



**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

Required and attached to this report                       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.

No prior reports have been issued by the developer.

Changes made are as follows:

<b>SPECIAL ATTENTION</b>
<p>This is a Condominium Project, <b>not</b> 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 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.</p> <p>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.</p> <p>There are two buildings on the project, one of which is a farm dwelling and the other is an agricultural shed, both of which may be defined as an "Apartment" under the Condominium Property Act. The agricultural shed is not intended for human habitation.</p> <p><b>THERE ARE RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT ON THE PROPERTY. THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. ANY DWELLING CONSTRUCTED ON THE PROJECT MUST COMPLY WITH CHAPTER 25 OF THE HAWAII COUNTY CODE AND RULE 13 OF PLANNING DEPARTMENT RULES, AS THOSE RULES MAY BE ALTERED, AMENDED OR REPLACED. THE PURCHASER IS URGED TO CONSULT WITH THE APPROPRIATE COUNTY AGENCIES TO DETERMINE WHETHER THE PURCHASER MAY BUILD A RESIDENTIAL DWELLING UNIT, OR ANY OTHER TYPE OF STRUCTURE, ON THE PROPERTY</b></p> <p>Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways</p> <p style="text-align: center;"><b>THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING</b></p>

## TABLE OF CONTENTS

	page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	
Developer                      Attorney for Developer                      General Contractor	5
Real Estate Broker              Escrow Company                      Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A:	Description of Buildings and Other Improvements
EXHIBIT B:	Parking Plan
EXHIBIT C:	Description of Common Elements and Limited Common Elements
EXHIBIT D:	Encumbrances against title
EXHIBIT E:	Schedule of estimated initial maintenance fees and maintenance fee disbursements
EXHIBIT F:	Summary of Sales Contract
EXHIBIT G:	Summary of Escrow Agreement
EXHIBIT H:	Summary of information on Farm Dwelling Agreements
EXHIBIT I:	Sample Farm Dwelling Agreement
EXHIBIT J:	Notice of Grant of Variance ("Water Waiver")
EXHIBIT K:	Elevation Agreement
EXHIBIT L:	Covenants, Conditions and Restrictions for Keopu Country Estates

## **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: SAMA FARMS, INC.,  
A HAWAII CORPORATION \_\_\_\_\_ Phone: (808) 322-2220  
Name (Business)  
78-6423A MAMALAHOA HWY. \_\_\_\_\_  
Business Address  
HOLUALOA, HI 96725 \_\_\_\_\_

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

FRANCIS WANDELL, PRESIDENT AND TREASURER \_\_\_\_\_  
JEANNIE WANDELL, VICE PRESIDENT AND SECRETARY \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker: None selected, see page 20 \_\_\_\_\_ Phone: \_\_\_\_\_  
Name (Business)  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Escrow: FIRST HAWAII TITLE CORP. \_\_\_\_\_ Phone: (808) 885-4822  
Name (Business)  
P. O. BOX 1180 \_\_\_\_\_  
Business Address  
KAMUELA, HI 96743 \_\_\_\_\_

General Contractor: KEN KILKUSKIE \_\_\_\_\_ Phone: (808) 329-7349  
Name (Business)  
75-5806 KAKALANI ST. \_\_\_\_\_  
Business Address  
KAILUA-KONA, HI 967240 \_\_\_\_\_

Condominium Managing Agent: THE PROJECT WILL BE SELF-MANAGED  
BY THE ASSOCIATION OF APT. OWNERS \_\_\_\_\_ Phone: \_\_\_\_\_  
Name (Business)  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Attorney for Developer: COLIN L. LOVE \_\_\_\_\_ Phone: (808) 329-2460  
Name (Business)  
POST OFFICE BOX 2072 \_\_\_\_\_  
Business Address  
KAILUA-KONA, HI 96745 \_\_\_\_\_

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  
 Recorded - Bureau of Conveyances: Document No. 98-157359  
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  
 Recorded - Bureau of Conveyances Condo Map No. 2813  
 Filed - Land Court 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 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  
 Recorded - Bureau of Conveyances: Document No. 98-157360  
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       Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents:**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	<u>100%</u>
Bylaws	65%	<u>100%</u>
House Rules	---	<u>N/A</u>

\* 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.

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:**

- 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 Sub-leaseholds:**

- 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 Sub-leasehold:**

**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 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: 75-5330 KEOPU PLACE, Tax Map Key: (TMK) (3rd) 7-5-001:091  
HOLUALOA, HAWAII 96725

Address  TMK is expected to change because N/A

Land Area: 1.080  square feet  acre(s) Zoning: A-1a

Fee Owner: ROBERT M. KIMBALL and  
SANDRA KIMBALL  
 Name  
75-5330 KEOPU PLACE  
 Address  
HOLUALOA, HI 96725

Lessor: N/A  
 Name  
 \_\_\_\_\_  
 Address  
 \_\_\_\_\_

C. **Buildings and Other Improvements:**

1.  New Buildings  Conversion of Existing Building(s)  Both New Building(s) and Conversion  
 BUILDING "A" = 2  
 2. Number of Buildings: 2 Floors Per Building BUILDING "B" = 1 1

Exhibit A contains further explanation.

3. **Principal Construction Materials:**

Concrete  Hollow Tile  Wood (BUILDING "A")

Other METAL AND SHADE CLOTH (BUILDING "B")

4. **Permitted Use by Zoning:**

	No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>		No. of <u>Apts.</u>	Use Determined <u>By Zoning</u>
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Agricultural	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other <u>Greenhouse</u>	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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

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:

Pets: As provided in the bylaws

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

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 if one is available. The property shall not be used for the outdoor cleaning of any large fish or the slaughtering or outdoor cooking of any whole animals. The property shall not be used for dog kennels, or chicken or pig farming.

There are no special use restrictions.

6. Interior (fill in appropriate numbers)

Elevators: 0      Stairways: 0      Trash Chutes : 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Other Area (sf)	(Identify)
A	1	_____	1584	_____	_____
B	1	_____	_____	864	Greenhouse

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:

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.



11. Conformance to Present Zoning Code:

a.  No variances to zoning code have been granted.

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

WATER WAIVER – SEE EXHIBIT “J”

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

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

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>    x    </u>	<u>          </u>	<u>          </u>
Structures	<u>    x    </u>	<u>          </u>	<u>          </u>
Lot	<u>    x    </u>	<u>          </u>	<u>          </u>

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

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

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

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

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

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 no limited common elements in this project:

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

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 \_\_\_\_\_

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.

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 Oct. 29, 1998

and issued by FIRST HAWAII TITLE CORPORATION

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.

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.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conversion</b></u>
First Mortgage and Agreement of Sale	If Developer defaults or the mortgage lien is 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 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" apartments has been completed since 1990.

All construction on Apartment "B" greenhouse has been completed since August 1998

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.  
 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).

- 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  Electricity (\_\_\_\_\_ Common Elements Only \_\_\_\_\_ Common Elements & Apartments)  
 Gas (\_\_\_\_\_ Common Elements only \_\_\_\_\_ Common elements & Apartments)  
 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

Specimen Sales Contract  
Exhibit \_\_\_\_\_ "F" contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated August 28, 1998  
Exhibit \_\_\_\_\_ "G" contains a summary of the pertinent provisions of the escrow agreement.

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.
  - 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. 4066 filed with the Real Estate Commission on NOVEMBER 18, 1998.

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

- YELLOW paper stock                       WHITE paper stock                       PINK paper stock

C. Additional Information Not Covered Above

The property is zoned for agriculture. One of the apartments were designed and built to be used for agricultural greenhouse. It is not residential apartments, and they may not be used for residential purposes. 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 The Hawaii County Planning Department is requiring applicants for the first building permit of land zoned for agricultural 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 State 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 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*

Applicants for the second building permit for a dwelling on land zoned for agriculture are required to comply with the provisions of Chapter 25, Article 6, Division 3 of the Hawaii County Code, as amended, and Rule 13 of Planning Department Rules, as amended from. A brief summary of some of their provisions may be found on Exhibit "H".

A copy of the County of Hawaii Planning Department Additional Farm Dwelling Agreement is attached as Exhibit "I".

Disclosure regarding selection of Real Estate Broker

The developer has not selected a real estate broker for the sales of apartments in this 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 s 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 abstract to the purchaser together with a copy of this public report.

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.

SAMA FARMS, INC., A HAWAII CORPORATION

Printed Name of Developer

By: *Francis Wandell*  
Duly Authorized Signatory

8-28-98  
Date

FRANCIS WANDELL, PRESIDENT

Print Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii  
Planning Department, County of Hawaii

**EXHIBIT "A"**  
**DESCRIPTION OF BUILDINGS AND APARTMENTS**

**There are two (2) Buildings.**

<u>Description of Buildings</u>	<u>Building "A"</u>	<u>Building "B"</u>
Number of stories	2	1
Number of basements	0	0
Number of apartments	1	1
Approximate age of building	8 years	6 months
Principal materials of construction	wood	metal and shade cloth

<u>Description of Apartments</u>	<u>Apartment "A"</u>	<u>Apartment "B"</u>
Apartment number	A	B
Location of apartment	Building "A"	Building "B"
Living area of apartment (Approx.)	1584 sq. ft.	864 sq. ft.
Number of bedrooms	3	0
Number of bathrooms	2	0
Number of lanais or patios	0	0
Area of lanais or patios	0	0
Description of rooms in the apartment	3-bedroom, 2-bath, 1-kitchen, 1-living room, 1-dining room, 2-storage rooms, 1-workshop, 1-laundry and a car port	greenhouse
Immediate common element to which the apartment has access	The Limited Common elements surrounding the apartment.	The Limited Common elements surrounding the apartment.
Number of parking stalls that are part of the Limited Common Area for each apartment	2	2
Percentage of undivided interest in Common Elements	50%	50%

Other data necessary for proper

identification of the apartment

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 APPROXIMATELY ONLY. THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR APARTMENT, LANAI OR PATIO.



**EXHIBIT "C"**

**DESCRIPTION OF COMMON ELEMENTS  
AND  
LIMITED COMMON ELEMENTS**

All of the property is Fee Simple.

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.
- (i) There are no Common Elements available for the use of all apartment owners.

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 32,045 square feet 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 15,000 square feet 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.

End Exhibit "C"

**EXHIBIT "D"**  
**ENCUMBRANCES AGAINST TITLE**

The property is fee simple

Tax Key: (3) 7-5-1-91

1. For Real Property Tax due and owing contact the County of Hawaii Department of Finance.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. AGREEMENT

By and Between: DONALD HIDEO IKEDA, husband of June M. Ikeda, RICHARD D. WASNICH, husband of Carole Wasnich, and KEOLA CHILDS, husband of Martha Elizabeth Greenwell Childs, with COUNTY OF HAWAII, DEPARTMENT OF WATER SUPPLY

Dated: March 11, 1983

Book- 17254

Page: 606

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

DEED

Dated- . -,1987

Book: 20551

Page: 642

but omitting any covenants or restrictions if any, based upon color, religion, sex, handicap, familial status, or national unless and only to the extent that said covenant (a) is exempt Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped

5. GRANT

In Favor Of-, HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawaii corporation and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, a Hawaii corporation

Dated; October 20, 1989

Book: 23929

Page: 298

Purpose: granting an easement for utility purposes.

6. MORTGAGE

Mortgagor: SAMA FARMS, INC., a Hawaii corporation  
Mortgagee: GECC FINANCIAL CORPORATION, a Hawaii corporation  
Dated: September 8, 1995  
Document No. 95-118938  
Principal Sum: \$350,000.00  
The present amount due should be determined by contacting the owner of the debt.  
(ALSO AFFECTS OTHER PROPERTY)

The foregoing mortgage was assigned by the following:

ASSIGNMENT OF INSTRUMENTS

Assignor: GECC FINANCIAL CORPORATION, a Hawaii corporation  
Assignee-. GE CAPITAL HAWAII, INC., a Hawaii corporation  
Dated: November 22, 1995  
Document No. 95-165779

7. NOTICE OF GRANT OF VARIANCE

By: SAMA FARMS, INC., a Hawaii corporation  
Dated: May 28, 1997  
Document No. 97-093294

8. As To Parcel First:

- a) Easement "P-1" (10-foot wide) for planting screen purposes (no vehicular access permitted) over and across a portion of Lot 5-A, containing an area of 2,063 square feet, more or less.
- b) Easement "1" for access purposes in favor of lot 5-B and 5-C, containing an area of 863 square feet, more or less.

9. As To Parcel Second:

- a) Rights of others who own undivided interest(s) in the land described herein.

10. AGREEMENT OF SALE

Seller: SAMA FARMS, INC., a Hawaii corporation  
Purchaser: ROBERT M. KIMBALL and SANDRA KIMBALL, husband and wife  
Dated: July 9, 1998

Document No. 98-101599  
Purchase Price \$238,000.00

The foregoing Agreement of Sale was assigned by the following:

ASSIGNMENT OF VENDEE'S INTEREST IN AGREEMENT OF SALE

Assignor: ROBERT M. KIMBALL and SANDRA KIMBALL husband and wife  
Assignee: ROBERT M. KIMBALL and SANDRA KIMBALL husband and wife, as Tenants by the Entirety  
Dated: July 31, 1998  
Document No. 98-117532

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

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF "KEOPU GINGER ESTATES 'EKAHI"

Dated: September 17, 1998  
Document No. 98-157359  
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. 2813 to which reference is hereby made,

13. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF "KEOPU GINGER ESTATES 'ELUA"

Dated: September 15, 1998  
Document No. 98-157360  
to which reference is hereby made

**EXHIBIT "E"**

**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

Estimate of Initial Maintenance Fees

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>	
A	\$00.00	\$00.00
B	\$00.00	\$00.00

Note – no monthly maintenance fees have been estimated for this project because the there are no Common Areas on the project.

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



**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 then 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:

<b>Item</b>	<b>Seller</b>	<b>Purchaser</b>
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 the 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.

4. Subject to the conditions set forth below, the Buyer of a condominium unit under a sales contract shall be entitled to a refund of all payments made to date thereof, less such fee as hereinafter enumerated, if any, and without interest. Escrow agrees to make such refunds to Buyer out of funds then on deposit with Escrow, if Buyer shall so request in writing and any one of the following events shall have occurred.

- a. Escrow has received a written request from Developer to return to the buyer the funds of such buyer then held by Escrow; or
- b. Developer shall have notified Escrow of Developer's exercise to cancel or rescind the sales contract pursuant to any right of cancellation or recession provided therein or otherwise available to Developer; or
- c. With respect to a buyer whose funds were obtained prior to the issuance of the Final Public Report, the buyer has exercised his right to cancel the contract pursuant to § 514A-62, Hawaii Revised Statutes, as amended; or
- d. A buyer has exercised his right to rescind the contract pursuant to § 514A-63, Hawaii Revised Statutes, as amended; or
- e. If, in accordance with Part VI of Chapter 514A, Hawaii Revised Statutes, as amended:
  - i. No sales contract is offered to a buyer who was placed on the Developer's reservation list of owner-occupant applicants; or
  - ii. The buyer has been unable to obtain adequate financing, or a commitment for adequate financing, for his unit within thirty (30) calendar days following the end of the ten (10) calendar day period during which the developer is limited to selling to owner-occupants; or
  - iii. The buyer desires to cancel the contract on account of hardship circumstances such as those set forth in § 514A-104(1) Hawaii Revised Statutes, as amended; or
  - iv. The buyer indicates an intent not to become an owner-occupant of such unit.
- 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.

5. 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.

6. 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.

## Exhibit "H"

### Ohana Dwelling Permit, Farm Dwelling Agreement

*Notice – the following is presented for informational purposes only. It is not intended to be legal advice, and it is not exhaustive of the subject. Anyone whose plans may be affected or limited by the Hawaii County Zoning Code or the Planning Commission Rules is urged to (1) consult their attorney, (2) consult with the County of Hawaii Planning Department, or (3) otherwise obtain a complete understanding on how the County of Hawaii Zoning Code, Building Code and the Planning Commission Rules may affect their plans for development.*

#### Farm Dwelling Agreement

A party seeking a building permit for the second dwelling on the project must enter into a Farm Dwelling Agreement with the Planning Director of the County of Hawaii. The agreement is supplied by the County of Hawaii Planning Department, and you are urged to obtain a copy of the agreement and read it before you commit yourself to purchasing this condominium apartment. In addition to signing the Farm Dwelling Agreement the landowner or lessee is required to provide:

- a. A notarized affidavit that the additional dwelling(s) shall be used for farm related purposes.
- b. Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
- c. Written authorization of the landowner if the request is filed by the lessee
- d. The landowner or lessee shall submit an agricultural development and use program, farm plan, or other evidence of the applicant's continual agricultural productivity or farming operation within the County. Such plan shall also show how the farm dwelling(s) will be utilized for farm-related purposes. To verify the applicant's engagement in any agricultural productivity or farming operation, the following evidences may be submitted:
  1. State of Hawaii Department of Taxation's Gross Income License.
  2. Approved agricultural dedication from the County of Hawaii Department of Finance, Real Property Tax Division.
  3. Receipts of income received from sale of agricultural products.

The County of Hawaii Zoning Code and the Planning Commission Rules may amend and other or additional requirements or limitations may be placed on your ability to build a dwelling on the subject property.

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AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ( )

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TITLE OF DOCUMENT:

---

PARTIES TO DOCUMENT:

---

PROPERTY DESCRIPTION:

---

EXHIBIT "I"

---

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
by and between \_\_\_\_\_ herein called the  
"First Party," whose mailing address is \_\_\_\_\_  
\_\_\_\_\_.

and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling  
located on the property described by Tax Map Key \_\_\_\_\_  
situated within the State Land Use \_\_\_\_\_ district  
and zoned \_\_\_\_\_ by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the \_\_\_\_\_  
(legal owner/lessee)  
of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct an additional farm  
dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s)  
involved in the agricultural or farm-related activity on the building site.
2. The agreement shall run with the land and apply to all persons who may now or in  
the future use or occupy the additional farm dwelling.
3. The landowner or lessee shall record the approved Additional Farm Dwelling  
Agreement with the State of Hawaii, Bureau of Conveyances and/or with the

Land Court System within thirty days from the date of receipt of approval. A copy of the recorded Additional Farm Dwelling Agreement shall be submitted to the Planning Director of the County of Hawaii prior to approval of the building permit.

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may imposed a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY

---

(Legal Owner)

---

(Lessee)

SECOND PARTY

---

Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII        )  
                                  ) SS.  
COUNTY OF HAWAII    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said \_\_\_\_\_, acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

R-690

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JUL 15, 1997 11:15 AM

Doc No(s) 97-093294

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

---

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ( )

Planning Department  
County of Hawaii  
25 Aupuni Street, Room 109  
Hilo, Hawaii 96720

TOTAL NUMBER OF PAGES: 4

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TITLE OF DOCUMENT:

NOTICE OF GRANT OF VARIANCE

---

PARTIES TO DOCUMENT:

SAMA FARMS INC.

---

PROPERTY DESCRIPTION:

TAX MAP KEY: 7-5-001: 091, 3rd DIVISION

---

EXHIBIT "J"

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NOTICE OF GRANT OF VARIANCE

Subdivision Variance (Application #744) by the PLANNING DEPARTMENT of the COUNTY of HAWAII, to permit Applicant(s) Sama Farms, Inc. as holders of that certain property described in Tax Map Key 7-5-001:091 3 rd. Division is granted subject to the following requirements:

1. That a County dedicable public water system is not now or in the foreseeable future available to service the subdivision, and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply, County of Hawaii.

2. That the County will not at any time bear the responsibility of supplying public water to the subdivision.

3. That any future dwellings constructed on the property shall have a minimum of (6000) gallons of water storage facility and a minimum of 3000 gallons of water storage for fire protection.

4. That this notice shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by Planning at the cost and expense of Applicant(s).

5. That any amendments or changes to the subdivision after date of this agreement shall be reported to Planning by the Applicant(s) and are incorporated and made part of this notice by reference thereto.

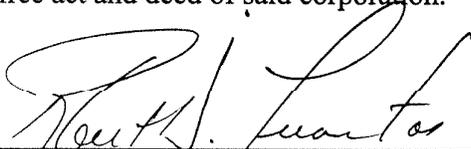
6. That this notice shall be considered a legal covenant running with the land and shall be binding upon the Applicant(s), their heirs, executors, administrators or assigns or its successors and assigns, and shall be incorporated by reference as a exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title of ownership of each subdivided lot.

The PLANNING DEPARTMENT of the COUNTY OF HAWAII hereby stipulates and gives notice that in the event that any of the

STATE OF HAWAII )  
 ) SS:  
COUNTY OF HAWAII )

On this 11<sup>th</sup> day of July, 1997, before me personally appeared FRANCIS WANDELL, to me known (or proved to me on the basis of satisfactory evidence) that he is the President of SAMA FARMS, INC., a Hawaii corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation.

L.S.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: 2/6/98

lots are provided with separate water service through individual meters from the Department of Water Supply, it will upon request of the existing owner of the then existing owner of a subdivision lot with water so provided, consent in writing to a cancellation of the above requirements.

The undersigned hereby acknowledge that they have received Notice of the Grant of Variance and that they agree to abide by the requirements of said variance.

Owner: Sama Farms, Inc. Date 5-28-97

By it's President Francis Wandell  
Francis Wandell

FOR PERSONAL ACKNOWLEDGMENT

STATE OF HAWAII )  
County of Hawaii )

SS:

POST.  
N/P

On this 28<sup>th</sup> day of May, A.D. 19 97,

before me personally appeared Francis R. Wandell

to be known to be the person \_\_\_\_\_ described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Jayme L. Louin  
Notary Public, 3<sup>rd</sup> Circuit,

State of Hawaii

My Commission Expires 12-7-99

L.S.

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES  
DATE MAY 26 1998 TIME 8:00  
DOCUMENT NO. 98-074587

Return by Mail ( X ) Pickup ( ) To:  
Department of Water Supply  
County of Hawaii  
25 Aupuni Street, Room 103  
Hilo, HI 96720

ELEVATION AGREEMENT

THIS AGREEMENT, made this 6 day of May, 1998.

pursuant to Rule 3, Section 3-3, of the Rules and Regulations of the Department of Water Supply, between the DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII, whose principal place of business and mailing address is County Building, 25 Aupuni Street, Hilo, County of Hawaii, State of Hawaii, hereinafter called the DEPARTMENT, and SAMA FARMS INC 78-6423 A Mamalahoa Hwy Holualoa HI 96725

\_\_\_\_\_ hereinafter called the OWNER for himself and on behalf of his heirs, successors, executors, administrators and assigns and each of them,

W I T N E S S E I H:

WHEREAS, the OWNER of that certain parcel of land designated as Tax Map Key (3) 7-5-001:091 (por) Lot 5-2, more particularly described by deed dated the 18th of June, 1997, and recorded in the Bureau of Conveyances of the State of Hawaii on June 27, 1997, in

EXHIBIT "K"

Liber \_\_\_\_\_, page \_\_\_\_\_ or Document No. 97-085315 and/or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_ and noted on Certificate of Title No. \_\_\_\_\_, a copy of which is attached as Exhibit A, desires a connection to the public water system pursuant to the elevation agreement, pressure conditions of Rule 3, Section 3-3, of the Rules and Regulations of the DEPARTMENT.

NOW, THEREFORE, in consideration of the DEPARTMENT granting such water connection pursuant to Rule 3, Section 3-3 of the Rules and Regulations of the DEPARTMENT, the OWNER agrees as follows:

1. DEPARTMENT shall not be responsible for any, inadequate water pressure or dependable water supply to said property;
2. DEPARTMENT and its officers, agents and employees shall be held harmless from and free of all claims and liabilities resulting from, caused by or arising out of any harm or damages connected with the inadequate water service to said property; and
3. The OWNER shall indemnify and defend the DEPARTMENT, its officers, agents and employees from and against all losses, damages, costs, expenses, attorney's fees and other sums which the DEPARTMENT may incur, pay or be obligated to pay on account of any demand, claim or suit for any loss of or damage to property, property right or injury to any person, arising out of, caused by or in any way connected with the inadequate water service to the above-described property, whether attributable to the fault, failure or negligence of the DEPARTMENT or any other fault, failure or negligence.

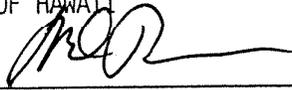
4. OWNER agrees to accept such water service as the DEPARTMENT is able to render and said OWNER agrees to construct, if necessary, and maintain at his expenses a tank of sufficient capacity to furnish a supply of water at such times as the pressure in the water main may be insufficient to supply said property with water.

The undersigned hereby further agrees that all the stipulations and provisions herein contained shall be binding upon his heirs, successors, administrators and assigns, and that this Agreement shall run with the land.

The terms OWNER AND OWNERS, as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof. If this agreement is or shall be signed by two or more owners, all covenants of such parties shall for all purposes be joint and several.

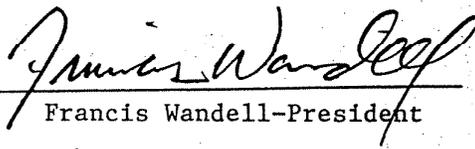
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DEPARTMENT OF WATER SUPPLY  
COUNTY OF HAWAII

By   
Its Manager (MILTON D. PAVAO)

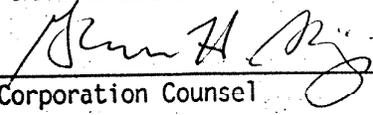
OWNER(S)

SAMA FARMS, INC.

  
Francis Wandell-President

APPROVED AS TO  
FORM AND LEGALITY

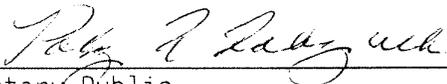
**DEPUTY**

  
Corporation Counsel  
County of Hawaii

Date 5-14-98

STATE OF HAWAII     )  
                              )     SS:  
COUNTY OF HAWAII    )

On this 20th day of May 1998, before me appeared MILTON D. PAVAO, to me personally known, who, being by me duly sworn, did say that he is the Manager of the Department of Water Supply of the County of Hawaii, and that the seal affixed to the foregoing instrument is the seal of said Department and that the instrument was signed and sealed in behalf of said agency by authority of the Water Commission of the County of Hawaii and said MILTON D. PAVAO acknowledged the instrument to be the free act and deed of the Commission.

  
\_\_\_\_\_  
Notary Public     *S.*  
State of Hawaii

My commission expires: July 3, 1999

STATE OF HAWAII

)

SS:

COUNTY OF HAWAII

)

On this 7th day of May, 1998, personally appeared FRANCIS WANDELL, to me personally known, who, being by me duly sworn or affirmed did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.  
such capacity.

*Evelyn Munnite*

\_\_\_\_\_  
Notary Public, in and for said  
County and State

My Commission Expires: 2/6/2003

~~COVENANTS, CONDITIONS AND RESTRICTIONS~~

for

KEOPU COUNTRY ESTATES

During the period commencing with the date of delivery of the Warranty Deed to which these "Covenants, Conditions and Restrictions" are attached until December 31, 2010, and thereafter for successive terms as herein provided, the Buyer agrees that the Buyer, as an Owner, will comply with, and that all Agreements of Sale, mortgages, leases, deeds or other conveyances of the Buyer's property in the "Keopu Country Estates" tendered by the Buyer to others, shall contain and be subject to the following covenants, conditions and restrictions:

1. DEFINITIONS.

The following words, when used in these "Covenants, Conditions and Restrictions" for the "Keopu Country Estates," unless the context otherwise specifies or requires, shall have the following meanings:

1.1 Keopu Country Estates means Lots 1 through 6, inclusive, as shown on the map attached hereto and marked as Exhibit "1" and made a part hereof, together with Road "A" and the various access, utility, cut slope and drainage easements constituting the Buyer's property, all as more particularly described in Exhibit "A" to which these "Covenants, Conditions and Restrictions" are attached, which descriptions are incorporated herein by reference, and also together with all rights and interests appurtenant thereto and all improvements located thereon.

1.2 Lot means Lots 1 to 6 inclusive as shown in Exhibit "1".

1.3 Owner means any person (including Seller) who is the record Owner of a fee simple interest in any Lot and such person's heirs, personal representatives, successors and assigns, in trust or otherwise. Any person who holds any interest in a Lot merely as a security for the performance of any obligation shall not be deemed an Owner.

1.4 Person means a natural individual, corporation, partnership or any other legal entity.

1.5 Record or "recorded" or "recordation" means with respect to any document, the recordation or filing of such document in the Bureau of Conveyances and/or 1. the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as appropriate.

1.6 Roadway means Road "A" as described in Exhibit "B" to which these "Covenants, Conditions and Restrictions" are attached and certain other non-exclusive perpetual access, utility, drainage and cut slope easements as described in Exhibits "C", "D" and "E" to which these "Covenants, Conditions and Restrictions" are attached and in that certain "Grant of Easement and Covenant Running With the Land" recorded in the Bureau of Conveyances of the State of Hawaii in Liber 16804, Page 524, and made a part hereof by reference, including

EXHIBIT "L"

the improvements and facilities thereon and therein, together with and subject to, the rights, privileges, duties and obligations incidental thereto as described in Paragraph 3.1 below.

1.7 Seller means Keola Childs, Donald Hideo Ikeda and Richard Wasnich, Trustee, acting jointly and not individually as joint owners of undivided interests in any one or more of the Lots in the "Keopu Country Estates."

1.8 Water Distribution System means the private water distribution system described in Paragraph 3.2 below, including the facilities, fixtures and equipment comprising such system, together with and subject to the rights, privileges, duties and obligations incidental thereto as described in said Paragraph.

#### 11. USE RIGHTS AND RESTRICTIONS.

2.1 Residential And Agricultural Purposes Only. All Lots within Keopu Country Estates shall be used only for single family residences and accessory uses including servants' and guests' quarters, and agricultural purposes, provided, however, that no commercial livestock ventures shall be allowed, including but not limited to, piggeries, feedlots, slaughterhouses, kennels, poultry farms or commercial riding stables. No hunting shall be allowed on any Lot. Domestic livestock may be kept but must be contained within a secure and well-fenced area on the Lot. Horses may be kept for the use of the Owners of the Lot. No commercial production of fertilizers shall be allowed.

Notwithstanding the foregoing, nothing herein shall be deemed to prohibit one or more principal residence structures to the extent the same shall be allowed pursuant to the "Ohana Zoning" ordinance, or any successor or similar law.

2.2 Temporary Structures, Completion Of Construction. No structure of a temporary character, or any trailers, tents, shacks, garages, barns, quonset huts or other outbuildings shall be used on the Lot at any time as a residence, either temporarily or permanently. Temporary storage structures shall be allowed only during construction of on-site improvements but may remain no longer than twelve (12) months. All structures shall be completed within four (4) months after commencement of construction provided that the exterior of a principal dwelling shall be completed within six (6) months after commencement of construction and the interior within one (1) year of said commencement. No building shall be occupied prior to final inspection and issuance of a Certificate of Occupancy or similar consent from the County government or its designated agency. The term "commencement of construction" shall include the visible demarcation or excavation of building foundations.

2.3 No Unsightliness. No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing, on any Lot: (a) there shall be no use or maintenance as a dumping ground or repository for discarded or old vehicles not in operating condition or regular use, rubbish or trash; (b) no metals, bulk materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate; (c) refuse, garbage and trash shall be kept at all times in covered, sanitary containers out of sight, provided that garbage disposal cans may be put out immediately prior to collection by a garbage collection

service if removed and properly stored promptly after collection; (d) all yards shall be maintained in a reasonably clean condition; and (e) all vacant lots shall be kept reasonably clear of trash and rubbish.

2.4 No Open Storage. No storage of lumber, grass, plant waste, materials, tools or any other items shall be permitted out of doors or in open garages or carports on any Lot where such items may be observed from the Roadway or any adjacent Lot. No vehicles or trailers of any kind or boats shall be parked on the Roadway serving Keopu Country Estates, nor shall trailers or boats be habitually parked within forty (40) feet of any Lot's Roadway boundary line unless within a garage or carport or within the County-stipulated building setback zone for any Lot. No clothesline or laundry washing or drying equipment or fuel storage tanks shall be placed, constructed or permitted to remain on any Lot where such items may be observed from the Roadway.

2.5 Minimum Dwelling Size. Each dwelling, except a second dwelling constructed pursuant to an "Ohana Zoning" permit or similar County permit, shall have a fully enclosed floor area (exclusive of roofed or unroofed porches, lanais, verandas, terraces, garages, hobbyshops or accessory structures) of not less than 1,000 square feet.

2.6 Property Line. No building or structure, including streetlights of any form, except driveways, fences or walls shall be erected, placed or allowed to remain upon any Lot within thirty (30) feet of the Lot/Roadway boundary.

2.7 Radio And Television Equipment. No antennae of any kind, except for single stalk CB or similar type antennae, shall extend or project more than six (6) feet above any roof from the point of its connection to the roof, provided, however, any such antennae shall not extend more than four (4) feet above the height of the uppermost ridgeline of the roof to which it is attached. No dish-type or any free-standing antennae shall be permitted on any Lot unless fully screened from view from the Roadway and the other Lots.

2.8 Construction Material. No used or second-hand lumber or other material shall be incorporated into the construction of any improvements erected upon any Lot, unless used for aesthetic accent purposes. No building which has been previously erected in another location shall be placed, erected or permitted to remain upon any Lot except as conditionally permitted in Paragraph 2.2 above, during the construction of a dwelling.

2.9 Roofing Materials. Roofing materials other than wood shall have a dull, medium to dark color finish, and if made of sheet metal, shall exhibit a varied surface appearance, such as tiling, ribbing, or corrugation, in order to not be offensive to other Lots which may overlook such roof.

2.10 Solar Heating/Power System. The entire frame of any solar energy collector panels and storage devices, whether designed for heating or electrical power generation, when mounted on roof surfaces, shall be fastened directly to the roof surface without any portion of the system being elevated and supported above and away from the roof surfaces by legs, brackets, skirting, or other similar supporting devices; provided, however, that elevated, fully skirted, concealed supports of twelve (12) inches or less shall be allowable. Any roof

mounted water storage tanks and supports shall be painted and maintained in a color matching the overall roof surface.

2.11 Signs. No signs or advertising devices of any nature shall be erected or maintained on any Lot except signs identifying the subdivision or signs necessary to identify the ownership of the Lot and its address, a sign of not more than four (4) square feet necessary to show that the Lot is for sale, and a building contractor's job identification sign of not more than sixteen (16) square feet during the period of actual construction on the Lot.

2.12 Lot Drainage. Each Owner shall be individually and solely responsible for the design and construction of all drainage facilities for his respective Lot and each Owner shall be solely liable for all claims for damages or injuries resulting from such design, construction or the drainage of water from such drainage facilities.

2.13 Streetlights And Exterior Lighting. No streetlight of any type shall be constructed, installed or operated on, within or adjacent to the Roadway unless the same shall be required by ordinance or law applicable to private roads within the County of Hawaii or as a necessary precondition to the dedication of the Roadway as provided in Paragraph 3.3(b) below. Exterior (exterior shall include, without limitation, lanais, porches, patios and eaves) floor or spot lights on any Lot shall be shielded so as to prevent the light source from being directly visible from other Lot.

2.14 Building Height Restriction (Lot 3 Only). No structure, building, temporary or permanent improvement, fence, screen, wall, utility pole or other construction which shall exceed 14 feet in height as measured from the natural grade of lot 3 on the date the Seller sells Lot 3 to an Owner, shall be installed, built, erected or placed on Lot 3, TMK No. (3) 7-5-1-89 within an area between the northern boundary of Lot 3 and a line parallel to and 185 feet south of the northern boundary. In addition, within an area bounded on the north by a line 145 feet south of and parallel to the northern boundary and on the south by a line 185 feet south of and parallel to the northern boundary, no structure, building, temporary or permanent improvement, fence, screen, wall, utility pole or other construction exceeding 8 feet in height shall be installed, built, created or placed. Notwithstanding the height restrictions set forth in this Paragraph 2.14, the Owner of Lot 3 shall have the right to install, within an area bounded on the north by the northern boundary of Lot 3 and bounded on the south by a line 40 feet south of and parallel to the northern boundary, a single pole for utility purposes serving Lot 3.

### III. ROADWAY AND WATER SYSTEMS.

#### 3.1 Roadway Use.

(a) Use. The Roadway will be used by the Owners for roadway purposes of ingress and egress to Lots located in the "Keopu Country Estates" and for utility purposes over or under the Roadway to the Lots and no Owner shall have any right to assign or convey any rights in the Roadway for ingress or egress to any property other than Lots located within the "Keopu Country Estates." The Roadway shall be used for such purposes only by: (1) Owners of Lots in the "Keopu Country Estates," their families, tenants, guests and invitees; (2) those persons and their successors in interest for whom use has

been reserved in the instruments creating, granting or transferring the Roadway and each of its constituent parts; and (3) such other persons as the Seller may designate pursuant to the terms of these Covenants, Conditions and Restrictions and the Warranty Deed And Bill of Sale to which they are attached. No Owner, or any person acting on behalf of an Owner, shall in any way prevent or inhibit free usage of the Roadway by those persons entitled thereto for the purposes and upon the conditions set forth in these Covenants, Conditions and Restrictions.

(b) Driveway Connection. Each Owner shall construct the driveway connection from his Lot to the Roadway in such a manner as to preserve the engineering and physical integrity of the Roadway, particularly the design of the Roadway as it affects drainage. The connection to the Roadway must be paved and maintained with an all-weather surface such as concrete or asphaltic concrete over the entire distance between the Roadway pavement and the boundary lines of the Lot. Each Owner shall individually maintain and pay for the maintenance of his Lot's driveway connection to the Roadway, including the portion within the Roadway shoulder and swale. The Owner shall construct his respective Lot's driveway connection wide enough so that large commercial vehicles, such as ready-mix concrete trucks, do not have to leave the paved surface when turning from the Roadway onto the Lot connection.

(c) Maintenance. The Owner's obligation to pay the costs and fees of operating, maintaining and repairing the Roadway are described in Paragraph 3.3 below.

(d) Additional Access And Use. As set forth in the Warranty Deed And Bill of Sale to which these Covenants, Conditions and Restrictions are attached, the Seller has reserved the right to grant additional access and use rights to properties other than those constituting the "Keopu Country Estates." The Seller has reserved this right subject to their obligation to obtain an agreement from such additional users to pay a pro rata share of the costs and fees for maintenance and operation of the Roadway as described in these Covenants, Conditions and Restrictions. In the event the Seller shall receive any monetary or other consideration for the granting of such right, the Seller reserves the right to receive and retain such compensation without obligation or liability to pay the same over to any Owner in the "Keopu Country Estates" or any other user of the Roadway.

### 3.2 Water Distribution Systems.

(a) Components. The "Water Distribution Systems" for the benefit of the "Keopu Country Estates" shall consist of a "Primary Water Distribution System" and a "Secondary Water Distribution System."

(b) "Primary Water Distribution System". The "Primary Water Distribution System," generally described, is a system which has been constructed by the Seller and others with property developments in the Keopu mauka area. The "Primary Water Distribution System" runs from Mamalahoa Highway below the "Keopu Country Estates" to the top of the Keopu Mauka Subdivision which is immediately south of "Keopu Country Estates." From Mamalahoa Highway the system starts as a 6-inch main connected to the County of Hawaii main by way of a County water meter and runs mauka approximately one-half (1/2) of a mile to a 4-way intersection, where it then becomes a 4-inch main running to the top of

the Keopu Mauka Subdivision. There are several pump and tank stations along the Systems' lines with electrically operated valves and pumps. The water lines and the pumps have been built and installed in conformance with County engineering standards for private water distribution systems. In addition to owning the fixtures, equipment and facilities of the "Primary Water Distribution System," the owners of the System have certain easement rights over various privately owned parcels between the County owned section of Keopu Mauka Road and the mauka terminal end of the System.

The "Primary Water Distribution System" was designed in part to distribute and transmit water to the boundary of the "Keopu Country Estates" subdivision. The system was created and developed according to a "Cost Sharing Agreement" dated November 17, 1980, which provides that the Owners of Lots purchased from the Seller in the "Keopu Country Estates" shall have access to the "Primary Water Distribution System" for water upon the payment of costs and fees as described in the Agreement. The Agreement further provides that all of the Owners of property utilizing the "Primary Water Distribution System" for water shall be required to join an Association of Water Users to be established by the Seller and the other owners of the "Primary Water Distribution System" to take title to and operate and maintain the "Primary Water Distribution System." As set forth in the Warranty Deed And Bill of Sale received by the Owners of Lots in the "Keopu Country Estates," the Exhibits attached thereto and these Covenants, Conditions and Restrictions, it is the obligation of each Lot Owner to participate in and pay a pro rata share of the cost of the "Primary Water Distribution System" and to join in and to pay the costs of the Association of Water Users upon its establishment and assumption of ownership and control of the System.

(c) Secondary Water Distribution System. The "Secondary Water Distribution System" consists of water transmission and distribution lines within the "Keopu Country Estates" subdivision itself. The System connects to the "Primary Water Distribution System" by means of a 4-inch PVC line which connects to the 6-inch main at the Keopu Mauka Road cul-de-sac junction. Each of the Owners in the "Keopu Country Estates" is an owner of an undivided one-sixth (1/6) interest in the "Secondary Water Distribution System," subject only to the right of the other Owners to use the System, the Seller's reservation of the right to add additional users to the System as described in the Warranty Deed And Bill of Sale to which these Covenants, Conditions and Restrictions are attached and subject to the Owners' obligations to pay the maintenance, operating and repair costs and fees of the "Secondary Water Distribution System" as described in Paragraph 3.3 below.

3.3 Maintenance, Operation and Repair Of The Roadway And "Secondary Water Distribution System".

(a) Costs Of Maintenance And Repair. The costs and fees associated with the maintenance and repair of the Roadway and the "Secondary Water Distribution System" shall be paid in equal shares by the Owners of the parcels of real property having use of the Roadway and the System, subject, however, to the terms, conditions and agreements contained in the documents creating, granting or transferring the easements and other rights constituting the Roadway and the System, which may on occasion require a different allocation and payment of the costs of the Roadway. With respect to the costs and fees

attributable to all of the Owners, as a whole, of Lots in the "Keopu Country Estates," those costs and fees shall be paid pro rata by each Lot Owner in equal measure, or, 16.666% of the total, per Lot. In the event the Seller shall grant any right of access to or over the Roadway or access to and use of the System to the owner of any other properties other than Lots located within the "Keopu Country Estates", the access and use of such other persons shall be subject to the obligation of such person to pay a pro rata share of the costs and fees for maintenance and repair of the Roadway and/or the System, as appropriate. Such pro rata share is to be determined by dividing the number one (1) (the numerator) by the number of new parcels or lots to which the Seller shall grant access or use, plus the number of Lots in the "Keopu Country Estates," i.e., six (6), (the denominator). In the case of Roadway costs and fees, the denominator shall in no case include lots or parcels for which access or use of the Roadway has been reserved in the instrument creating, granting or transferring the easements constituting the Roadway and the owners of such lots or parcels shall not be required to pay any costs and fees for such maintenance and repair unless the instruments so require. The costs and fees for maintenance and repair of the Roadway and the System shall be incurred to maintain the Roadway and the System in a condition similar to that existing at the time the Owner purchased his Lot in the "Keopu Country Estates." No Owner shall be required to make any contribution for improvements or repair to the Roadway or the System over and above its existing standard and quality at the time of his purchase without the prior written consent of all of the Owners of Lots in the "Keopu Country Estates" and no person other than an Owner of a Lot in the "Keopu Country Estates" shall have any right to require any maintenance or repairs to the Roadway or the System unless such right shall have been reserved in any instrument creating, transferring or granting any easement constituting the Roadway or the System. For purposes of Paragraphs 3.1, 3.2 and this Paragraph 3.3, costs of maintenance and repair shall be deemed to include: (1) the cost of actual repairs necessary to maintain the Roadway and/or the System in its original condition; (2) the cost of keeping the Roadway clear of debris and natural growth not being otherwise contained and managed by the Owners; (3) the cost of maintaining and stabilizing the Roadway shoulders; and (4) the cost of accounting, billing and collection of the amounts owed by those liable pursuant to this Paragraph 3.3 for the costs and fees of the maintenance and repair of the Roadway and the "Secondary Water Distribution System." For purposes of Paragraphs 3.1, 3.2 and this Paragraph 3.3, costs shall not include any claims, demands, charges or costs for materials provided for or work performed on the Roadway and/or the System prior to the Seller's sale of the Lot covered by these Covenants, Conditions and Restrictions to an Owner. As to such claims, demands, charges or costs for materials provided for or work performed on the Roadway and/or the System prior to the Seller's sale, the Seller shall indemnify and hold the Owner harmless and the Seller hereby warrants and guarantees that all such claims, demands, charges and costs have been, or will be, paid by the Seller at no expense to the Owner.

(b) Dedication. In the event that an Owner or any other person improves the Roadway or the System, or any portion thereof, to County of Hawaii dedicable standards, upon the request of such Owner or other person, the Owners of all Lots agree to join in the dedication of the Roadway and/or the System or the affected portion thereof, to the County of Hawaii, provided that the Owners shall be released from all obligations under these Covenants, Conditions and Restrictions for the portion so dedicated to the County of Hawaii. The Owners

shall remain liable for any costs and fees incurred prior to dedication but no Owner shall be liable without his consent for the cost of improving the Roadway or the System to a condition better than that which existed at the time the Owner acquired his Lot in the "Keopu Country Estates."

(c) Owner Initiative. In the event any Owner deems it necessary to initiate Roadway or System maintenance or repairs, he may do so on his own initiative subject to the conditions stated below and seek reimbursement from the other Owners and users of the Roadway and/or the System pursuant to the terms and conditions of these Covenants, Conditions and Restrictions.

Any Owner proceeding to initiate repairs or maintenance without the written consent of all of the other Owners and users shall not be entitled to reimbursement from the other Owners and users unless he either:

(a) limits the request in billing for reimbursement to the costs of materials used with no charge for labor; or

(b) does each of the following:

(i) seeks bids for the repair and maintenance work from at least two (2) licensed contractors;

(ii) has the work completed by some person (whether licensed or not) at a cost equal to or less than the lowest bid received as provided in (i) above; and

(iii) gives notice to the other Owners in writing thirty (30) days prior to the commencement of the work or signing of a contract for the work, whichever shall first occur, as to what work will be done and the estimated cost of the work; provided, however, that in the event the Roadway shall be impassible at any point, notice need not be given for work to clear the impass and obtain reimbursement therefor.

If another Owner can have the proposed work done for at least ten percent (10%) less than the proposed price as set forth in the notice given pursuant to (iii) above, the work shall be done at the lower price. Without the unanimous consent of all of the Owners and users of the Roadway or the System, or the portion thereof which will be subject to the contract, no contract for maintenance and repair shall have a term exceeding one (1) year. Any Owner contracting with an unlicensed contractor for maintenance or repair work pursuant to this Paragraph 3.3 shall first verify that the contractor is covered by an appropriate general liability insurance policy of a form and amount customarily held by persons operating such a licensed contracting business. Nothing herein shall be deemed to constitute any Owner or user of the Roadway or the System as an agent of any other Owner or user and the rights and liabilities of the Owner and users of the Roadway and the System shall be limited to those specifically set forth in these Covenants, Conditions and Restrictions and only for the purposes herein described.

(d) Lien And Collection. In the event any Owner or other user shall fail to pay his pro rata share of a proper expense for maintenance or repair of the Roadway or the System within thirty (30) days after receiving a written notice of such expense, the amount of such expense and any costs and fees associated or related to the collection thereof, shall constitute a lien upon the property of the Owner or user for whose benefit the Roadway or the System is being utilized. The lien for such expense may be foreclosed upon by an action initiated by an Owner or user who shall have paid their own pro rata share of the expense. Actions to recover a money judgment for the unpaid

expense shall be maintainable by any Owner or user who shall have paid his pro rata expense without foreclosing upon or waiving the lien securing the payment of the same. Such foreclosure action to collect the unpaid expense will be prosecuted in accordance with the provisions of Hawaii Revised Statutes, Chapter 667, as amended. Interest shall accrue at the rate of one and one-half percent (1.5%) per month, from and after the thirty-first (31st) day following the receipt of written notice of the expense by the Owner or user liable therefor. In the event of any legal action to collect the expense, the prevailing party shall be entitled to recover his attorney's fees and costs of court. It shall be the obligation of the Seller, as a condition of granting any right of access to or use of the Roadway or the System to any other person, to obtain the agreement of such person in writing to be bound by the terms and conditions of this Paragraph 3.3 of these Covenants, Conditions and Restrictions, and such agreement shall be recorded and noted on the document of title of such person for the property which receives the benefit of such access or use.

(e) Notices. For purposes of this Paragraph 3.3, notices shall be deemed as given on the day when they has been personally delivered to the addressee or when deposited in the United States Post Office, postage pre-paid, addressed to the Owner or user at the address shown on the document of title for the property for whose benefit the Roadway or the System is being used.

3.4 Indemnity And Hold Harmless Agreement. Except as may be otherwise provided in a specific written agreement, each Owner and user hereby releases and discharges the Seller from any and all claims, demands or causes of action which the Owner has or may have, whether arising in equity or in law, for any injuries or damages which might be suffered or paid by the Owner or user arising from the use, ownership, control, design, construction, repair or maintenance of the Roadway and/or the "Primary and Secondary Water Distribution Systems" and/or the improvements thereon or thereof, and each Owner agrees to hold harmless and indemnify the Seller from any and all claims, demands, costs and losses arising from such use, ownership, control, design, construction, repair or maintenance by the Seller from and after the date that the Owner shall have accepted the Warranty Deed And Bill of Sale to which these Covenants, Conditions and Restrictions are attached.

#### IV. MISCELLANEOUS.

4.1 Compliance With Laws And Ordinances. The Buyer will comply with all Federal, State and County laws, statutes and ordinances with respect to the construction of improvements or use of the property. Failure to comply with any such law, statute or ordinance shall be a breach of these covenants and the Seller or any other Owner may bring an action for equitable relief or damages based on such breach pursuant to Paragraphs 4.4 and 4.5 below.

4.2 Covenants To Run With Land. All of the foregoing restrictive covenants, conditions and restrictions shall run with and benefit the Lots constituting the "Keopu Country Estates" subdivision, and the Roadway and easements appurtenant thereto and any deed, mortgage, Agreement of Sale, lease or other document of conveyance of any right or interest in any Lot shall state that the Lot described in any such document is subject to these covenants, conditions and restrictions.

4.3 Successive Terms And Amendment. During the period from the date of delivery of the Warranty Deed to which these "Covenants, Conditions and Restrictions" are attached until December 31, 2010, the foregoing covenants, conditions and restrictions shall continue in force and effect and shall bind the Buyer, his heirs, personal representatives, successors and assigns, in trust or otherwise, and thereafter, during successive ten (10) year periods following the year 2010, except to the extent that the same shall be modified or amended prior to commencement of any such ten (10) year period by agreement of the Owners of a majority of the Lots, including any Lots owned by the Seller. These covenants, conditions and restrictions may be amended at any time by the unanimous affirmative vote of the Owners of all of the Lots including the Seller, if the Seller still owns any Lot or Lots. Any amendment of these covenants, conditions and restrictions shall not take effect until a declaration amending the same, signed by all of the Owners, including the Seller if the Seller owns any Lot or Lots, is recorded.

4.4 Enforcement. Jurisdiction may be taken by the Seller, their successors and assigns, or any Owner of any Lot, to restrict or prevent by injunction, mandatory or restraining, any violation or threatened violation of any of these covenants, conditions and restrictions without prejudice to the right of the Seller or their successors and assigns or any other Owner of any Lot, to adopt or pursue any other remedy thereafter for the same breach or failure, or for any subsequent breach or failure, or to adopt or pursue suitable process to recover damages for any such breach or failure. The Seller shall retain their rights to enforce these covenants for so long as the Seller retains any ownership interest or any security interest in any Lot. Neither the Seller nor any of the Owners shall have any legal obligation to enforce these covenants, conditions and restrictions.

4.5 Attorney's Fees. Should any Owner, in an action for equitable relief or damages, be found by any court to have violated these covenants, conditions and restrictions, said offending Owner shall pay reasonable attorney's fees to the prevailing party in the action.

4.6 Severability. Invalidity or unenforceability of any provision of these covenants, conditions and restrictions, in whole or in part, shall not affect the validity or enforceability of any other provision, or any valid and enforceable part of a provision, of these covenants, conditions and restrictions.

4.7 No Waiver. Failure to enforce any provision of these covenants, conditions and restrictions shall not operate as a waiver of any such provision or of any other provision herein.

4.8 Benefit. These Covenants, Conditions and Restrictions shall be for the benefit of and bind the Seller and each and every Owner of any Lot in the "Keopu Country Estates" and any other person or persons who shall by contract agree to be bound by these Covenants, Conditions and Restrictions or any part thereof and shall be for the benefit of and run with the lands of such persons which shall in any way benefit from the terms and conditions hereof.

EXHIBIT "H"

EASEMENT 1 (REVISED)  
 (20-Ft. Wide)  
 Over and Across Lots 5 and 6  
For Utility Pole Purposes

Land situated approximately 1,600 feet Easterly of Mamalahoa Highway at Keopu 2nd, North Kona, County of Hawaii, Hawaii.

Being portions of:

Lots 5 and 6; and  
 Grant 727 to Kaluahinenui.

Beginning at the Northeast corner of this easement, being also the Northeast corner of Lot 5 and on the Southerly side of an existing Private Road (30-ft. wide), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA (NORTH MERIDIAN)" being 6,176.04 feet North and 14,171.72 feet East and running by azimuths measured clockwise from True South:

1. 330° 05' 30" 560.33 feet along the remainder of Grant 727 to Kaluahinenui to a point;
2. 68° 04' 20.20 feet along stonewall, Lot A-1 of the Keopu Mauka Subdivision and along Royal Patent 4475, Land Commission Award 7713, Apana 5 to V. Kamamalu to a point;
3. 150° 05' 30" 560.27 feet along the remainders of Lots 6 and 5 and along the remainder of Grant 727 to Kaluahinenui to a point;
4. 247° 53' 45" 20.19 feet along an existing Private Road (30-ft. wide) to the point of beginning and containing an area of 11,207 Square Feet.

20551 685

STATE OF HAWAII )  
 ) S.S.  
CITY AND COUNTY OF HONOLULU )

On this 8<sup>th</sup> day of April, 1987, before me personally appeared DONALD HIDEO IKEDA, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

Kathleen R. Hameda  
Notary Public, State of Hawaii

My commission expires: NOVEMBER 6, 1988

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20551 686

STATE OF HAWAII                    )  
  )    ss.  
CITY AND COUNTY OF HONOLULU    )

On this 8<sup>th</sup> day of April, 1987, before me appeared RICHARD WASNICH, to me personally known, who being by me duly sworn, did say that he is the Trustee of the RICHARD WASNICH REVOCABLE TRUST dated October 28, 1982, and that the foregoing instrument was signed in behalf of said Revocable Trust, and the said RICHARD WASNICH acknowledged that he executed said instrument as the free act and deed of said RICHARD WASNICH as Trustee of the RICHARD WASNICH REVOCABLE TRUST.

Kathleen R. Amida  
Notary Public, State of Hawaii

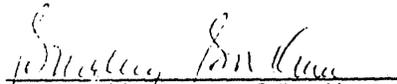
My commission expires: NOVEMBER 6, 1988

LS

20551 687

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 21<sup>st</sup> day of December, 1987, before me personally appeared KEOLA CHILDS, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

  
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Notary Public, State of Hawaii

My commission expires: 2-27-91

20551 688

STATE OF HAWAII                    )  
  ) ss.  
CITY AND COUNTY OF HONOLULU    )

On this 4 day of April, 1987, before me personally appeared SAMUEL S. LUKE, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: 2-27-91