public Report dated: _____
[ ] Final Public Report dated: _____
[ ] Supplementary Public Report dated: _____

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

(*) Exactly as named in the Declaration

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

[X] Required and attached to this report [ ] 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 developer.

[X] Changes made are as follows:

1. There are no blanket liens which affect title to more than one unit. Each of the units is individually subject to a mortgage on that unit. See Exhibit "G".

2. Exhibit "G" describes the encumbrances against title contained in the title reports dated 10/21/94 and issued by Title Guaranty of Hawaii.

3. Construction of units A, B and C has commenced in November 1994; the estimated completion date is October 1995.

4. The Palolo Valley Agricultural District Association will manage and operate the community water system with the completion estimated in September of 1995. See page 20 for further information.

5. The Estimated Maintenance Fee Breakdown is revised and reflected in Exhibit "H" attached hereto.

## SPECIAL ATTENTION

This is a 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.

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.

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EXHIBIT A: Summary of Reservation and Sales Contract
EXHIBIT B: Agricultural Cluster Development Application No. 90/CL-12
EXHIBIT C: Permitted Alterations to Units
EXHIBIT D: Developer's Reserved Rights
EXHIBIT E: Common Elements
EXHIBIT F: Limited Common Elements
EXHIBIT G: Encumbrances Against Title
EXHIBIT H: Palolo Agricultural Terraces Condominium Estimated Maintenance Fee Breakdown
EXHIBIT I: Summary of Escrow Agreement

## General Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

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 owners/tenants) 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 at the lessee's expense. 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 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 project's 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 the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the 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 important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

## I. PERSONS CONNECTED WITH THE PROJECT

Developer:

Schuyler Edward Cole, Trustee
Marilyn Jean Cole, Trustee
Stuart Herbert Scott, Trustee
Name

Phone: Coles: (808) 638-7289
Scott: (808) 625-3239
(Business)

Coles: 59-299C Ke Nui Road, Haleiwa, HI 96712
Business Address
Scott: 2901 N La-i Road, Honolulu, HI 96816

Names of officers or general partners of developers who are corporations or partnerships:
The Agricultural Cluster Permit (Exhibit "B" hereto) was initially processed in the name of "Palolo Agricultural Terraces Co., Ltd.", a Hawaii corporation whose principals are Schuyler Cole, Marilyn Cole and Stuart Scott. The Developer's rights under the Agricultural Cluster Permit and all other development rights in connection with the Project, are now being processed by such owners (as shown on title) directly as "Developer", i.e., Schuyler Edward Cole, Trustee, Marilyn Jean Cole, Trustee and Stuart Herbert Scott, Trustee

Real Estate Broker:

Developers - see p. 20
Name

Phone: _____
(Business)

Business Address

Escrow:

Bank of Hawaii (Escrow Services)
Name

Phone: (808) 537-8795
(Business)

111 S. King Street, 6th Floor
Business Address
Honolulu, Hawaii 96813

General Contractor:

Owner/Builder
Name

Phone: _____
(Business)

Business Address

Condominium Managing Agent:

Self-managed by Association of Apartment Owners
Name

Phone: _____
(Business)

Business Address

Attorney for Developer:

Stephen A. Jones, Esq.
Name

Phone: (808) 528-1100
(Business)

707 Richards St., Suite 700
Business Address
Honolulu, Hawaii 96813

## 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 o Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, anc to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceabl in a court of law.

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
[xx] Recorded - Bureau of Conveyances: Document No. 93-152927
Book_____ Page _____
[ ] Filed - Land Court: Document No._____

The Declaration referred to above has been amended by the following instruments (state name of document, date and recording/filing information):
First Amendment of the Declaration of Condominium Property Regime of Palolo Agricultural Terraces Condominium recorded in the Bureau of Conveyances ("Bureau") as Document No. 93-175936; Second Amendment of the Declaration of Condominium Property Regime of Palolo Agricultural Terraces Condominium recorded in the Bureau as Document No. 94-087336; and Third Amendment of the Declaration of Condominium Property Regime of Palolo Agricultural Terraces Condominium recorded in the Bureau as Document No. 94-102167.

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
[xx] Recorded - Bureau of Conveyances Condo Map No. 1928
[ ] Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments (state name of document, date 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 manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

[ ] Proposed
[xx] Recorded - Bureau of Conveyances: Document No. 93-152928
Book_____ Page _____
[ ] Filed - Land Court: Document No._____

The Bylaws referred to above have been amended by the following instruments (state name of document, date and recording/filing information):
First Amendment (Correction) of the By-Laws of the Association of Owners of Palolo Agricultural Terraces Condominium recorded in the Bureau of Conveyances ("Bureau") as Document No. 93-175937; and Second Amendment of the By-Laws of the Association of Owners of Palolo Agricultural Terraces Condominium recorded in the Bureau as Document No. 94-087466.

D. House Rules. The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. 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 [ X] 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:

| | Minimum Set by Law | This Condominium |
|---|---|---|
| Declaration (and Condo Map) | 75%* | 75% |
| Bylaws | 65% | 75% |
| House Rules | -- | N/A |

* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. Developer:

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

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

See Exhibit "D"

## III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

[X] Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.

[ ] Leasehold or Subleasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____

Rent Renegotiation Date(s): _____

_____

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year

For Subleaseholds:

[ ] Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
[ ] Canceled [ ] 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 canceled or foreclosed.

[ ] Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Subleasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____
Rent Renegotiation Date(s): _____

_____

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually
Exhibit _____ contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year

[ ] Other:

## IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: 2801 N La-i Road
Honolulu, Hawaii 96816

Tax Map Key: (1)3-4-21:01 (TMK)

[ ] Address [ ] TMK is expected to change because _____

Land Area: 8.6 acres (approx.) [ ] square feet [xx] acre(s) Zoning: Ag-2

~~Lessor~~
(Fee Owner): Schuyler Edward Cole, Trustee
Marilyn Jean Cole, Trustee
Stuart Herbert Scott, Trustee

Name

Coles: 59-229C Ke Nui Road, Haleiwa, Hawaii 96712

Address

Scott: 2801 N La-i Road, Honolulu, Hawaii 96816

Sublessor: _____

Name

_____

Address

_____

C. Buildings and Other Improvements:

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

2. Number of Buildings: 8 Floors Per Building two (2) per Unit A, B & C
Unit D: one (1)

[ ] Exhibit _____ contains further explanations.

3. Principal Construction Material:

[ ] Concrete [ ] Hollow Tile [xx] Wood

[xx] Other Glass

4. Permitted Uses by Zoning:

| | No. of Apts. | Use Permitted By Zoning | | No. of Apts. | Use Determined By Zoning |
|---|---|---|---|---|---|
| [xx] Residential | 4 | [x] Yes [ ] No | [ ] Ohana | ____ | [ ] Yes [ ] No |
| [ ] Commercial | ____ | [ ] Yes [ ] No | [ ] Industrial | ____ | [ ] Yes [ ] No |
| [ ] Mix Res/Comm | ____ | [ ] Yes [ ] No | [xx] Agricultural | ____ | [x] Yes [ ] No |
| [ ] Hotel | ____ | [ ] Yes [ ] No | [ ] Recreational | ____ | [ ] Yes [ ] No |
| [ ] Timeshare | ____ | [ ] Yes [ ] No | [ ] Other: _____ | ____ | [ ] Yes [ ] No |

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?
[xx] Yes [ ] No

Special Use Restrictions:

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

[xx] Pets: Two (2) dogs, two (2) cats and household pets permitted in reasonable number

[ ] Number of Occupants: _____

[xx] Other: See Agricultural Cluster Permit 90/CL-12 attached as Exhibit "B"
Obstruction to critical view plane(s) restrictions of adjacent Unit(s)

[ ] There are no special use restrictions.

Interior (fill in appropriate numbers):

Elevators: 0 Stairways: A, B, C: 1 Trash Chutes: 0

| Apt. Type | Quantity | BR/Bath | Net Living Area (sf)* | Deck ~~Lanai/Patio~~ (sf) |
|---|---|---|---|---|
| A | 1 | 4/3½ | 2,500 | 400 |
| B | 1 | 4/3½ | 2,596 | 538 |
| C | 1 | 4/3½ | 2,500 | 400 |
| D | 1 | 2/1 | 922 | 310 (porch) |
| | | | | |
| | | | | |

Total Apartments: 4

*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:

Each of the Units shall be deemed to include all interior and exterior surfaces of the respective structure located on the Unit site, including but not limited to the roof, footings and other surfaces of such structure.

Permitted Alterations to Apartments:

Per Declaration paragraph 22; see also Declaration paragraph 10; see Exhibit "C"

7. Parking Stalls:

Total Parking Stalls: 18

| | Regular | | Compact | | Tandem | | |
|---|---|---|---|---|---|---|---|
| | covered | open | covered | open | covered | open | TOTAL |
| Assigned (for each unit) | | 3 | | | | | 12 |
| Guest | | | | | | | |
| Unassigned | | | | | | | |
| Extra for Purchase | | | | | | | |
| Other: | | 6 | | | | | 6 |
| Total Covered & Open | 18 | | | | | | |

Each apartment will have the exclusive use of at least 3 parking stall(s). Buyers are encouraged to find out which stall(s) will be available for their use.

[ ] Commercial parking garage permitted in condominium project.

[ ] Exhibit _____ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

[ ] There are no recreational or common facilities.

[ ] Swimming pool [ ] Storage Area [ ] Recreation Area

[ ] Laundry Area [ ] Tennis Court [ ] Trash Chute

[xx] Other: Agricultural accessory and shed use per Condominium Map

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

[xx] There are no violations. [ ] Violations will not be cured.

[ ] Violations and cost to cure are listed below. [ ] Violations will be cured by_____

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations (For conversions of residential apartments in existence for at least five years):

Unit D is an existing structure and is in fair condition. Its electrical and plumbing installations were renovated within the last three years. With normal use and maintenance, its structural components, mechanical and electrical installations are expected to last at least ten (10) years.

11. Conformance to Present Zoning Code

a. [ ] No variances to zoning code have been granted.

[XX] Variance(s) to zoning code was/were granted as follows:

See Agricultural Cluster Permit No. 90/CL-12 attached as Exhibit "B" which places certain conditions on the project.

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.

| | Conforming | Non-Conforming | Illegal |
|---|---|---|---|
| Uses | XX | | |
| Structures | XX | | |
| Lot | XX | | |

See Agricultural Cluster Permit No. 90/CL-12 attached as Exhibit "B" which places certain conditions on the project.

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.

ommon Elements, Limited Common Elements, Common Interest:

Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

[XX] described in Exhibit "E".

[ ] 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.

[xx] The limited common elements and the apartments which use them, as described in the Declaration, are:

[XX] described in Exhibit "F".

[ ] 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 used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

[ ] described in Exhibit _____.

[xx] as follows:

Unit A - 25%
Unit B - 25%
Unit C - 25%
Unit D - 25%

Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit "G" describes the encumbrances against the title contained in the title reports dated 10/21/94 and issued by Title Guaranty of Hawaii.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien 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.

[X] 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. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

| Type of Lien | Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance |
|---|---|

*Each of the units is individually subject to a mortgage on such unit; see Exhibit "G" attached hereto.

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:

   Units A, B and C: No warranties; "As Is"

   Unit D: No warranties; "As Is"

2. Appliances:

   No warranties; "As Is"

3. Status of Construction and Estimated Completion Date:

Units A, B and C: Construction has commenced in November 1994; estimated completion date is October 1995.

Unit D: Existing structure; completed in approximately 1930.

Project Phases:

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

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

## IV. CONDOMINIUM MANAGEMENT

A. Management of the Common Elements: The Association of Apartment Owners is responsible for the management the common elements and the overall operation of the condominium project. The Association may be permitted, in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium 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 condominium managing agent for this project, named on page five (5) of this report, is:

[ ] not affiliated with the Developer
[XX] self-managed by the Association of Apartment Owners
[ ] the Developer or the Developer's affiliat
[ ] other _____

B. 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.

Exhibit "H" contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change). Prospective purchasers are advised that the Developer's estimate of maintenance fees (Exhibit "H" hereto) is based upon the assumption that the project will collect $2,000.00 per month in operating income; although this is currently Developer's most informed assumption as to such income level, actual collections may differ from this assumption, and therefore it is possible that actual maintenance fees may be higher or lower than those estimated in Exhibit "H".

C. 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:

[ ] None [XX] Electricity * [ ] Gas [XX] Water *

[ ] Sewer [ ] Television Cable [XX] Other agricultural utilities - see Exhibit "H"

* These utilities will be billed separately at such time as individual meters are installed for the apartments. Until installation of separate meters, these utilities will be charged to the apartments on a fair and equitable manner as determined by the Board of Directors.

## V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

[xx] Notice to Owner Occupants

[xx] Specimen Sales Contract
Exhibit "A" contains a summary of the pertinent provisions of the sales contract.

[xx] Escrow Agreement dated August 3, 1993
Exhibit "I" contains a summary of the pertinent provisions of the escrow agreement.

[ ] Other_____

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

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 or Supplementary Report to a Final Report: Sales made by the developer are binding if:

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
B) Declaration of Condominium Property Regime, as amended.
C) Bylaws of the Association of Apartment Owners, as amended.
D) House Rules.
E) Condominium Map.
F) Escrow Agreement.
G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
H) Other Agricultural Cluster Permit No. 90/CL-12 dated February 19, 1991 by CCOH, DLU Declaration of Restrictive Covenants Regarding Agricultural Use dated November 14, 1991 as Document No. 91-162364.

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 Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 2998 filed with the Real Estate Commission on Nov. 10, 1993.

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

[ ] yellow paper stock [X] white paper stock [ ] pink paper stock

C. Additional Information Not Covered Above

(A) **Pursuant to Sections 16-99-3(g) and 16-99-11(d), Hawaii Administrative Rules ("HAR"), prospective purchasers are hereby advised that the Developer/Owners Schuyler E. Cole (RS-9583) and Stuart Scott (RS-43961) are current and active Hawaii-licensed real estate salespersons. Further, pursuant to Section 16-99-11(c), HAR, "(n)o licensee shall advertise 'For Sale by Owner, . . .'"**

(B) The Project is currently served by a private non-potable water source (Pukele and Waiomao Streams). The Project will be served by a community water system with tank and supply lines constructed by the State, water provided by the Board of Water Supply ("BWS"), and a distribution system by the Palolo Valley Agricultural Association ("PVAA"). Four (4) BWS development fees have been paid by the developer. PVAA will manage and operate the system with completion estimated in September of 1995. Water catchment has been approved as an alternate potable water source for units A, B and C for which such application was made previously.

D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

Schuyler Edward Cole, Trustee;
Marilyn Jean Cole, Trustee
Stuart Herbert Scott

Schuyler Edward Cole, Trustee; Marilyn Jean Cole, Trustee;
Stuart Herbert Scott, Trustee

Name of Developer

Schuyler Edward Cole, Trustee
Marilyn Jean Cole, Trustee
By: Stuart Herbert Scott, Trustee

Duly Authorized Signatory

April 11, 1995

Date

Schuyler Edward Cole, Trustee
Marilyn Jean Cole, Trustee
Stuart Herbert Scott, Trustee

print name & title of person signing above

Distribution:

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

## SUMMARY OF RESERVATION AND SALES CONTRACT

The Reservation Agreement/Deposit, Receipt and Sales Contract (the "Sales Contract"), between the Developer/Seller and the purchaser, is a contract which identifies the unit being sold, the purchase price for the unit, the method of financing (cash, institutional mortgage, or agreement of sale), and certain closing costs to be paid by the purchaser.

Under the Sales Contract, the Seller reserves the right to modify the Declaration, Bylaws, or Unit Deed under certain circumstances, but no modification can (i) increase the purchaser's share of common expenses or the cost of the property, (ii) substantially change the unit being sold to the purchaser, or (iii) reduce (or substantially change) the Developer/Seller's obligations.

Dwellings A, B and C will be newly constructed. The Seller will pass on and assign to the Purchaser the contractor's customary one-year warranty against defective work, and whatever warranties that the contractor may have received from materialmen and subcontractors. However, Seller makes no warranties itself. EXCEPT FOR THE ASSIGNMENT OF THE CONTRACTOR'S ONE-YEAR WARRANTY as to Units A, B and C, NO WARRANTIES EXIST; NO WARRANTIES FOR FITNESS OF USE, MERCHANTABILITY, HABITABILITY, OR ANY OTHER ARE MADE AS TO EITHER THE UNITS OR COMMON ELEMENTS OF THE PROJECT. PURCHASERS ARE ADVISED TO CONDUCT THEIR OWN INSPECTION OF THE UNIT THEY DESIRE TO PURCHASE. THE UNITS ARE SOLD "AS IS".

Dwelling D is a prior existing residential structure. With respect to Dwelling D, Seller makes no warranties. NO WARRANTIES EXIST; NO WARRANTIES FOR FITNESS OF USE, MERCHANTABILITY, HABITABILITY, OR ANY OTHER ARE MADE AS TO EITHER THE UNIT OR COMMON ELEMENTS OF THE PROJECT. PURCHASERS ARE ADVISED TO CONDUCT THEIR OWN INSPECTION OF THE UNIT THEY DESIRE TO PURCHASE. THE UNIT IS SOLD "AS IS".

The Sales Contract also provides among other things that until the purchaser takes possession of the unit after the sale closes, the risk of destruction of the unit remains on the Developer/Seller, and that there are not expected to be any common expenses assessed against the condominium units for the present time.

If the purchaser fails to make any payment when it is due, the Developer/Seller can cancel the Sales Contract after giving the Purchaser five days to cure the default, and all sums paid under the Sales Contract will belong to the Developer/Seller. Either party may pursue its legal remedies if the other party defaults.

**EXHIBIT "A"**

If a Supplementary Public Report for the Project is issued, which differs in any material respect from the last Public Report given to the Purchaser, the Developer/Seller will send a copy of the new Report to the Purchaser. If the Purchaser does not acknowledge receipt of the new Report within thirty days, the Developer/Seller has the option of cancelling the Sales contract and returning the purchaser's funds (less the escrow's cancellation fee of $50.00), or assuming that the purchaser accepts the new Report and treating the Sales Contract as a valid and continuing contract.

Buyer may finance the purchase through institutional financing or cash payment:

(i) If Buyer elects institutional financing, Buyer must submit the required loan application documents to the institutional lender within five (5) days of Seller's acceptance of the sales contract. If Buyer does not qualify for such financing, Seller may cancel the sales contract and return Buyer's deposit(s), less any costs of escrow including cancellation fees. If Buyer fails to submit the loan application documents to the lender within five (5) days of Seller's acceptance, Seller may cancel the sales contract.

(ii) If Buyer elects to purchase by cash payment, Buyer must submit to Seller a financial statement (certified by Buyer to be true and accurate) within five (5) days of Seller's acceptance of the sales contract. Seller shall then have five (5) days to accept the financial statement or terminate the sales contract, in Seller's sole discretion. Upon such termination, Seller will cause the escrow agent to refund Buyer's deposits without interest and less (a) Seller's costs incurred in reviewing the financial statement, and (b) costs of escrow including cancellation fees.

Buyer may be required to prepay certain maintenance fees, insurance premiums and real property taxes. All such prepaid items shall be prorated (as between Seller and Buyer) as of the date fixed for prorating real property taxes at closing.

The purchaser is urged to read the Sales contract in its entirety to be advised of all its provisions.

## SUMMARY OF THE AGRICULTURAL CLUSTER DEVELOPMENT PERMIT

By Order dated February 19, 1991, the City and County of Honolulu Department of Land Utilization ("DLU") granted approval of the Agricultural Cluster Development Application for Palolo Agricultural Terraces, Application No. 90/CL-12 (the "Ag Cluster Permit").

The Ag Cluster Permit allows the developer to use about 8.5 acres of the project parcel for agricultural purposes in a manner permitted in the existing agricultural district. To optimize the use of the overall project land, the development reduces the number of existing dwellings from seven to four. (Three existing structures are being converted to non-dwelling farm use, such as storage and minor crop processing.)

The four permitted dwellings (i) will be placed within specified "buildable" sites of 5,000 square feet each; (ii) are to blend with the character of the neighborhood by use of warm earth-tone finishes; and (iii) must each comply with AG-2 Agricultural District development standards such as use, building height, setbacks and lot coverage.

Building permits for the four (4) dwellings have been issued as follows:

| | | |
|---|---|---|
| Unit A | | |
| 2/10/93 | #331096 | Construct a new home on terrace 5 |
| Unit B | | |
| 2/10/93 | #331099 | Construct a new home on terrace 4 |
| Unit C | | |
| 2/10/93 | #331102 | Construct a new home on terrace 3 |
| Unit D | | |
| 12/6/91 | #311191 | Electrical permit for the master meter and for other site work |
| 4/15/92 | #317179 | Plumbing permit for an aerobic system |

By letter dated March 8, 1994, the Director of the DLU confirmed that the permits for work on the existing manager's farm unit and appurtenant driveway, have been extended for eighteen months (to August 19, 1995).

Roadways, water systems, and wastewater disposal systems shall be constructed in accordance with prior agency review and approval. Maintenance of all common elements is provided for in the project's Bylaws and Declaration of Condominium Property Regime.

Pursuant to the Ag Cluster Permit, a covenant requiring all owners, lessees and tenants to maintain the land in agricultural use in conformity with State and City laws, has been recorded in the Bureau of Conveyances of the State of Hawaii, as Document No. 91-162364.

The development, subject to the conditions of approval, complies with the Agricultural Cluster provisions of the Land Use Ordinance ("LUO") and requirements of the governmental agencies. Future additions or modifications to the Ag Cluster Permit development plan, shall require approval by the Director of the DLU, as well as approval by the owners' association.

Prospective purchasers are urged to read the Ag Cluster Permit in its entirety. (See Exhibit "B", attached to the Public Report.)

\agpermit.sum

DEPARTMENT OF LAND UTILIZATION
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET
HONOLULU, HAWAII 96813 • (808) 523-4432

FRANK F. FASI
MAYOR

DONALD A. CL
DIRECTOR

LORETTA K.C. C
DEPUTY DIRECT

90/CL-12(BN

February 20, 1991

Mr. Stuart Scott
Palolo Agricultural Terraces Co., Ltd.
2801-N La-I Road
Honolulu, Hawaii 96816

Dear Mr. Scott:

Agricultural Cluster Development Application
Palolo Agricultural Terraces
Tax Map Key: 3-4-21: 1
Application No. 90/CL-12

The Cluster Development application for Palolo Agricultural Terraces has been approved, subject to the provisions of the enclosed "Report, Conclusions, and Decision and Order" dated February 19, 1991.

Very truly yours,

Donald Clegg

DONALD A. CLEGG
Director of Land Utilization

DAC:ra
Enclosure
0033M

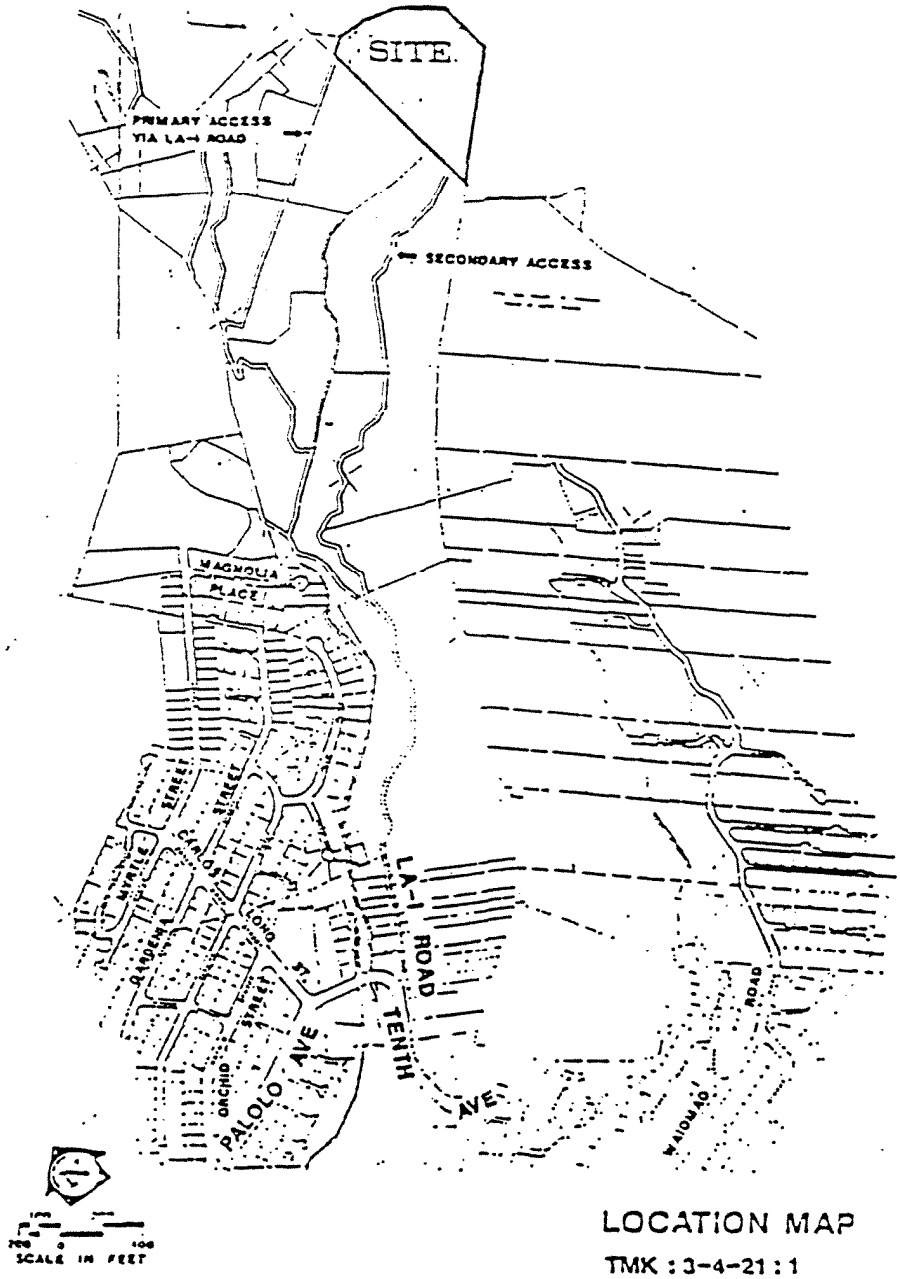
EXHIBIT "B"

DEPARTMENT OF LAND UTILIZATION
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET
HONOLULU, HAWAII 96813 • (808) 523-4432

FRANK F. FASI
MAYOR

DONALD A. CLEGG
DIRECTOR

LORETTA K.C. CHEI
DEPUTY DIRECTOR




LOCATION MAP
TMK : 3-4-21 : 1

Application for an Agricultural Cluster Development
Application No. 90/CL-12

Project: Palolo Agricultural Terraces

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REPORT, CONCLUSIONS, AND DECISION AND ORDER

---

## I. APPLICATION

Application Date

November 21, 1990

Recorded Fee Owner

Schuyler E. Cole, et al
59-229C Ke Nui Road
Haleiwa, Hawaii 96712

Applicant/Developer

Palolo Agricultural Terraces Co., Ltd.
2801-N La-i Road
Honolulu, Hawaii 96816

Tax Map Key

3-4-21: 1

Location

2801-N La-I Road, Honolulu, Hawaii 96813

Area

9.65 acres

Request

Agricultural Cluster Development to consist of four farm dwellings.

State Land Use

Agriculture

Development Plan

Agriculture

Public Facility Map (Department of Transportation Services Planning Area Map approved July 28, 1983)

40' wide roadway system across the lower portion of the parcel.

Zoning

AG-2 General Agricultural District

PROPOSAL:

Number of Units

A total of four farm dwellings.

Density

One unit per 2.375 acres

Code Requirements

The requirements of Land Use Ordinance Sections 5.20-1, 5.20-2 and 5.20-3 are applicable to the proposed development. The proposal meets the density requirement:

$$\frac{\text{Zoning Lot Area}}{\text{Minimum Lot Size}} = \frac{9.65 \text{ acres}}{2 \text{ acres per unit}} = 4 \text{ units maximum allowed}$$

Units proposed = 4 units

## II. REPORT

### Summary of Agency Comments

Comments were received from the City Board of Water Supply, Departments of Parks and Recreation, Transportation Services, Public Works and the Palolo Neighborhood Board No. 6, and the State Departments of Agriculture, Health, and Land and Natural Resources.

Comments were not received from the City Fire Department and the U.S. Soil Conservation Service.

The responding agencies had no objections to the proposal, subject to specific recommendations (letters on file with the Department of Land Utilization).

Major comments are as follows:

Board of Water Supply (January 4, 1991)

We have no objections to the proposed agricultural cluster.

However, water service cannot be made available to the proposed cluster development from our water system because the parcel is located above the service limit of our Palolo '605' system. A complete new water system at a higher elevation, including booster pumps, transmission mains and a reservoir will be required. These improvements are very extensive and we have no plans to construct them at this time.

The developer should coordinate the fire protection requirements with the Fire Department.

Department of Public Works (December 27, 1990)

Engineering

The minimum width standard for a City-owned agricultural road is 18 feet of paved asphalt concrete. The two private roads have widths less than this. We therefore recommend that at least one of the access roads match City standards. Please contact the Department of Transportation Services for any further recommendations on the widths.

The plans show that roads with slopes greater than 20% will have an all weather surface. We note that the Subdivision Rules and Regulations require such surfaces to be concrete.

The application states that a soils report is not needed for construction of the dwellings. The grading ordinances require a soils report if fill will support building foundations. Please have the applicant verify that the proposed dwelling construction sites do not contain existing fill.

Refuse Collection

Limited quantities of household refuse from this and neighboring properties off La-I Road is currently picked up from the point on La-I Road where the private access roadways begin. This will not change under the cluster plan except that the volume of refuse from this property will decrease. Bulky items have been and will continue to be placed for pickup at the curbside where La-I Road intersects 10th Avenue.

Sanitary Sewers

A municipal sewer system is not available for the project. We presently have no plans to provide sewer improvements in the project area.

Department of Transportation Services (January 8, 1991)

Since the project will reduce the number of dwelling units from seven to four, thereby reducing the volume of traffic, we have no objections to this development.

Palolo Neighborhood Board No. 6 (January 25, 1991)

At our regularly scheduled meeting on Wednesday, January 24, the Palolo Neighborhood Board voted unanimously to support the proposed project.

State Department of Agriculture (February 6, 1991)

Mr. Scott has provided us with detailed information in answer to our questions concerning the location and coverage of nursery operations, the extent of agricultural use of the subject property, and where crops (especially hardwood fruit trees) were to be located.

Through Mr. Scott's careful and detailed description of the operation, we believe the planned activities are well thought out and fully compatible with uses in Agricultural Districts.

Department of Health (January 28, 1991)

Wastewater Disposal

1. The subject project is located within a proposed critical wastewater disposal area as determined by the Oahu Wastewater Advisory Committee.

2. It has been determined that the subject project is located in the "No Pass" area. Within the "No Pass" area, only one individual wastewater system per lot of record or a one-for-one, non-cesspool replacement of existing individual wastewater system(s) is allowed.

3. The details of wastewater treatment and disposal are general in nature. Although a letter of general support for this kind of system accompanied a prior submission, all proposed wastewater treatment and disposal systems must conform to applicable provisions of Chapter 11-62. However, we do reserve the right to review the detailed wastewater plans for conformance to applicable rules.

Drinking Water

1. According to the application, the primary source of potable water will be either rain catchment or the Palolo Valley Agricultural District Association (PVADA) community water system. However, the application does not provide any details of either water system. The applicants should be reminded that if a potable water system is to serve 25 or more individuals at least 60 days per year or will have a minimum of 15 service connections, the system will be required to comply with the Department's Administrative Rules, Title 11, Chapter 20, "Potable Water Systems."

2. Section 11-20-29 of Chapter 20 requires that a new source of potable water serving a public water system be approved by the Director of Health prior to its use. Such an approval is based primarily upon the submission of a satisfactory engineering report which addresses the requirements set in Section 11-20-29.

3. Section 11-20-30 of Chapter 20 requires that all new or substantially modified distribution systems for public water systems be approved by the Director.

4. In the event that Chapter 20 does not apply, would highly recommend that the applicants routinely test their drinking water for microbiological contaminants. Other water quality tests may be warranted, depending on the source of drinking water and potential sources of contamination.

5. The proposed development is situated above the Department's Underground Injection Control (UIC) line. Land areas located above the UIC line are generally considered t contain underground sources of drinking water. These areas should therefore be protected against all sources of groundwater contamination.

Vector Control

The proposal to build a 80,000 gallon reservoir using recycled household wastewater is a concern to us. Past experience has proven that ponds that retain wastewater can generate hoards of the night biting mosquitoes "Culex quinquefasciatus" which have a flight range of 1-5 miles radius. This can impact the entire community.

In addition, wastewater holding ponds can generate large numbers of gnats that can become a serious nuisance to nearby residences.

Any water catchment system must be built in such a manner as to prevent mosquito breeding, primarily the day-biting mosquito "Aedes albopictus".

Care must be taken to prevent mosquito breeding and other household pests.

Department of Land and Natural Resources (January 16, 1991)

This project area is zoned for agriculture. Personnel from our Division of Forestry and Wildlife have made field inspections of the site and are currently working with the land owners for tree removal along the Forest Reserve Boundary.

A review of our files indicates no archaeological survey has ever been done for the subject parcel, so it is uncertain if significant historic sites are present.

In view that the 5 large level terraces were graded before 1969 and a 80,000 gallon water reservoir is incorporated into the irrigation system, it is unlikely that surface or subsurface significant historic sites remain. We believe, therefore, that the proposed Agricultural Cluster will have "no effect" on significant historic sites.

If, however, historic remains such as artifacts, shell or charcoal deposits are found during construction, please stop work in the immediate area of the find and notify our office at 587-0015. We will determine the appropriate mitigation measure, if needed.

United States Department of Agriculture
Soil Conservation Service (October 3, 1990 Letter to Applicant)

We examined existing rainfall and pan evaporation records for your area using the Rainfall atlas of Hawaii and Pan Evaporation: State of Hawaii 1894-1983. Both of these reports were developed by the Department of Land and Natural Resources. Station 782 is the data collection site closest to your property. The rainfall and pan evaporation data taken from this station should be quite similar to what you experience.

The total rainfall of 123 inches is well distributed throughout the year. The wettest month has an average rainfall of 12 inches while the driest month has an average of 7 inches. Total pan evaporation is 36 inches annually. The average amount pan evaporation for each month is much lower than average rainfall for the corresponding month. See attached data tables.

We understand that you plan to grow bananas and floral varieties. Although SCS does not have specific water use data for these crops, it is usual that evapotranspiration is similar to, but does not exceed pan evaporation. Furthermore, unirrigated bananas are grown in similar areas on Oahu. Therefore, it is our opinion that the rain will provide adequate water for your agricultural operation.

University of Hawaii at Manoa
College of Tropical Agriculture and Human Services
(October 19, 1990 Letter to Applicant)

Re: Verification of the Availability of Sufficient Agricultural Quality Water to Support Agricultural Use

I reviewed your agricultural pan of 9.65 acres at Kakio in Palolo Valley with an approximate 2/3 area for banana on mild slope and 1/3 steep slope land for tree crops.

The water requirement for both banana and tree crops can be estimated by using the average evaporation rate in the farm area which is only 36 in. annually and is about 0.1 in. per day. The farm site in Palolo Valley has an average annual rainfall of 120 in. and it is well distributed throughout the year. The rainfall, in general, should be enough to supply the water requirement for banana and trees without irrigation.

There is a possibility for a supplementary irrigation during some unusual dry seasons. The past records show that the average monthly rainfall in the driest month is still over 7 inches. Assuming, in a worst situation, the 7 in. of rainfall all occurs in the first half of the month, there will be a possible dry period of 15 days at the maximum. At the beginning of this dry period, there is at least 2 inches of soil moisture storage in the root zone which can take care of the water consumption of at least 10 days. The supplementary irrigation needs only to supply water requirements for 5 days at most.

Your 80,000 gallon reservoir can store 3 ac-in. of water. I would like to suggest the supplementary irrigation is used for 6 ac. of banana only since the tree crops on 3 ac. of steep slope field should have deep root systems which should be able to sustain 5 days of drought without hurting too much. The 3 ac-in. storage will be enough to support 0.1 in. per day for 6 ac. banana for 5 days.

In view of the rainfall, water storage, irrigation systems and field planning of your farm, I think there is more than adequate rainfall and water system for your farm operation, and you have no need for additional sources of irrigation water.

Plan Evaluation and Analysis

Agricultural Plan

According to the application documents, the parcel, which is partially in banana production, has been in agricultural use since the early 1900's. The applicant intends to market organically grown bananas and other plant food products to health food stores, and trees and landscape plant material to nurseries and landscapers.

The applicant's Crop Production Plan includes the following:

a. a base crop of Apple and Dwarf Apple Bananas which provides a cash crop as well as a natural canopy, windbreak and weed control for other crops. About 1,000 banana clumps will be planted, and the keikis will be sold once all trees are propagated.

b. a variety of plants, grass and flowers have a ready market as landscaping stock and can be easily propagated. About 1,000 clumps of flowers will be initially planted under the canopy of the bananas. Heliconias (e.g. Rostrada, Humulus, Calentiana, Wagneriana, Golden, Purpurea, Carabia), Ginger (e.g. Red Torch, Eileen MacDonald), Citicorum, etc. are currently available or planned. They will be bagged, potted and/or cut for resale. Mondo grass grows well in the area and is being studied as a possible crop.

c. a variety of trees have a ready market and can be easily propagated. About 1,000 trees will be initially planted under the canopy of the bananas. Palms (Areca, Richards), Strawberry Guava, and Hawaiian Koa are currently available or planned. Air layering will be used for propagation wherever suitable and endemic varieties will be emphasized. They will be bagged and/or potted for resale.

d. a variety of long cycle trees, planted on the steep inclines between terraces. These trees will be cultivated to control erosion and provide a future return. Selected citrus, avocados and breadfruit are proven to grow well on the site and have a ready market.

e. a windbreak of trees, which grow well on the site, have a ready market and can be easily propagated. About 200 Erect Wiliwili will be initially planted at the perimeter. Cuttings will be planted and later transplanted or bagged and/or potted for resale.

f. an area for minor crop processing needed for potting and cleaning cut flowers. It is planned on the first level.

g. several accessory buildings for storage, repair and minor processing.

Agricultural Water

Public water system is not available in this area. For agricultural purposes, farms in the area rely primarily on rain water. Based on area rainfall data, the U.S. Soil Conservation Service and U.H. Tropical Agriculture Department reports the adequacy of rain water to support the type of farming proposed.

The applicant states that they have worked with the U.S. Department of Agriculture, Soil Conservation Service to develop an irrigation and water conservation system. On average, the site has more than 120" of rain annually. It is one of the wettest agricultural areas on Oahu. The crop plan is based on plants which retain water well.

Proposed is an 80,000 gallon reservoir which will provide a 20 day supply during dry conditions. The plan includes the recycling of household wastewater to this reservoir, via a self-contained 'marsh' wastewater treatment system acceptable to the State Department of Health, Wastewater Treatment Branch. The inclines above the 3rd and 4th terrace provide areas for diversion of rainfall into the reservoir. Rooftop rainfall from dwellings on the 4th and 5th terraces will be diverted as well. The intermittent runoff stream crossing the site may also provide a source for the reservoir, though the need to pump water uphill puts this lower on the list.

The applicant states that there is sufficient rainfall on this property to support the planned agriculture even where no external sources are available.

The application documents state that owners and tenants of the property have, however, drawn household and agricultural water from Pukele and Waiomao Streams for years. This water use has been declared with the DLNR last year, but they have informed the applicant that this use will not be confirmed for at least a year and that it will remain an available source of water until this confirmation takes place, and thereafter.

The proposed agricultural water system should be reviewed and approved by all governmental agencies such as the Department of Public Works, Board of Water Supply, State Department of Health, and U.S.Soil Conservation Services.

Site Plan

The site plan will reduce the number of existing dwellings from 7 to 4. The 4 farm dwelling units will be clustered along the Ewa edge of the property. This will optimize use, management, and control of available agricultural land.

Three existing structures will be converted to farm use, such as storage and minor crop processing. The other 4 dwellings will be replaced with new structures within an area of a maximum 5,000 square feet each. New dwellings will be modest, natural, and blend into the environment of Palolo Valley.

The 9.65 acre parcel has been divided into several agricultural areas yielding about 8.5 acres of common land for agricultural use. The balance is four 5,000 sq. ft. home sites and common areas for utilities, roads and paths.

Building Design

The farm dwellings are proposed to blend with the character of the neighborhood by use of warm earth-tone colors/finishes. Development of each farm dwelling shall comply with AG-2 Agricultural District development standards such as use, building heights, setbacks and lot coverage.

Roadways

The existing on-site roadways are proposed to be improved with crushed coral or rock where slopes are less than 10% and an all-weather surface for slopes greater than 10%. The road segment along the south end which provides access to the up-slope terraces will be improved by the State and jointly serve the DLNR water improvement project.

La-I Road and two private roadways serving the site are narrow and substandard. The Department of Transportation Services has no objections to the development, based on the reduction in number of units from 7 to 4. The practice of pulling over and yielding to opposing traffic would continue.

The on-site roadway construction plans should be reviewed and approved by the Departments of Public Works, Transportation Services, Fire and Land Utilization. Roadways for each farm dwelling should have a minimum width of 12 feet and a reinforced concrete pavement for grades exceeding 12%. An alternate roadway pavement may be installed upon justification by the applicant and approvals by the Departments of Public Works and Land Utilization.

## Public Utilities and Services

Domestic Water System. The area is not presently served by the BWS system. The State DLNR is proposing to construct the Palolo Valley Agricultural District water project consisting of a 25,000 gallon water tank for domestic use for the area. Until completion of the DLNR water system, the site will continue to use water by catchment systems. The proposed domestic water system, whether tank or catchment system, should be approved by the State Department of Health and Board of Water Supply prior to issuance of any permits.

Fire Protection. Fire protection system should be reviewed and approved by the Fire Department. Automatic fire sprinkler system for each structure may be required due to the lack of adequate fire protection water system.

Wastewater Disposal System. The applicant proposes to use an advanced "marsh" waste water treatment system. The system uses standard plumbing at each dwelling and agricultural building. Effluent is gravity fed to a "marsh" which will be designed and engineered by professionals. Clarified effluent from the marsh will then be pumped up to the proposed irrigation reservoir. An alternative, should planned approach prove unfeasible for the site, is to use self-composting dry toilets (e.g. Clivus Multrum) and a greywater filtration system, which have been approved recently for home construction in this area.

The details of wastewater treatment and disposal systems shall be reviewed and approved by the State Department of Health and City Department of Public Works.

Refuse. Limited quantities of household refuse from this and neighboring properties off La-I Road is currently picked up from the point on La-I Road where the private access roadways begin. This will not change under the cluster plan except that the volume of refuse from this property will decrease. Bulky items have and will continue to be placed for pickup at the curbside where La-I Road intersects 10th Avenue.

## Grading and Drainage Analysis

The application documents state that grading would be limited for the roadways, agriculture and farm dwellings. Measures for drainage and erosion control should be implemented. Grading, drainage and erosion control plans should be approved by the Department of Public Works. Agricultural grading work should be reviewed and approved by the U.S. Soil Conservation Service.

## Relationship to the Neighborhood

The proposed development would not have an adverse impact on the surrounding area.

## III. CONCLUSIONS

Based on the foregoing analysis, the Director has made the following conclusions:

a. The development, subject to conditions of approval, complies with the Agricultural Cluster provisions of the Land Use Ordinance (LUO) and requirements of the governmental agencies;

b. Property in the vicinity of the area would not be adversely affected; and

c. The property would be used for purposes and in a manner permitted in the existing agricultural district.

## IV. DECISION AND ORDER

Based on the Report and Conclusions, the Agricultural Cluster application for "Palolo Agricultural Terraces" is approved, subject to conformity with the following exhibits and conditions:

Exhibit "A"

Application Drawings by Douglas Ackerman, Architect, AIA, 3 sheets, dated October 17, 1990.

Exhibit "B"

Applicant's Narrative titled "Agricultural Cluster Application for 2801-N La-I Road", dated October 23, 1990.

Exhibits "A" and "B" shall be followed, except as may be altered by the following conditions:

1. Site Plan and Building Design

   a. Legal documents, such as a subdivision map prepared by a registered surveyor, shall be submitted to the Department of Land Utilization showing the zoning lot area as defined in the Land Use Ordinance. The number of farm dwellings shall not exceed one for each 2 acres of lot area.

   b. A site plan shall be submitted to the Department of Land Utilization for review and approval showing all farm dwellings and accessory uses and structures contained within a described maximum 5,000 sq. ft. area. The boundary dimensions, location and area shall be noted on the plan.

   c. The proposed structures and uses shall meet AG-2 General Agricultural District regulations.

   d. Parking for farm dwelling units shall meet Land Use Ordinance off-street parking requirements: Two stalls per unit plus one per 1,000 square feet of floor area over 2,500 square feet (excluding carports and garages).

   e. White or highly reflective material shall not be used on the roof of any proposed structure.

2. Roadways

   Final roadway construction plans, to include turnarounds, shall be subject to review and approval by the Fire Department, Departments of Transportation Services, Public Works, and Land Utilization prior

to issuance of any permits for the project. All pavement work for roadways, driveways, parking areas and walkways shall be designed for the particular soil conditions and constructed in accordance with the requirements of governmental agencies. Minimum width of roadways to serve each farm dwelling shall be 12 feet. Reinforced concrete pavement shall be provided for roadway gradients exceeding 12%. An alternative pavement material may be installed subject to the applicant's justification and approval by the Department of Public Works and Land Utilization.

3. Soils, Grading and Drainage

Grading, drainage and erosion control plans shall be submitted and approved by the Department of Public Works prior to issuance of any permits. Grading and drainage work, including soils report and erosion controls, shall comply with all applicable Federal, State and County regulations, statutes and ordinances. Grading for the agricultural operation shall be subject to approval of the U.S. Soil Conservation Service.

4. Utilities

a. Domestic Water:

The applicant shall install a complete potable water system in accordance with the regulations and requirements of the State Department of Health and Board of Water Supply. Construction plans for the potable water system, whether by DLNR tank or private catchment system, shall be approved by these agencies prior to issuance of any building permits.

b. Agricultural Water System:

The 80,000 gallon reservoir using collected rainwater and recycled wastewater shall meet the regulations and requirements of the State Department of Health, Department of Public Works and Board of Water Supply. Construction plans for the agricultural water system and reservoir shall be approved by the agencies prior to commencement of this work.

c. Wastewater Disposal System:

The applicant shall install a wastewater treatment and disposal system in conformance with the State Department of Health regulations and standards. Construction plans for the wastewater disposal system shall be approved by the State Department of Health and Department of Public Works prior to issuance of any permits.

d. Vector Control:

The applicant shall contact the Vector Control Branch of the State Department of Health and comply with their requirements regarding vector control such as mosquito breeding and other pests for the domestic and agricultural water and wastewater disposal systems.

5. Fire Protection

Fire protection plans shall be approved by the Fire Department prior to issuance of any building permits.

6. Refuse Collection

The applicant shall meet the requirements of the Department of Public Works for refuse collection.

7. Lighting

All exterior lighting shall be recessed and/or shielded to minimize glare and any adverse visual impact to the development and surrounding neighborhood.

8. Agricultural Use Covenants

Covenants running with the land requiring property owners, lessees, and tenants to maintain land in agricultural use in conformity with State and City laws shall be filed with the State Bureau of Conveyances. Evidence of recordation shall be submitted to DLU prior to issuance of any permits. All subsequent sales, lease and rental agreement shall contain this covenant.

9. Engineer's or Architect's Supervision and Responsibility

The applicant's consulting engineer and/or architect shall be responsible for all work and final plans to comply with all provisions of the Land Use Ordinance. The project plans shall meet all code regulations, standards and requirements for approval by all affected governmental agencies.

10. Flexibility

a. The project shall be developed as authorized and approved by the Director of Land Utilization. In no case, however, shall the above alteration harm the general intent of the design concept of the project, nor will there be any increase in the number of farm units (4). The environmental character and design concept of the project, as indicated on the submitted plans, shall be maintained.

b. Any modification to the conditions stated herein shall be subject to approval by the Director of Land Utilization. Any major modification may be subject to a new application under the agricultural cluster development provisions.

c. Changes made to the conditions or site plan necessitated by additional soils, grading, drainage or other studies shall be subject to the approval of the Director of Land Utilization.

11. Archaeological Findings

Should any archaeological artifacts or findings, such as charcoal-filled fire pits, or human skeletal remains be discovered during construction, the applicant and/or contractor shall stop work and notify the State Historic Sites Office, Department of Land and Natural Resources, for mitigative action.

12. Detailed Documents

a. The applicant shall obtain the approval of the Director of Land Utilization and appropriate governmental agencies on final detailed documents covering all building and site improvements, including but not limited to parking, grading, drainage, sewers, water and electric utilities, easements, walkways, roadways, fire protection, fences, and final exterior materials, colors, textures and/or finishes.

b. This approval shall be obtained prior to commencement of any work. Site improvements and utility plans shall be approved by the Director of Land Utilization prior to issuance of any building permits.

13. Maintenance of Common Areas and Facilities

Legal documents shall be drawn up to ensure perpetual maintenance of all common elements including, but not limited to, roads, utilities and drainage system.

14. Future Additions and Alterations

Future additions and alterations subsequent to the completion of the project, shall require the review and approval by the Director of Land Utilization and individual owners requesting such additions and alterations shall first obtain the written approval from the property owners' association.

15. Transfer of Rights

a. Any assignment and/or transfer of any substantial interest in the land parcel designated as a cluster development by this document shall be subject to the approval and consent of the Department of Land Utilization (except for such assignment and/or transfer to any mortgagee or to any purchaser upon foreclosure). Such approval and consent shall not be unreasonably withheld provided that the assignee and/or transferee agrees in writing to comply with all the conditions imposed herein.

b. This requirement of obtaining Department of Land Utilization's approval and consent shall become null and void upon the applicant/developer satisfying the following:

(1) Completion of all construction according to approved plans, as well as sale of the house lots within the cluster project; and

(2) Compliance with all the conditions and restrictions imposed by this document.

16. Time Limit

Failure to secure building permits for the 4 farm dwellings within 2 years of the date of this approval may constitute grounds for the Director to repeal this approval. If the applicant finds that he is unable to obtain a building permit prior to the expiration date of this approval, he shall file with the Director a written request for extension of time prior to the expiration date together with acceptable reasons which justify such extension.

17. Responsibility

It shall be the responsibility of the applicant to provide all site improvements in conformity with Exhibits "A" and "B" and the conditions and restrictions imposed herein. All structures and site improvements shall be completed prior to the occupancy of the dwelling unit.

18. Covenants

The developer shall be required to incorporate all of the post construction conditions set forth which are applicable, subsequent to occupancy as part of the restrictive covenants running with the land and made a part of any sales agreement with any future owners.

19. Recordation

The applicant/developer of the property encompassed by this cluster development shall be required to file with the Bureau of Conveyances or Assistant Registrar of the Land Court of the State of Hawaii, a declaration of the above-mentioned restrictive conditions.

20. Violations

The Department of Land Utilization would review alleged violations of the conditions imposed herein and upon its findings that the applicant has not complied with any of said conditions, may take any lawful action necessary to prevent further non-compliance, or to compel compliance with the conditions.

21. Rescinding Governmental Agency Approvals

Upon repeal of this approval by the Department of Land Utilization, the Director of Land Utilization and other governmental agencies may rescind any or all approvals granted to the development including but not limited to approvals of building permits and other detailed documents, in order to restore the property to conditions pre-existing the effective date of this approval.

DONALD A. CLEGG
Director of Land Utilization

Date: February 19, 1991

0931M
Exhibit "A": Application Drawings
Exhibit "B": Application Narrative

Alteration of Project.

A. Changes to Units. Notwithstanding anything to the contrary contained in this Declaration,

(1) Each Unit owner has the right at his sole option at any time and from time to time without the consent of anyone other than the holders of all liens affecting his Unit, to improve, renovate, remodel, make additions to, remove, replace or restore the improvements to or in his Unit or portions thereof or limited common elements appurtenant thereto.

The foregoing are referred to collectively as "changes" and are subject to the following conditions:

(a) All building plans for any such changes must be prepared or approved by a licensed architect and conform with building and zoning laws and other applicable City and County laws, rules, regulations, ordinances and variances, and with the Agricultural Cluster Permit so long as it remains in effect. In accordance with the Agricultural Cluster Permit as presently in effect, the Dwelling Units and other appurtenant improvements must be located within the Buildable Site for each such Unit, as shown on the Condominium Map. Changes to Unit D must be set back at least twenty (20) feet from the Diamond Head (South) edge of Unit D's Buildable Site, and constructed so as to preserve the existing privacy for Unit C.

(b) The value of the Unit, as reasonably determined by the Board, after such changes shall not be less than the value before such changes.

EXHIBIT "C"

(c) No change may reduce the distance between improvements placed on each Unit to less than required under the applicable State and City and County zoning laws and other applicable laws, rules, regulations, ordinances and variances. No change may obstruct the critical view planes of the other Units.

(d) All such changes shall be at the expense of the Unit owner making the change and such shall be expeditiously made and in a manner that will not unreasonably interfere with the other owners' use of their Units or appurtenant limited common elements.

(e) During the entire course of such construction, the Unit owner making such change will cause to be maintained at his expense builder's all-risk insurance in an amount not less than the estimated cost of construction. The Association shall be named as an additional insured and evidence of such insurance shall be lodged with the Board or the Association's managing agent (if any);

(f) Prior to commencement of such construction, and as a condition thereto, the Unit owner making such change shall give reasonable assurance to the Association of the owner's financial ability to complete and to pay for the change.

(g) If the Declaration is amended to accommodate any reconstruction or rebuilding, then the common interest appurtenant to each Unit shall not be changed;

(h) The owner of the changed Unit shall have the right at his expense to utilize, relocate and realign existing, and/or to develop additional and appurtenant installations for services to the Unit affected by such change for electricity, sewer and other utilities and services and when applicable, to add,

delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith; PROVIDED that the same shall not cause any unreasonable interruption, in the service of such utilities to any other part of the Project;

(i) The owner of any changed Unit shall have the right and duty without the consent or joinder of any other person to amend and shall be required to amend this Declaration and the Condominium Map to accomplish any such changes. If required by the Act, then promptly upon completion of such changes, the owner of the changed Unit or the Declarant, as the case may be, shall duly record any amendment to this Declaration in the Bureau of Conveyances of the State of Hawaii, and/or Office of the Assistant Registrar of the Land Court of the State of Hawaii, together with a complete set of the floor plans of the Project as so altered, certified as built by a registered architect. All existing Unit owners and all future Unit owners and their mortgagees, by accepting an interest in a Unit, shall be deemed to have given the Declarant and all other Unit owners a Power of Attorney to execute an amendment to the Declaration solely for the purpose of describing the changes to any Unit on the Declaration so that the Declarant and each Unit Owner shall hereafter have a Power of Attorney from all the other Unit Owners to execute such amendment to the Declaration. This Power of Attorney shall be deemed coupled with each owner's interest in his Unit (including his common interest) and shall be irrevocable.

(j) Each and every conveyance, lease and mortgage or other lien made or created on any Unit and all common interests and other appurtenances thereto shall be subject to the provisions of this paragraph.

B. Changes to Other Than Units. Except as to changes to a Unit or appurtenant limited common elements, all changes to the Project or any building thereof or construction of any additional building or structural alteration or addition to any building, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association of Unit owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to vote of 75% of the Unit owners and accompanied by the written consent of the holders of all liens affecting any of the Units, and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction, the Association shall duly file such amendment in said Office, together with a complete set of the floor plans of the Project as so altered, certified as built by a registered architect.

Reserved Rights of Declarant. In addition to any rights reserved in the Declaration, the Declarant hereby reserves the right for itself, its successors and assigns, to

(i) assign Declarant's rights hereunder to a corporation or trustee or any other person or entity by instrument recorded in said Bureau and filed in said office;

(ii) designate and grant utility and other easements for the benefit of the project;

(iii) designate specific agricultural zones within the common elements and make such regulations and take such other actions as Declarant deems appropriate with respect to agricultural operations on the Project.

EXHIBIT "D"

Common Elements. Common elements shall include the elements described below and all other portions of the Property, excluding those items defined as part of any Unit hereof, but including the portion of land on which the Units are located and all elements mentioned in the Act which are actually constructed on the land, and specifically shall include but not be limited to:

a. The land in fee simple;

b. All yards, grounds, planter and planting areas, driveways and access areas;

c. All electrical and mechanical equipment and wiring and other installations serving the Units, including power, lights, water, waste treatment systems, and drainage;

d. All other parts of the Project existing for the common use where necessary to the existence, maintenance and safety of the Project, or normally in common use, e.g., three (3) agricultural accessory buildings and existing shed as shown on the site plan.

**EXHIBIT "E"**

Limited Common Elements. Certain parts of the common elements called the "limited common elements", are designated and set aside for the exclusive use of each Unit, and each Unit shall have appurtenant thereto exclusive easements for the use of such limited common elements. Unless otherwise specified herein, all costs of every kind pertaining to each limited common element, including, but not limited to, costs of landscaping, maintenance, repair, insurance, replacement and improvement, shall be borne entirely by the Unit to which it is appurtenant. The limited common elements so set aside and reserved are as follows:

a. The site of each Unit consisting of the land beneath and immediately adjacent thereto, as shown and delineated on said Condominium Map, together with all improvements located thereon.

CAVEAT: THE LINES DELINEATING THE UNITS' LIMITED COMMON ELEMENT SITES DO NOT REPRESENT THE BOUNDARIES OF SUBDIVIDED LOTS, BUT ONLY THE APPROXIMATE LOCATION OF LIMITED COMMON ELEMENTS APPURTENANT TO EACH SUCH UNIT IN ACCORDANCE WITH THIS DECLARATION AND THE ACT.

The approximate areas of the Units' respective limited common area sites are as follows:

| | | |
|---|---|---|
| Unit A | 21,400 | square feet |
| Unit B | 22,283 | square feet |
| Unit C | 23,126 | square feet |
| Unit D | 15,564 | square feet |

EXHIBIT "F"

The Units' respective limited common area sites have been designated by permanent physical staking on the ground; in the event of any inconsistency between the approximate areas recited herein, the Condominium Map, and the physical staking, the on-site staking shall control.

The following special restrictions apply to the limited common elements:

(i) Buildable Sites: Within the limited common element site of each Unit, a specific portion (approximately 5,000 square feet) of each site (the Unit's "Buildable Site") has been designated for the location of any improvements, including the residential Dwelling Unit and appurtenant improvements.

Residential improvements may not be constructed by the Unit Owner outside the Unit's respective Buildable Site. Non-residential improvements may be constructed in such area (outside the Unit's Buildable Site but within the Unit's limited common element site) so long as (i) such improvements are allowable under applicable land use and health regulations of appropriate governmental organizations, (ii) such improvements do not create nuisances or noxious or hazardous conditions, (iii) such improvements are designed or approved by a licensed architect, and (iv) such improvements do not conflict with the view planes of adjacent Unit owners. The Units' Buildable Sites are designated and delineated on the Condominium Map, to which reference is made.

(ii) View Plane Restrictions: The Unit Owners shall not build improvements within their limited common element sites, or

permit the growth of trees or shrubs, which would obstruct the critical view plane(s) of adjacent Unit(s). The existing critical view planes are identified in that certain unrecorded View Plane Addendum of Palolo Agricultural Terraces Condominium (including photographic exhibits thereto), a copy of which shall be kept and maintained with the permanent records of the Association of Owners, and to which reference is hereby made.

ENCUMBRANCES COMMON TO ALL UNITS (A,B,C & D)

1. REAL PROPERTY TAXES

Refer to the City & County Director of Finance for further information.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC. and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED

DATED : February 19, 1948
FILED : Land Court Document No. 99703
RECORDED : Liber 2121 Page 37
GRANTING : an easement for utility purposes

4. (A) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DEED

DATED : August 10, 1970
RECORDED : Liber 7199 Page 423

(B) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION

DATED : November 14, 1991
RECORDED : Document No. 91-162364

(C) GRANT

TO : PATSY TERUKO MASTERS, wife of William Masters, et al.

DATED : May 28, 1993
RECORDED : Document No. 93-110417
GRANTING : an easement for water pipeline purposes, to allow for installation, maintenance, etc.

EXHIBIT "G"

(D) The terms and provisions, including the failure to comply with the covenants, conditions and reservations, contained in Declaration of Condominium Property Regime for "PALOLO AGRICULTURAL TERRACES" Condominium Project dated July 30, 1993, recorded as Document No. 93-152927, and the By-Laws attached thereto, as the same are or may hereafter be amended in accordance with law, said Declaration or said By-Laws. (Project covered by Condominium Map No. 1928.) Said Declaration was amended by instruments dated October 15, 1993, recorded as Document No. 93-175936, dated May 23, 1994, recorded as Document No. 94-087336, and dated June 16, 1994, recorded as Document No. 94-102167.

(E) The terms and provisions, including the failure to comply with the covenants, conditions and reservations, contained in the By-Laws of the Association of Apartment Owners of said Condominium Project dated July 30, 1993, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-152928, as the same may hereafter be amended.

(F) GRANT

TO : HAWAIIAN ELECTRIC COMPANY, INC.

DATED : July 23, 1993
RECORDED : Document No. 93-194006
GRANTING : a perpetual non-exclusive right an easement to operate, maintain, inspect, etc., for the transmission and distribution of electricity

5. -AS TO ITEM II (APPURTENANT UNDIVIDED PERCENTAGE INTERESTS IN ROADWAY LOTS 20, 21 AND 22):-

(A) All easements in the State of Hawaii of rights-of-way for pipelines now constructed through the property registered and also rights of way for any pipe lines that may be constructed through property, the said rights-of-way being the same as those granted by Deed dated January 15, 1913, recorded in Liber 388 at Page 37.

(B) An easement for right-of-way across the land registered in the State of Hawaii as means of access to Government Forest Reserve lying along the mauka boundary of said land.

(C) -AS TO LOT 21, ONLY:-

(1) An easement for a right-of-way in the State of Hawaii for a 20 foot road through said land from Government Homestead Lots 18 and 19.

(2) An easement in favor of Lot A of said Application, as contained in DEED dated October 10, 1945, filed as Land Court Document No. 80852.

## ENCUMBRANCES SPECIFIC TO INDIVIDUAL UNITS

Unit A:

1. **Terms, easements, restrictions, agreements, reservations, covenants, conditions and provisions contained in Apartment Deed dated June 7, 1994, filed as Land Court Document No. 2161066, recorded as Document No. 94-112415.**

2. The terms and provisions, including the effect of any failure to comply with the covenants, conditions and reservations, contained in that certain unrecorded Declaration of Revocable Trust of Schuyler E. Cole dated July 1, 1980, as amended, of which a Short Form is recorded as Document No. 94-074601.

3. The terms and provisions, including the effect of any failure to comply with the covenants, conditions and reservations, contained in that certain unrecorded Declaration of Revocable Trust of Marilyn Cole dated July 1, 1980, as amended, of which a Short Form is recorded as Document No. 94-074603.

4. MORTGAGE

| | | |
|---|---|---|
| MORTGAGOR | : | SCHUYLER EDWARD COLE, husband of Marilyn Jean Cole, Trustee under that certain unrecorded Declaration of Revocable Trust of Schuyler E. Cole dated July 1, 1980, as amended of which a Short Form is recorded as Document No. 94-074601, and MARILYN JEAN COLE, wife of Schuyler Edward Cole, Trustee under that certain unrecorded Declaration of Revocable Trust of Marilyn Cole dated July 1, 1980, as amended of which a Short Form is recorded as Document No. 94-074603 |
| MORTGAGEE | : | BANK OF HAWAII, a Hawaii corporation |
| DATED | : | October 14, 1994 |
| FILED | : | Land Court Document No. 2189806 |
| RECORDED | : | Document No. 94-173192 |
| AMOUNT | : | $375,000.00 |

Unit B

1. Terms, easements, restrictions, agreements, reservations, covenants, conditions and provisions contained in Apartment Deed dated June 7, 1994, filed as Land Court Document No. 2161067, recorded as Document No. 94-112416.

2. The terms and provisions, including the effect of any failure to comply with the covenants, conditions and reservations, contained in that certain unrecorded Declaration of Revocable Trust of Stuart H. Scott, dated October 5, 1992, as amended.

3. MORTGAGE

| | | |
|---|---|---|
| MORTGAGOR | : | STUART HERBERT SCOTT, also known as STUART H. SCOTT, husband of Hui Fang Scott, also known as Fawn Scott, Trustee under that certain unrecorded Declaration of Revocable Trust of Stuart H. Scott dated October 5, 1992 |
| MORTGAGEE | : | BANK OF HAWAII, a Hawaii corporation |
| DATED | : | October 19, 1994 |
| FILED | : | Land Court Document No. 2189807 |
| RECORDED | : | Document No. 94-173194 |
| AMOUNT | : | $315,000.00 |

Unit C

1. Terms, easements, restrictions, agreements, reservations, covenants, conditions and provisions contained in Apartment Deed dated June 7, 1994, filed as Land Court Document No. 2161068, recorded as Document No. 94-112417.

2. The terms and provisions, including the effect of any failure to comply with the covenants, conditions and reservations, contained in that certain unrecorded Declaration of Revocable Trust of Schuyler E. Cole dated July 1, 1980, as amended, of which a Short Form is recorded as Document No. 94-074601.

3. The terms and provisions, including the effect of any failure to comply with the covenants, conditions and reservations, contained in that certain unrecorded Declaration of Revocable Trust of Marilyn Cole dated July 1, 1980, as amended, of which a Short Form is recorded as Document No. 94-074603.

4. MORTGAGE

| | | |
|---|---|---|
| MORTGAGOR | : | SCHUYLER EDWARD COLE, husband of Marilyn Jean Cole, Trustee under that certain unrecorded Declaration of Revocable Trust of Schuyler E. Cole dated July 1, 1980, as amended of which a Short Form is recorded as Document No. 94-074601, and MARILYN JEAN COLE, wife of Schuyler Edward Cole, Trustee under that certain unrecorded Declaration of Revocable Trust of Marilyn Cole dated July 1, 1980, as amended of which a Short Form is recorded as Document No. 94-074603 |
| MORTGAGEE | : | BANK OF HAWAII, a Hawaii corporation |
| DATED | : | October 14, 1994 |
| FILED | : | Land Court Document No. 2189808 |
| RECORDED | : | Document No. 94-173196 |
| AMOUNT | : | $375,000.00 |

Unit D

1. Terms, easemen , restrictions, agreemen reservations, covenants, conditions and provisions con..ned in Apartment Deed dated June 7, 1994, filed as Land Court Document No. 2161069, recorded as Document No. 94-112418.

2. The terms and provisions, including the effect of any failure to comply with the covenants, conditions and reservations, contained in that certain unrecorded Declaration of Revocable Trust of Schuyler E. Cole dated July 1, 1980, as amended, of which a short form is recorded as Document No. 94-074601.

3. The terms and provisions, including the effect of any failure to comply with the covenants, conditions and reservations, contained in that certain unrecorded Declaration of Revocable Trust of Marilyn Cole dated July 1, 1980, as amended, of which a short form is recorded as Document No. 94-074603.

4. The terms and provisions, including the effect of any failure to comply with the covenants, conditions and reservations, contained in that certain unrecorded Declaration of Revocable Trust of Stuart H. Scott, dated October 5, 1992, as amended.

5. MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

| | | |
|---|---|---|
| MORTGAGOR | : | SCHUYLER EDWARD COLE, husband of Marilyn Jean Cole, Trustee under that certain unrecorded Declaration of Revocable Trust of Schuyler E. Cole dated July 1, 1980, as amended, of which a short form is recorded as Document No. 94-074601, MARILYN JEAN COLE, wife of Schuyler Edward Cole, Trustee under that certain Declaration of Revocable Trust of Marilyn Cole dated July 1, 1980, as amended, of which a short form is recorded as Document No. 94-074603, and STUART HERBERT SCOTT, also known as STUART H. SCOTT, husband of Hui Fang Scott, also known as Fawn Scott, Trustee under that certain unrecorded Declaration of Revocable Trust of Stuart H. Scott dated October 5, 1992 |
| MORTGAGEE | : | FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF AMERICA, a federal corporation |
| DATED | : | October 14, 1994 |
| FILED | : | Land Court Document No. 2189809 |
| RECORDED | : | Document No. 94-173197 |
| AMOUNT | : | $108,000.00 |

END OF EXHIBIT "G"

Palolo Agricultural Terraces Condominium
Estimated Maintenance Fee Breakdown

| | | |
|---|---|---|
| TOTAL ESTIMATED EXPENSES (MONTHLY) | | $2,850 |
| LESS ESTIMATED FARM INCOME (MONTHLY) | | (2,000) |
| EST. MAINTENANCE FEE ASSESSMENT (MONTHLY) say | | $ 850 |
| Unit A | $212.50 | |
| Unit B | $212.50 | |
| Unit C | $212.50 | |
| Unit D | $212.50 | |

Breakdown:

Operating Income (estimate only; based on income/expense data for prior 2-year operating period) Monthly

| | |
|---|---|
| Farm sales (bananas, ti, etc.) | $ 950 |
| Agricultural lease rentals | 950 |
| Interest/misc. income | 100 |
| Est. Farm Operating Income | $2,000 |

| Farm Operating Expenses | Monthly |
|---|---|
| Farm Mgr. (part-time) | $1,000 |
| Fee for Service (tractor, etc.) | 250 |
| Supplies (fertilizer) | 100 |
| Minor Maintenance--water systems | 150 |
| Electric utilities | 200 |
| Insurance | 150 |
| Est. Farm Operating Expenses | $1,850 |

| Other Project Expenses | Monthly |
|---|---|
| Finance/accounting/legal/insurance | $ 200 |
| Minor maintenance--roads, utilities | 250 |
| Reserve account | 550 |
| Est. Other Project Expenses | $1,000 |

| Reserve Account Calculation: | Annual |
|---|---|
| 5 year partial replacement--rock roads | $1,000 |
| 15 year repair--concrete road | 1,500 |
| 5 year partial replacement--copper line | 1,000 |
| 5 year partial replacement--PVC line | 1,000 |
| 5 year partial replacement--utilities | 2,000 |
| Annualized reserve allowance | $6,500 |
| Monthly reserve contribution | $ 550 |

EXHIBIT "H"

## SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement between the Developer and the Escrow, Bank of Hawaii Escrow Department, provides among other things that the Escrow will supervise the signing of all documents, and will hold all funds deposited by the purchaser in an interest-bearing account, with interest to be credited to the purchaser.

The purchaser may obtain a refund of funds deposited with the Escrow (less a cancellation fee of $50.00), if (i) the Developer requests such a refund, or (ii) there is a change in the building plans for the Project, or if the final Public Report differs in a material respect from the Preliminary Public Report (if any). If the Developer notifies the Escrow that the purchaser has defaulted under the Reservation and Sales Agreement, the Escrow will notify the purchaser of the default and thereafter hold the deposited funds as the funds of the Developer.

Under the Escrow Agreement, the Developer may use Buyer's funds deposited into escrow, to cover construction costs of the project.

If a dispute arises or if conflicting demands are made on the Escrow, the Escrow may deposit the funds with the First Circuit Court of the State of Hawaii and await further instruction from the Court. Both the purchaser and the Developer agree to hold the Escrow harmless from any liability or cost arising out of the escrow agreement.

The purchaser is urged to read the Escrow Agreement in its entirety to be advised of all of its provisions.

**EXHIBIT "I"**