CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer JEFFREY W. CUMES and DONALD C. MERWIN
Address P. O. Box 354, Kealakekua, HI 96750

Project Name(*): HOG HEAVEN
Address: 81-5929 Mamalahoa Highway, Captain Cook, HI 96704

Registration No. 3608 (Conversion)

Effective date: December 18, 1996
Expiration date: January 18, 1998

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 of 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 a 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.

[X] No prior reports have been issued.
[ ] 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:

[ ] Required and attached to this report [X] Not Required - disclosures covered in this report.

Summary of Changes from Earlier Public Report

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.

[X] No prior reports have been issued by the developer.

[ ] Changes made are as follows:

SPECIAL ATTENTION

This is a Condominium Project, **not** a subdivision. The land area beneath and immediately appurtenant to each unit is designated as a LIMITED COMMON AREA and is NOT a legally subdivided lot. The doted 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 governmental 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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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 are 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 compose 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 rights 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:

DONALD C. MERWIN
JEFFREY W. CUMES
Name
P. O. Box 354
Business Address
Kealakekua, HI 96750

Phone: (808) 328-8701
(Business)

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

N/A

Real Estate Broker:

None – the project will be offered for sale by the owners (See Page 20)
Name

Business Address

Phone: _____
(Business)

Escrow:

First Hawaii Title Corporation
Name
P. O. Box 1180
Business Address
Kamuela, HI 96743

Phone: (808) 885-4822
(Business)

General Contractor:

N/A
Name

Business Address

Phone: _____
(Business)

Condominium Managing Agent:

The project will be self-managed by the association of Apartment owners
Name

Business Address

Phone: _____
(Business)

Attorney for Developer:

JOSEPH FAGUNDES, III
Name
77-6399 Nalani Street, Suite 3A
Business Address
Kailua-Kona, Hawaii 96740

Phone: (808) 329-4474
(Business)

II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. 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, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

[x] Recorded - Bureau of Conveyances: **Document No. 96-097759**
Book _____ Page _____

[ ] Filed - Land Court: **Document No. _____**

The Declaration referred to above has been amended by the following instrument [state name of document, date and recording/filing information]:

B. **Condominium Map (File Plan) shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment numbers, and dimensions of each apartment.**

The Condominium Map for this condominium project is:

[ ] Proposed

[x] Recorded - Bureau of Conveyances Condo Map No. 2429

[ ] Filed - Land Count Condo Map No._____

The Condominium Map has been amended by the following instrument [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 conduced, 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

[x] Recorded - Bureau of Conveyances: **Document No. 96-097760**
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]:

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%	100%
Bylaws	65%	100%
House Rules	---	N/A

*** The percentages for individual condominiums 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:

During the sales period, the Developer has reserved the right to make changes to the project documents and the project as may be required by law, a title insurance company, an institutional lender or any governmental agency; prior to the conveyance or transfers of the first apartment, for any reason and in any manner, as the developer deems necessary under the circumstances, provided that no such change shall substantially alter or reduce the usable space within the Buyer's Apartment, render unenforceable the Buyer's mortgage commitment, increase the Buyer's share of common expenses, or reduce the obligations of the Developer for common expense on unsold apartments.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

[x] Fee Simple: Individual apartments and common elements, which include 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 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 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 provisions(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 a leasehold condominium 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: 81-5929 Mamalahoa Highway
Captain Cook, Hawaii 96704

Tax Map Key: (3rd) 8-1-023:014 (TMK)

[ ] Address [ ] TMK is expected to change because N/A

Land Area: 5.548 [ ] square feet [X] acre(s) Zoning: Ag 5

Fee Owner: Jeffrey W. Cumes and Heide Cumes husband and wife and Donald C. Merwin a single person
Name
P. O. Box 354
Address
Kealakekua, HI 96750

Sublessor: NA.
Name

Address

C. **Buildings and Other Improvements:**

1. [ ] New Buildings [X] Conversion of Existing Building(s) [ ] Both New Building(s) and Conversion
Building "A" = 2 floors
2. Number of Buildings: 2 Floors Per Building Building "B" = 1 floor

[x] Exhibit A contains further explanation.

3. **Principal Construction Materials:**

[ ] Concrete [ ] Hollow Tile [X] Wood

[ ] Other

4. **Permitted Use by Zoning:**

	No. of Apts.	Use Permitted By Zoning		No. of Apts.	Use Determined By Zoning
[ ] Residential		[ ]Yes [ ] No	[ ] Ohana		[ ] Yes [ ] No
[ ] Commercial		[ ]Yes [ ] No	[ ] Industrial		[ ] Yes [ ] No
[ ] Mix Res/Comm		[ ]Yes [ ] No	[X] Agricultural	2	[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?
[x] Yes [ ] No

5. **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:

[X] Pets: As provided in the bylaws

[ ] Number of Occupants: _____

[x] Other: Except for vehicles belonging to guests, the owners/tenants of the apartments shall keep or park no more than two motor vehicles on the property at any one time. They shall not keep or allow any junked or abandoned vehicle or vessel on the property. The property shall not be used as a location for the repair of any vehicle or vessel if such repair includes painting other than minor touch-up, or the removal and rebuilding of any of a vehicle's or vessel's major parts other than as may be related to minor tune-ups and adjustments. If a vessel is kept on the property it shall be kept in the carport. The property shall not be used for the outdoor cleaning of any large fish or the slaughtering or outdoor cooking of any whole animals Section "G" of the Declaration of Condominium Property Regime contains additional limitations on the use of the apartments

[ ] There are no special use restrictions.

6. **Interior (fill in appropriate numbers)**

Elevators: 0 **Stairways:** A -- 2, B -- 1 **Trash Chutes :** 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Lanai/Patio (sf)
A	1	2/1	3,372	1,727
B	1	2/1	1,048	113

Total Apartments 2

***Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.**

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

Boundaries of Each Apartment:
Each apartment includes, but is not limited to, the exterior finished surfaces of all walls, the doors and door frames, windows and window frames along the perimeters, the air space within the perimeter, and all fixtures originally installed in the apartment. The apartments include the interior load-bearing columns, girders, beams and walls, the undecorated or unfinished surfaces of the floor and ceilings surrounding each apartment and any pipes, shafts, wires, conduits or other utility or service lines running through or servicing only that apartment. which are utilized for or serve more than one apartment. An apartment does not include any pipes, shafts, wires, conduits or other utility or service lines running through or servicing an apartment. which are utilized for or serve more than one apartment.

Permitted Alterations to Apartments:
The crosshatched areas on the floor plans and elevations for Apartment "A" were a part of the design for Apartment "A", but deleted during the construction of Apartment "A". They are permitted additions to Apartment "A" that may be made by the owner of Apartment "A" without first obtaining the consent of the Board of Directors. As to all other alterations or additions within an apartment may be made with prior written notice to the Board of Directors, as long as the structural integrity and soundness of the apartment is not adversely affected. A copy of the owner's plans and appropriate building permits and an estimate of time of construction shall be submitted with the written notice. No exterior alterations other than those reasonably required for maintenance and upkeep may be made without the prior written approval of the Board of Directors that changes if such alterations will change the overall uniform appearance of the Project.

7. **Parking Stalls:**

Total Parking Stalls: 6

	Regular		Compact		Tandem		
	covered	open	covered	open	covered	open	TOTAL
Assigned: (for each unit)		3					6
Guest:							
Unassigned:							
Extra for: Purchase							
Other:							
Total Covered & Open	6		0		0		

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 "B" contains additional information on parking stalls for this condominium project.

8. **Recreational and Other Common Facilities:**

[x] There are no recreational or common facilities.

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

[ ] Laundry Area [ ] Tennis Courts [ ] Trash Chutes

[ ] Other: _____

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

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

[ ] Violations and costs 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):

All of on the structural components, and mechanical and electrical installations material to the use and enjoyment of the project are in good condition consistent with the age of the improvements.

11. **Conformance to Present Zoning Code:**

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

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

b. **Conforming/Non-Conforming Uses, Structures, Lot**

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	Conforming	Non-Conforming	Illegal
Uses	yes		
Structures	yes		
Lot	yes		

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.

D. **Common Elements, Limited Common Elements, Common Interest:**

1. **Common Elements: Common Elements are those parts of the condominium project 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:**

[X] described in Exhibit C

[ ] 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 n o limited common elements in this project:

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

[X] described in Exhibit C.

[ ] 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 _____

[x] as follows:

Apartment "A" : Fifty Percent (50%)
Apartment "B" : Fifty Percent (50%)

Each apartment has an equal undivided fractional interest in all of the common elements. The common interests are equal and not related to or determined by the size of the apartments.

The percentage common interest for each apartment equals one-hundred percent divided by the number of apartments. %Common interest = 100% / 2 = 50%

E. **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 "D" describes the encumbrances against the title contained in the title report dated July 16, 1996 and issued by Chicago Title Insurance Company

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.

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

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

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. 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
First Mortgage Second Mortgage	If Developer defaults or the mortgage or tax lien are foreclosed prior to conveyance to Buyer, Buyer's contract to purchase will be terminated, and all of Buyer's funds will be refunded to Buyer, less escrow cancellation fees. However, should Buyer's deposit be used by the Developer prior to a foreclosure of the mortgage or tax lien, and prior to conveyance to Buyer, Buyer may not be able to recover the deposited moneys.

F. 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:

The Owner/Developer makes no warranties itself and the Owner/Developer is not aware of any warranties from any general contractor, subcontractor or materials supplier that are in existence. The Owner/Developer will assign to the purchasers apartments such warranties as may exist, if any, and the Owner/Developer will cooperate with each apartment owner during the effective period of any warranty, if any, in asserting any claims.

2. Appliances:

None

G. Status of Construction and Estimated Completion Date:

All construction on Apartment "A" has been completed since approximately 1990, and all construction on Apartment "B" has been completed since before 1950.

H. Project Phase;

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

Summary of Developer's plans or rights 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 of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a 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 **[ ] the Developer or the Developer's affiliate.**
[X] self-managed by the Association of Apartment Owners **[ ] 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 "E" contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

The breakdown of estimated initial maintenance fees and maintenance fee disbursements is based on generally accepted accounting principals. It is subject to revision based on actual cost for the items enumerated. The Developer can make no assurances regarding the estimated maintenance fees and maintenance fee disbursements. Variables such as inflation, uninsured casualty loss or damages, increased or decreased services from those contemplated by the Developer, Apartment Owner delinquencies and other factors may cause the actual maintenance fees to be greater or lesser than the estimated maintenance fees. The breakdown of the estimated fees for each Apartment does not include the Buyer's obligation for the payment of real property taxes; estimates of such real property taxes will be provided by the Developer upon request. The estimate of annual maintenance fees and other monthly costs will be updated at least every twelve (12) months and provided to each prospective initial purchaser until all of the apartments are sold.

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:

[X] None **[ ] Electricity** **[ ] Gas** **[ ] Water**

[ ] Sewer **[ ] Television Cable** **[ ] Other _____**

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:

[ ] Notice to Owner Occupants

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

[X] Escrow Agreement dated June 18, 1996
Exhibit "G" contains a summary of the pertinent provisions of the escrow agreement.

[X] Other Specimen Deed

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 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 Changes 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.**
- **C) Bylaws of the Association of Apartment Owners.**
- **D) House Rules. (none)**
- **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 Farm Dwelling Notice**

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 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. 3608 filed with the Real Estate Commission on 8/22/96.

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

The property is zoned for agriculture. The apartments may be used for residential purposes, but only in support of or in conjunction with an agricultural use of the property. The apartments may not be used for any trade or business that is not related to an agricultural use of the property.

Residential Dwellings within State Land Use Agricultural District

Purchasers should be aware that the State Land Use Commission issued a Declaratory Ruling in December, 1994, regarding the construction of residential dwellings on properties located within the State Land Use Agricultural District. In response to said ruling, the Hawaii County Planning Department is requiring applicants for building permits on such lands to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling Notice reads as follows:

FARM DWELLING NOTICE

To: Applicants for Building Permits on Land in Stare Land Use Agricultural District.

This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm d dwelling ".

Farm Dwelling is defined in Chapter 205-4.5(a)(4) as "single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling. "

Penalty for violation of Section 205-4. 5, Hawaii Revised Statutes, is a fine of not more than $5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than $5,000 for any additional violation.

I acknowledge that I have read the above and have been given a copy

_____
Signature of Applicant

_____
Signature of Witness

Disclosure regarding selection of Real Estate Broker

The Developer does not presently intend to use a real estate broker for the sale of apartments in the project. In the event the Developer chooses to use a real estate broker for the sale of an apartment, prior to entering into a binding contract for such sale the Developer shall (1) submit to the Real Estate Commission a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, together with a duly executed disclosure abstract identifying the designated broker, and (2) provide a copy of the disclosure report abstract to the purchaser together with a copy of this public.

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.**

JEFFREY W. CUMES
Name of Developer

By: [signature] May 22, 1996
Duly Authorized Signatory **Date**

JEFFREY W. CUMES, DEVELOPER
print name & title of person signing above

DONALD C. MERWIN
Name of Developer

By: Donald C Merwin May 22, 1996
Duly Authorized Signatory **Date**

DONALD C. MERWIN, DEVELOPER
print name & title of person signing above

Distribution:

Department of Finance, County of Hawaii
Planning Department, County of Hawaii
Federal Housing Administration

EXHIBIT "A"
DESCRIPTION OF BUILDINGS, APARTMENTS

There are two (2) Buildings.

Description of Buildings	**Building "A"**	**Building "B"**
Number of stories	2	1
Number of basements	0	0
Number of apartments	1	1
Approximate age of building	6 years	45 years
Principal materials of construction	wood and concrete	wood
Description of Apartments	**Apartment "A"**	**Apartment "B"**
Apartment number	A	B
Location of apartment	Building "A"	Building "B"
Living area of apartment (Approx.)	3,372 sq. ft.	1048 sq. ft.
Number of bedrooms	2	2
Number of bathrooms	1	1
Number of lanais or patios	1 patio	1 lanai
Area of lanais or patios	1727 sq. ft.	113 sq. ft.
Rooms	1-Studio, 1-Living Room, 1-Kitchen, 1-Study, 1-Dining Room, 2-Bedrooms, and 1-Bath	1-Kitchen, 1-Living Room, 1-Sewing Room, 2-Bedrooms, and 2-Baths.
Immediate common element to which the apartment has access	The Limited Common elements surrounding the apartment as shown on the Condominium Plan	The Limited Common elements surrounding the apartment as shown on the Condominium Plan
Number of parking stalls that are part of the Limited Common Area for each apartment	3	3
Percentage of undivided interest in Common Elements	50%	50%

Net living area of enclosed portions of apartments are measured from interior surfaces of apartment perimeter walls. Lanai or patio areas considered as part of the apartment are computed and reported separately from the apartment area.

NOTE: FLOOR AREAS ARE APPROXIMATE ONLY. THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR APARTMENT, LANAI OR PATIO.

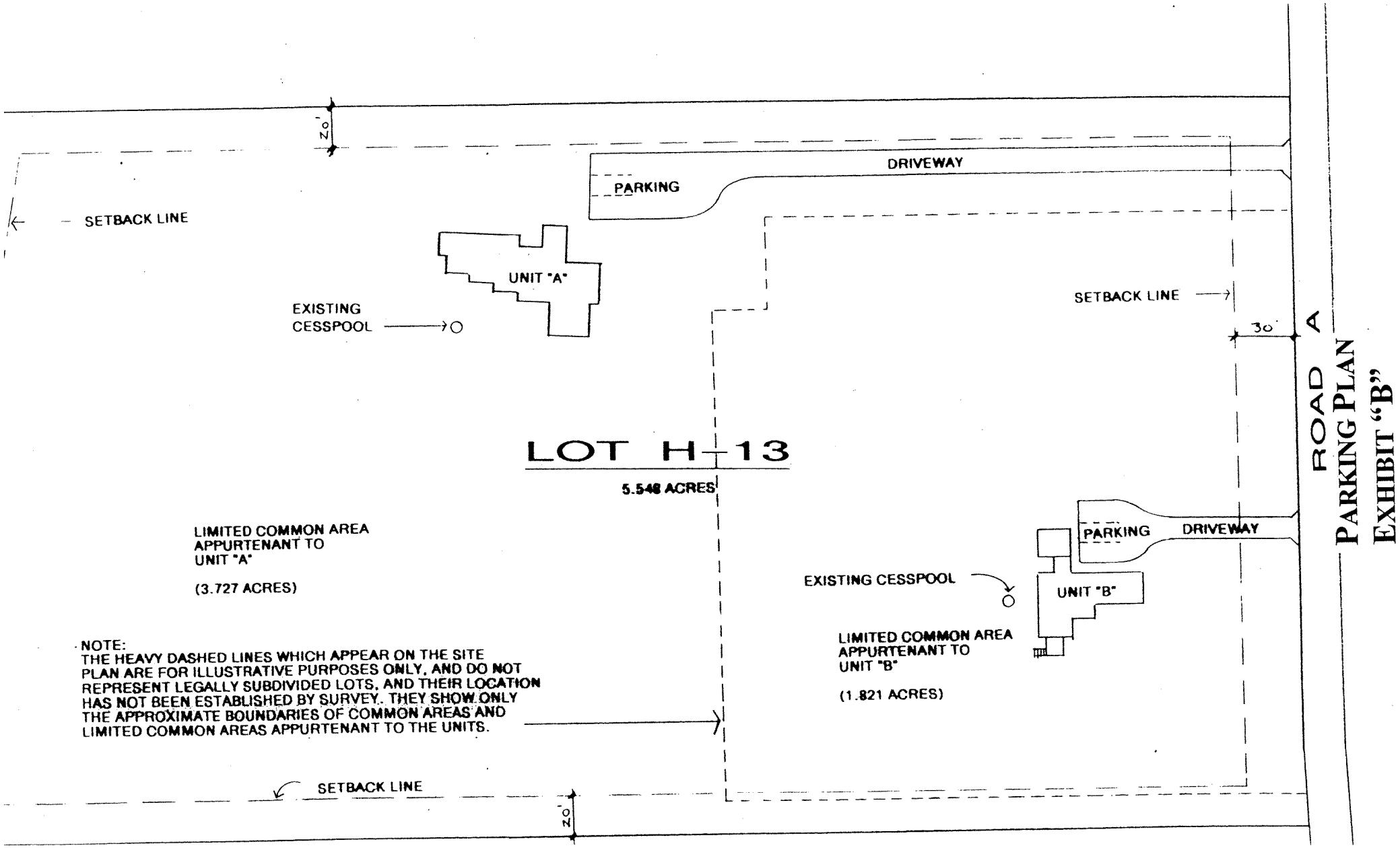

EXHIBIT "B"
PARKING PLAN

EXHIBIT "C"
DESCRIPTION OF COMMON ELEMENTS
AND LIMITED COMMON ELEMENTS

In the various documents relating to this project, the term "Common Element" means the same thing as the term "Common Area", and the term "Limited Common Element" means the same thing as "Limited Common Area".

Common Elements are those portions of the condominium project other than the individual apartments. Common Elements are owned jointly by all apartment owners. The owners of each apartment own an undivided one-half (1/2) interest (undivided 50% interest) in all of the Common Elements for all purposes, including voting. This means that the ownership **does not** depend on the size of an apartment or the use to which an apartment is put. The Common Elements include the land upon which the project is located, in fee simple, and all other portions of the project, other than the Apartments, including, specifically, but not limited to, the Common Elements mentioned in the Act that are actually constructed on the land, and all other portions of the Project necessary or convenient to its existence, maintenance and safety or normally in common use and which are not included as part of an apartment, including but not limited to following:

(a) The land in fee simple;

(b) All ducts, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the project, if any, which serve more than one (1) apartment for services such as power, light, water, gas, sewer, telephone and radio and television signal distribution, if any.

(c) The roof and all load bearing perimeter walls that serve more than one apartment, if any;

(d) Any and all other elements and facilities rationally in common use or necessary to the existence, upkeep and safety of the Project.

(e) The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided in the Condominium Property Act.

(f) Any such partition or division shall be subject to the prior consent thereto by the holder(s) of all mortgage(s) of any condominium Apartment(s) which are filed of record.

(g) All the rights, benefits and privileges, if any, inuring to the land or to the Condominium from all easements shown on the File Plan or listed in Exhibit "A", or acquired subsequent to the creation of those documents.

(h) Any and all other portions of the land and improvements that are not specifically designated for use by one or more specific Apartments, but which are intended for common use, including any directory facilities that may be established, and all other apparatus and installations the use of which exists for, is rationally allocated to or is necessary to the existence, upkeep and safety of more than one Apartment of the Condominium Project or which may otherwise be of common use.

Unless clearly repugnant to the context thereof, the term "Common Elements" also means and includes the limited common elements hereinafter described.

Limited Common Elements are those portions of the Common Elements which are reserved for the exclusive use of the owners of certain apartments. They are often referred to as Limited Common Area.

Limited Common Elements for Apartment "A". The Limited Common Elements for Apartment A are the approximately 3.727 acres of land appurtenant to Apartment "A". The land appurtenant to Apartment "A" is indicated by a dashed line on the Condominium File Plan. The dashed line, metes and bounds, courses and

distances, and statement of a land area on Condominium File Plan **do not** indicate that the land has been subdivided. They only define the Limited Common Area for Apartment "A".

Limited Common Elements for Apartment "B". The Limited Common Elements for Apartment "B" are the approximately 1.821 acres appurtenant to Apartment "B". The dashed line, metes and bounds, courses and distances, and statement of a land area on the Condominium File Plan **do not** indicate that the land has been subdivided. They only define the Limited Common Area for Apartment "B".

Each apartment has an equal undivided one-half (1/2) interest (undivided 50% interest) in all of the common elements for all purposes, including voting.

EXHIBIT "D"

ENCUMBRANCES AGAINST TITLE

The land is in fee simple

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.

6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

7. The lien of any real property taxes due and payable.

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

9. A 15-foot Building Setback Line for future road widening along Road "A", as shown on the map prepared by Island Survey, Inc., dated November 6, 1980.

10. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

DEED

Dated: October 15, 1981
Book: 15941
Page: 613
but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42,

Section 3607 of the United States Code or
(b) relates to handicap but does not
discriminate against handicapped persons.

11. GRANT

In Favor Of: HAWAII ELECTRIC LIGHT COMPANY, INC. and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED
Dated: March 20, 1991
Document No. 91-049341

Purpose: Granting a perpetual right and easement to construct, reconstruct, repair, maintain and operate pole and wire lines and/or underground lines, etc., for the transmission and distribution of electricity

12. MORTGAGE

Mortgagor: DONALD C. MERWIN, a single man, and JEFFREY WINSTON CUMES and HEIDE CUMES, husband and wife
Mortgagee: WESTERN PACIFIC MORTGAGE, INC., a Hawaii corporation
Dated: September 1, 1993
Document No. 93-155486
Principal Sum: $247,500.00
The present amount due should be determined by contacting the owner of the debt.

Through mesne assignments, the foregoing mortgage was assigned by the following:

ASSIGNMENT OF MORTGAGE

Assignor: AMERICAN RESIDENTIAL MORTGAGE CORPORATION, a California corporation
Assignee: WELLS FARGO BANK, N.A.
Dated: May 1, 1994
Document No. 95-061512

13. MORTGAGE

Mortgagor: DONALD C. MERWIN, a single man, and JEFFREY WINSTON CUMES and HEIDE CUMES, husband and wife
Mortgagee: ROYCE LUTHER COLMAN and CATHLEEN FRANCES COLMAN, husband and wife, as Tenants by the Entirety

Dated: September 2, 1993
Document No. 93-155488
Principal Sum: $49,500.00
The present amount due should be determined by contacting the owner of the debt.

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

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF "HOG HEAVEN"

Dated: May 22, 1996
Document No. 96-097759
but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Condominium Map No. 2429 , to which reference is hereby made.

NOTE: The units created by the foregoing instrument are more particularly described in Exhibit "A" attached hereto.

9. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF HOG HEAVEN

Dated: May 22, 1996 Document No. 96-097760 to which reference is hereby made

EXHIBIT "E"

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees

Apartment	Monthly Fee x 12 months =	Yearly Total
A	$20.42	$245.04
B	$40.42	$245.04

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

EXHIBIT "E" (Cont.)

Estimate of Monthly Fee Disbursements

Utilities and Service	Monthly Fee x 12 months =	Yearly Total
Air Conditioning (Service)	0	0
Electricity	0	0
[ ] common elements only	0	0
[ ] common element and apartments	0	0
Elevator	0	0
Gas	0	0
Refuse Collection	0	0
Telephone	0	0
Water and Sewer	0	0
Maintenance, Repairs and Supplies		
Building	0	0
Grounds	0	0
Management		
Management Fee (bookkeeping)	0	0
Payroll and Payroll Taxes	0	0
Office Expenses	0	0
Insurance	0	0
Reserve (*)	$20.00	$240.00
Taxes and Government Assessments	0	0
Audit Fees	0	0
Other Community association Roadway Fee	$20.83	$250.00
TOTAL	$40.83	$490.00

We, JEFFREY W. CUMES and DONALD C. MERWIN, developers for the condominium project HOG HEAVEN, hereby certify that the above estimate of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principals.

JEFFREY W. CUMES

DONALD C. MERWIN

(*) Mandatory reserve in effect January 1, 1993.

Date: May 22, 1996

End Exhibit "E"

EXHIBIT "F"

SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

The Deposit, Receipt and Sales Contract contains the price and other terms and conditions under which a Purchaser will agree to buy an apartment in the project. Among other things, the Deposit, Receipt and Sales Contract states:

1. The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.

2. That the Purchaser acknowledges having received and read a final public report for the Project prior to signing the Deposit, Receipt and Sales Contract.

3. That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefits to be derived from the purchase of an apartment.

4. That the Purchaser's money will be held in escrow, under the terms of the Escrow Agreement. The Purchaser's money can only be disbursed by escrow if the sale is canceled by the Purchaser, if the sale closes according to the terms of the Deposit, Receipt and Sales Contract, if the Purchaser is in default, if the Purchaser dies or is dissolved, or if the Seller and the Purchaser agree otherwise in writing.

5. The Purchaser has a right to cancel the Deposit, Receipt and Sales Contract before the apartment has been transferred to him or at any time within thirty (30) days after delivery of the Public Report, whichever is earlier and to have all money paid into escrow refunded less any escrow cancellation fees and other costs, up to $250, by giving notice to the Seller as provided by HRS § 514-62 (d), as amended.

6. If the Purchaser does not cancel the Deposit, Receipt and Sales Contract as provided in Paragraph 5, and more than thirty days have passed since the delivery of the Public Report to the Purchaser then the Deposit, Receipt and Sales Contract is binding on the Purchaser. If the Purchaser fails purchase the apartment after the Deposit, Receipt and Sales Contract becomes binding upon the Purchaser then the Purchaser will be in default. If the Purchaser is in default them the Seller will be entitled to cancel the Deposit, Receipt and Sales Contract and retain all money paid by Purchaser up to 20% of the sales price as liquidated damages.

7. If the Purchaser dies prior to closing, or in the case of a corporation or partnership, dissolves prior to closing, the Seller may return the Purchaser's payments, without interest and less Escrow cancellation fees and all costs incurred by the Seller, Escrow, or any lending institution in processing this Deposit, Receipt and Sales Contract or by loan application, and this Deposit, Receipt and Sales Contract will be deemed to have been canceled and both the Seller and the Purchaser (including the Purchaser's estate and legal representatives) shall be released from all obligations and liability under that agreement.

8. Requirements relating to the Purchaser's financing of the purchase of an apartment.

   a. The Purchaser's offer is **not** contingent on the Purchaser obtaining financing or on the Purchaser's ability to pay.

   b. In the event the Purchaser wishes to finance the purchase of the Apartment, the Purchaser is required to apply for financing within ten business days from the date the agreement to purchase becomes a binding contract. The Purchaser is required to use his best efforts to obtain

the mortgage loan in good faith; to execute and deliver all necessary documents and disclose all information; to pay any and all costs, charges and expenses in connection with the mortgage loan; to otherwise promptly and diligently comply with all requests of the mortgagee and/or the Seller to apply for, obtain and close the mortgage loan; and, where deemed necessary by the Seller, to make further applications for a mortgage loan.

c. The Purchaser may be required to pay a loan fee in order to get a loan.

d. The Seller has no obligation to arrange for the Purchaser's mortgage or other financing.

9. That the apartment and the Project will be subject to various legal documents which Purchaser should examine, and that the Developer may change these documents under certain conditions.

10. That the Developer makes no warranties regarding the apartment, the Project or anything installed or contained in the apartment or the Project.

11. That the Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price. The closing date will be set by the Seller, but it will not be sooner than sixty (60) days after the Deposit, Receipt and Sales Contract becomes binding.

12. On closing the Purchaser will be responsible for the payment of certain costs in addition to the purchase price. Typical closing costs for the Purchaser and the Seller include:

Item	**Seller**	**Purchaser**
Escrow fees	$212.50	$212.50
Recording		$20 per document
Lien Check	$20	$20
Real Property Tax Check	$2.00	
Documents	$104 for a deed	$135 for a purchase money mortgage
Hurricane Insurance Fund		.001 x the amount of any mortgage
Real Property Taxes & assessments	Prorated	Prorated
Conveyance tax	.001 x sale price	

The Deposit, Receipt and Sales Contract contain various other important provisions relating to the purchase of an apartment in the Project. It is incumbent upon Purchasers and prospective Purchasers to read with care the specimen Deposit, Receipt and Sales Contract on file with the Real Estate Commission.

EXHIBIT "G"

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a Buyer makes pursuant to the Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

1. Escrow will let the Buyer know when payments are due.

2. Escrow will arrange for the Buyer to sign all necessary documents.

3. The Buyer will be entitled to a refund of his or her funds only under certain circumstances as set forth in he Sales Contract. Those circumstances include the following:

a. If the Seller is not able to provide the Buyer with clear title at the time of closing;

b. The Buyer has a right to cancel the Deposit, Receipt and Sales Contract before the apartment has been transferred to him or at any time within thirty (30) days after delivery of the Public Report, whichever is earlier and to have all money paid into escrow refunded less any escrow cancellation fees and other costs, up to $250, by giving notice to the Seller as provided by HRS § 514-62 (d), as amended.

c. If (a) the Buyer has undertaken and performed the Mortgage Loan Acts but his application or eligibility for a loan is rejected or not given unqualified approval within sixty (60) days after application, or (b) the Buyer proposes to pay the Total Purchase Price in cash and has undertaken and performed the Cash Payment Acts, and if the Seller, in its sole discretion, after reviewing the written evidence submitted to it by the Buyer, determines that the Seller is not satisfied as to the Buyer's ability to make such cash payments, then in either of the foregoing events, the Seller may elect to cancel this Contract upon written notice to the Buyer and, upon such cancellation, the Seller shall direct Escrow to refund to the Buyer all sums paid hereunder by the Buyer, less any costs incurred by the Seller, Escrow or any lending institution in processing this Contract or the loan application. In the event, however, that the Seller ascertains that the Buyer has failed to perform the Mortgage Loan Acts, or in the event that the Seller determines in its sole discretion that the Buyer has failed to perform the Cash Payment Acts, whichever is appropriate, then the Buyer shall be in default hereunder, entitling the Seller to cancel this Contract and retain all sums paid hereunder (up to a maximum of twenty percent [20%] of the Total Purchase Price) as liquidated damages.

4. The Escrow Agreement also establishes the procedures for the retention and/or disbursement of a Buyer's funds, and says what will happen to the funds upon a default under the Sales Contract.

a. Retention of Buyer's funds. The Escrow will retain the Buyer's funds until the escrow is ready to close. When the Escrow is ready to close, the Escrow will disburse the Buyer's funds according to the terms of the Sales Contract.

b. Disbursement of Buyer's funds. If for some reason the escrow cannot close, either because of the fault of the Seller or the Buyer, then the Escrow will disburse the Buyer's funds, less escrow costs and fees of up to $250.00, as follows:

(a) To the Buyer if the Buyer is entitled to a refund;

(b) To the Seller if the Buyer is in default (see below); or

(c) In accordance with any subsequent agreement signed by both the Seller and the Buyer.

c. Default. If the Buyer does not do all that the Buyer has promised to do in the Sales Agreement, and if the Seller does all that the Seller has agreed to do, then the Buyer may be in default. If the Buyer is in default then the Seller is entitled to cancel the Sales Contract and to have the Escrow pay to the Seller all sums paid into Escrow up to twenty percent (20%) of the purchase price as liquidated damages. If the Buyer has paid more than twenty percent (20%) of the purchase price into escrow, then the Buyer may be refunded the excess less the Escrow cancellation fee of up to $250.

5. Indemnification of Escrow. In the Sales Contract the Seller and the Buyer agree that they will be jointly and severally liable to Escrow for all losses, costs, damages or money owed, including reasonable attorneys' fees, that Escrow must pay as a result of this Sales Contract. If Escrow has the right to collect these amounts from any other person, then that right shall belong to the Seller after the Seller pays Escrow. However, neither the Seller nor the Buyer has to pay to Escrow any losses, costs, damages, money owned or attorneys' fees if Escrow has done something wrong or doesn't do something it is supposed to do and that act or failure to act is not reasonable or responsible.

The Escrow Agreement contains various other important provisions and establishes certain charges with which a Buyer should be familiar, It is incumbent upon Buyers and prospective Buyers to read with care the executed Escrow Agreement on file with the Real Estate Commission.