

CONDOMINIUM PUBLIC REPORT

Prepared &  
Issued by:

Developer SAMUEL S. STOLTZFUS, JR.  
Address POST OFFICE BOX 21, KAILUA-KONA, HI 96745

Project Name(\*): MA'LA AINA I  
Address: 76-6017-E MAMALAHOA HWY., HOLUALOA, HI 96725

Registration No. 4179  
(Conversion)

Effective date: June 3, 1999  
Expiration date: July 3, 2000

Preparation of this Report:

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

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

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

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

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

Type of Report:

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

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

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

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

(\*) Exactly as named in the Declaration

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

- Required and attached to this report                       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>THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING</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:	<i>Schedule of estimated initial maintenance fees and maintenance fee disbursements</i>
EXHIBIT F:	Summary of Sales Contract
EXHIBIT G:	Summary of Escrow Agreement
EXHIBIT H:	House Rules
EXHIBIT J:	Elevation Agreement

## **General Information On Condominiums**

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

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: SAMUEL S. STOLTZFUS, JR. Phone: (808) 322-2578  
Name (Business)  
POST OFFICE BOX 21  
Business Address  
KAILUA-KONA, HI 96745

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

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker: BRIAN McCOURT Phone: (808) 329-1010  
Name (Business)  
KNUTSON & ASSOCIATES  
75-6082 ALII DRIVE, SUITE 8  
Business Address  
KAILUA-KONA, HI 96740

Escrow: OLD REPUBLIC TITLE AND Phone: (808)334-1777  
ESCROW SERVICE OF HAWAII (Business)  
Name  
75-166 KALANI ST., SUITE. 203  
Business Address  
KAILUA-KONA, HI 96740

General Contractor: N/A Phone: \_\_\_\_\_  
Name (Business)  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Condominium Managing Agent: THE PROJECT WILL BE SELF-MANAGED BY THE Phone: \_\_\_\_\_  
ASSOCIATION OF APARTMENT OWNERS (Business)  
Name  
\_\_\_\_\_  
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. 00-057345  
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. 2877

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. 99-057346  
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 March 10, 1999             Developer does not plan to adopt House Rules

PLEASE ASK TO SEE THE "PROJECT RULES" IF INTERESTED.

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>100%</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 to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause 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: 76-6017-E MAMALAHOA HWY. HOLUALOA, HI 96725 Tax Map Key: (TMK) (3rd) 7-6-05:027

Address  TMK is expected to change because N/A

Land Area: 1.537  square feet  acre(s) Zoning: A-1a

Fee Owner: SAMUEL S. STOLTZFUS, JR.  
 Name  
POST OFFICE BOX 21,  
 Address  
KAILUA-KONA, HI 96745

Lessor:  
 Name  
 Address

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 2 Floors Per Building 2

Exhibit A contains further explanation.

3. Principal Construction Materials:

Concrete  Hollow Tile  Wood

Other \_\_\_\_\_

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 checked="" 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>2</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 _____	_____	<input 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: According to the Bylaws and House Rules

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

Other: Except for vehicles belonging to guests, the owners/tenants of the apartments shall keep or park no more vehicles on the project than there are assigned parking spaces. 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: A: 1 B: 1                      Trash Chutes : 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Other Area (sf)	(Identify)
A	1	3/3	1925	1070/842	LANAI/PATIO
B	1	3/3	2405	1070/842	LANAI/PATIO

ALSO A SINGLE STORY BUILDING WITH A GUEST ROOM AND A STORAGE BUILDING PER CONDOMINIUM MAP 2877

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



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:

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 April 16, 1999

and issued by OLD REPUBLIC TITLE AND ESCROW OF HAWAII

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

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

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

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<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	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:**

Construction on Apartment "A" was completed more than five years ago.

Construction of Apartment "B" was completed between four and five years ago.

H. **Project Phase:**

The developer  has  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):



**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 FEBRUARY 21, 1999  
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 Elevation Agreement which sets forth the obligations of the owners in return for water connections (See Exhibit "I")

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. 4179 filed with the Real Estate Commission on May 17, 1999.

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**

There are various outbuilding and auxiliary improvements within the limited common areas appurtenant to both Apartment "A" and Apartment "B". The owner of the apartment within whose limited common area the outbuildings and auxiliary improvements are situated are entitled to the sole and exclusive use of such outbuildings and auxiliary improvements, and they are solely responsible for their maintenance, repair or demolition.

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.

SAMUEL S. STOLTZFUS, JR.

Printed Name of Developer

By:  3/10/99  
Duly Authorized Signatory Date

SAMUEL S. STOLTZFUS, JR. FEE OWNER AND DEVELOPER

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**

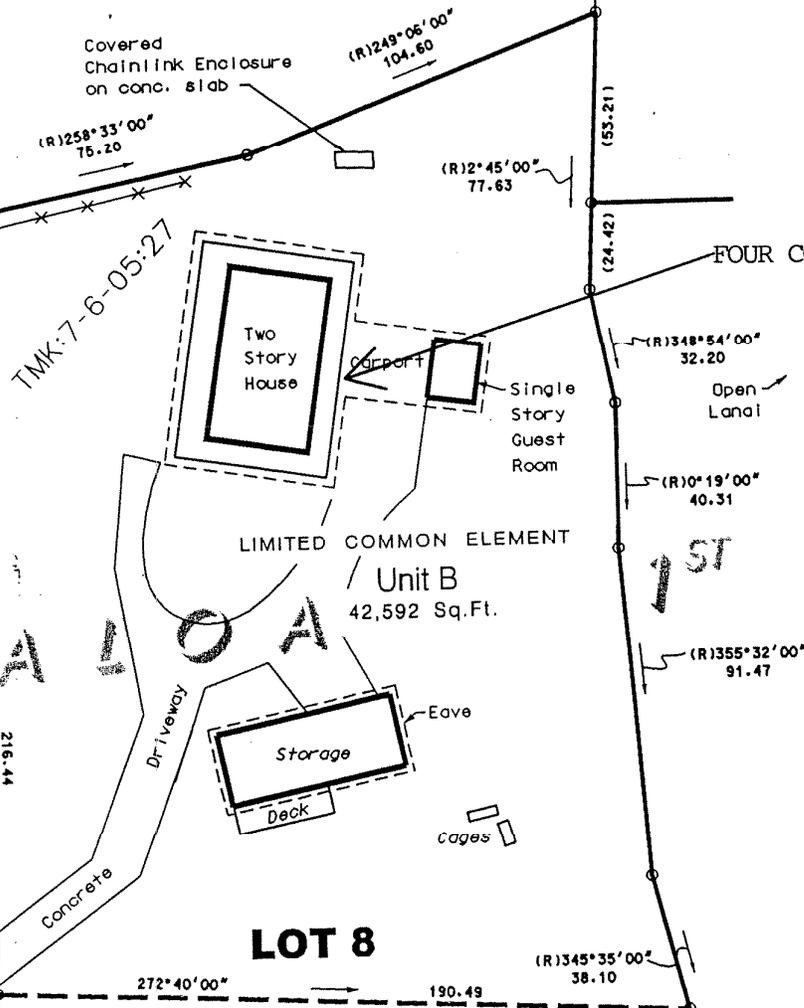
**There are two (2) Buildings.**

<u>Description of Buildings</u>	<u>Building "A"</u>	<u>Building "B"</u>
Number of stories	2	2
Number of basements	0	0
Number of apartments	1	1
Approximate age of building	4 year	6 years
Principal materials of construction	wood	wood
<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.)	1925 sq. ft.	2405 sq. ft.
Number of bedrooms	3	3
Number of bathrooms	3	3
Number of lanais	1	1
Area of lanai	1070 sq. ft.	1070 sq. ft.
Number of patios	1	1
Area of patios	842 sq. ft.	842 sq. ft.
Description of rooms in the apartment	3-bedroom,. 3-bath, 1-dining room, 1-living room, 1-kitchen, 1-recreation room, 1-four car garage	3-bedroom,. 3-bath, 1-dining room, 1-living room, 1-kitchen, 1-guest room, 1-recreation room, 1-four car garage
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	4	4
Percentage of undivided interest in Common Elements	50%	50%

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

NOTE: FLOOR AREAS IN THE TABLE ON THE FOREGOING PAGE ARE APPROXIMATELY ONLY. THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR APARTMENT, LANAI OR PATIO.

TMK:7-6-05:46



CON  
LOT 8 (Port  
HOLUA

AT HOLUALOA 1st.

L  
U  
A  
L  
O  
A

1<sup>ST</sup> & 2<sup>ND</sup>

**LOT 8**

6-05:4

TMK:7-6-05:2

LIMITED COMMON ELEMENT  
Unit A  
24374 Sq.Ft.



FOUR COVERED PARKING SPACES  
(REGULAR)

McIntosh, Surveyor  
McIntosh Consulting  
-Kona, Hawaii 96745-0058

EXHIBIT "B"  
PARKING PLAN

**NOTE**  
LIMITED COMMON AREA  
The "dash line" between  
delimitates the limited c  
land area for each un  
to represent a legally

**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 Areas 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 24,374 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 42,592 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.

EXHIBIT "D"  
ENCUMBRANCES AGAINST TITLE

The property is fee simple

1. Any Real Property Taxes that may be due and owing – check with the County of Hawaii Department of Taxation for taxes due and owing
2. Title to all minerals and metallic mines reserved to the State of Hawaii.
3. GRANT OF EASEMENT

Dated March 11th, 1991  
Recorded June 10th 1991 in the Bureau of Conveyances, State of Hawaii,  
as Document No. 91-075177  
In favor of: HAWAIIAN ELECTRIC COMPANY, INC. and GTE  
HAWAIIAN TELEPHONE COMPANY INCORPORATED

4. ELEVATION AGREEMENT  
Dated April 22nd 1993  
Recorded May 24th, 1993 in the Bureau of Conveyances, State of Hawaii,  
as Document No. 93-082922  
Re Connection to the public water system pressure conditions

5. Mortgage to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof

Amount \$260,000.00  
Mortgagor SAMUEL STOLTZFUS, JR., a single man  
Mortgagee U.S. FINANCIAL MORTGAGE CORP., a Hawaii corporation  
Dated February 1st 1994  
Recorded February 8th, 1994 in the Bureau of Conveyances, State of Hawaii,  
as Document No. 94-021741

The mortgagee's interest under said mortgage was assigned to TEXAS COMMERCE BANK, NATIONAL ASSOCIATION, AS CUSTODIAN FOR SAXON MORTGAGE CORPORATION, by instrument,

Dated November 28th, 1995  
Recorded December 18th, 1995 in the Bureau of Conveyances, State of Hawaii, as Document No. 95-163162

6. Mortgage to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof

Amount \$145,000.00

Mortgagor	SAMUEL STOLTZFUS, JR., a single man
Mortgagee	GE CAPITAL HAWAII, INC., a Hawaii corporation
Dated	April 3rd, 1997
Recorded	April 9th, 1997 in the Bureau of Conveyances, State of Hawaii, as Document No. 97-044968

Returned to Address: 745 Fort Street, Honolulu, HI 96813

NOTE:

Said Mortgage appears to secure a Revolving Line or Equity Line of Credit. If this loan is to be paid off and released through this transaction, the Company will require a written statement from the Lender that a freeze is in effect on the account, and that the demand for payoff from the Lender states that a release will be issued upon payment of the amounts shown therein.

The Lender may be assisted in freezing this account by receiving a creditline freeze authorization letter signed by the Borrower with the request for payoff demand. A sample copy of a typical such letter is available from the Company upon request.

7. Condominium Map No. 2877, filed in the Bureau of Conveyances, State of Hawaii.
8. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, easements and by laws set forth in the Declaration of Condominium Property Regime recorded April 14th, 1999 in the Bureau of Conveyances, State of Hawaii, as Document No. 99-057345.
9. By-Laws of the Association of Apartment Owners of MA'LA AINA I, recorded April 14th, 1999 in the Bureau of Conveyances, State of Hawaii, as Document No. 99-057346.

End of Exhibit "D"

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 there are no Common Areas available for the use of all Apartment owners. Each Apartment owner is required to maintain its own limited common area

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

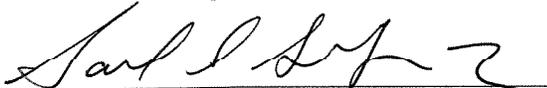
EXHIBIT "E" (Cont.)

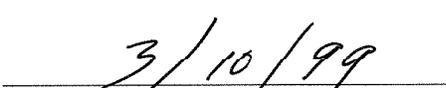
Estimate of Monthly Fee Disbursements

	<u>Monthly Fee x 12 months = Yearly Total</u>	
<b>Utilities and Service</b>		
Air Conditioning (Service)	0	0
Electricity	0	0
<input type="checkbox"/> common elements only	0	0
<input type="checkbox"/> common element and apartments	0	0
Elevator	0	0
Gas	0	0
Refuse Collection	0	0
Telephone	0	0
Water and Sewer	0	0
 <b>Maintenance, Repairs and Supplies</b>		
Building	0	0
Grounds	0	0
 <b>Management</b>		
Management Fee (bookkeeping)		
Payroll Office		
Insurance Reserve (*)		
Taxes and Audit Fees		
Other		
 <b>TOTAL</b>		

Developer discloses that no reserve study was done in accordance with Section 514A-83.6 HRS and replacement reserve rules, Subchapter 6 Title 16, Chapter 107 Hawaii Administrative Rules as amended.

I, SAMUEL S. STOLTZFUS, JR. as developer for the MA'LA AINA II condominium project hereby certify that the above estimate of initial maintenance fee assessment and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles

  
Signature

  
Date

(\*)Mandatory reserve assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserve", the Developer has conducted a reserve study in accordance with §514A-836, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514-A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first meeting  
End Exhibit "E"

**EXHIBIT "F"**

**SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT**

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

1. The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.
2. That the Purchaser acknowledges having received and read a final public report for the Project prior to signing the Deposit, Receipt and Sales Contract.
3. That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefits to be derived from the purchase of an apartment.
4. That the Purchaser's money will be held in escrow, under the terms of the Escrow Agreement. The Purchaser's money can only be disbursed by escrow if the sale is canceled by the Purchaser, if the sale closes according to the terms of the Deposit, Receipt and Sales Contract, if the Purchaser is in default, if the Purchaser dies or is dissolved, or if the Seller and the Purchaser agree otherwise in writing.
5. The Purchaser has a right to cancel the Deposit, Receipt and Sales Contract before the apartment has been transferred to him or at any time within thirty (30) days after delivery of the Public Report, whichever is earlier and to have all money paid into escrow refunded less any escrow cancellation fees and other costs, up to \$250, by giving notice to the Seller as provided by HRS § 514-62 (d), as amended.
6. If the Purchaser does not cancel the Deposit, Receipt and Sales Contract as provided in Paragraph 5, and more than thirty days have passed since the delivery of the Public Report to the Purchaser then the Deposit, Receipt and Sales Contract is binding on the Purchaser. If the Purchaser fails purchase the apartment after the Deposit, Receipt and Sales Contract becomes binding upon the Purchaser then the Purchaser will be in default. If the Purchaser is in default 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

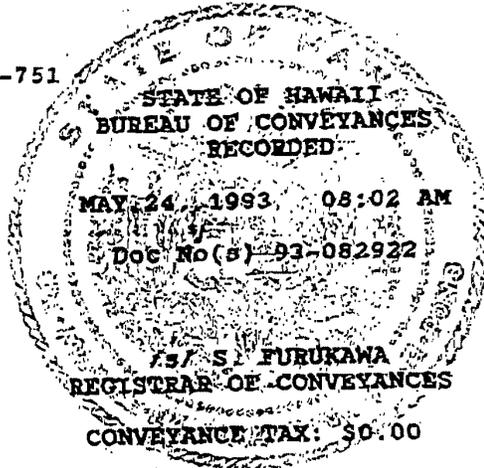
(c) In accordance with any subsequent agreement signed by both the Seller and the Buyer.

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.

R-751



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 22<sup>nd</sup> day of April, 19 93,

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 SAMUEL STOLTZFUS, JR., whose mailing address is P. O. Box 21, Kailua-Kona, Hawaii 96745

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 7-6-05-27 (Lot 8), more particularly described by deed dated the 5<sup>th</sup> of December, 19 83, and recorded in the Bureau of Conveyances of the State of Hawaii on April 18, 19 84, in Liber 17810, page 129, 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

EXHIBIT "I"

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.

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 tenants, 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 H. William Sewake  
Its MANAGER (H. WILLIAM SEWAKE)

OWNER(S)  
Samuel Stoltzfus, Jr.  
SAMUEL STOLTZFUS, JR.

APPROVED AS TO  
FORM AND LEGALITY

DEPUTY [Signature]  
Corporation Counsel  
County of Hawaii

Date 4/20/99

STATE OF HAWAII }  
COUNTY OF HAWAII } SS:

On this 22<sup>nd</sup> day of April, 1993, before me appeared H. WILLIAM SEWAKE, 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 H. WILLIAM SEWAKE acknowledged the instrument to be the free act and deed of said Commission.

L.S.

Wendy S. Okamura  
Notary Public  
State of Hawaii  
My commission expires: 7/7/93

STATE OF HAWAII }  
COUNTY OF HAWAII } SS:

On this 20 day of FEBRUARY, 1993, before me personally appeared SAMUEL S. GOUTIERREZ JR. to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

S. Goutierrez Jr.  
Notary Public  
State of Hawaii  
My commission expires: 3/31/94  
NOTARY PUBLIC FOR HAWAII  
3RD CIRCUIT  
COMMISSION EXPIRES 3-31-94

RECORDATION REQUESTED BY:

TITLE GUARANTEE SERVICES, INC.  
P. O. Box 1837  
Kailua-Kona, Hawaii 96740  
AFTER RECORDATION, RETURN TO:

TITLE GUARANTEE SERVICES, INC.  
P. O. Box 1837  
Kailua-Kona, Hawaii 96740

RETURN BY: MAIL ( ) PICKUP ( )

81-1366

84 APR 18 8:01

17810 129

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

TRK: (3) 7-6-5:27

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That FRANK E. ARTISS, a married man, whose residence address is Tokyo, Japan, and whose mailing address is c/o Erina Co., Inc., 5th Floor, Daichi Iyata building No. 10-18 Higashi Gotanda 5 Chome, Shinagawa-Ku, Tokyo, Japan 141, and DON W. TEEKELL, husband of Kazuko Teekell, whose residence and mailing address is 9001 Emerald Drive, Anchorage, Alaska, 99502, hereinafter collectively called the "Grantor," for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by SAMUEL STOLTZFUS, JR, a single man, whose residence and mailing address is 75-367 Nani Kailua Drive, Kailua-Kona, Hawaii 96740, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee all of that certain real property designated on the tax maps of the Third Taxation Division, State of Hawaii as Tax Map Key 7-6-5:27, more particularly described in Exhibit A attached hereto and made a part hereof, subject to the encumbrances noted therein.

TOGETHER WITH all and singular the buildings, improvements, rights, tenements, hereditaments, easements,



EXHIBIT A

17810 130

privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, as his sole and separate property, in fee simple, forever.

AND the said Grantor does hereby covenant with the Grantee that the Grantor is lawfully seised in fee simple of said granted premises and that the said premises are free and clear of all encumbrances except as aforesaid and other than as may have been made or suffered by Grantee, as Purchaser under that certain Agreement of Sale dated August 22, 1977, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12407 at Page 77, which Agreement of Sale was amended by instrument dated April 22, 1982, recorded in said Bureau of Conveyances in Liber 16360 at Page 446; that the Grantor has good right to sell and convey the said premises in the manner aforesaid; that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, firms, corporations, and associations, except as aforesaid.

This Warranty Deed is delivered on the express condition that the execution hereof by the Grantor and the Grantee shall constitute full compliance with and performance by the Grantor herein, as Seller, and said SAMUEL STOLTZPUS, as Purchaser, of their respective obligations under said Agreement of Sale.

IT IS MUTUALLY AGREED that the terms "Grantor," "Grantee," "Seller" and "Purchaser" when used in this document shall include masculine and feminine genders, plural numbers, associations, trustees, or corporations, and their successors in interest (including heirs, executors, personal representatives, administrators and permitted assigns), according to the context, and if this document is

17810 131

signed by two or more grantors, all covenants shall be deemed to be their joint and several covenants.

AND, KAZUKO TEEKELL, spouse of Don W. Teekell, in consideration aforesaid, states that the property described hereinabove is owned solely by the Grantor. The said Kazuko Teekell does hereby remise, release and forever quitclaim unto the Grantee, and does hereby wholly waive, all of the said spouse's estate, title, interest, right and claim in and to the said property, whether arising prior to or subsequent to July 1, 1977, and whether by right or possibility of dower, curtesy, community property laws of any state, elective share, or any other similar right, including any estate, title, interest, right and claim that said Kazuko Teekell may have pursuant to the laws of the State of Hawaii or the laws of the state of domicile of the Grantor at the date of Grantor's death.

IN WITNESS WHEREOF, the Grantor, Grantee, and said Kazuko Teekell have executed these presents on this 5<sup>th</sup> day of December, 1983

Don W. Teekell  
DON W. TEEKELL

Frank E. Arise  
FRANK E. ARISE

Samuel S. Stoltefus, Jr.  
SAMUEL S. STOLTEFUS, JR.

Kazuko Teekell  
KAZUKO TEEKELL

Approved as to Form  
GARDNER, GARDNER, WELCHMAN and CASE

17810 132

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me personally appeared DON W. TEEKELL, to me 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.

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

My Commission expires: My Commission Expires  
July 29, 1987

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_ ) SS.

On this fifth day of December, 1983,  
before me personally appeared FRANK E. ARTISS, to me known  
to be the person described in and who executed the foregoing  
instrument, and acknowledged to me he executed the same as  
his free act and deed.



Henry Wilson Welch  
Notary Public  
State of the United States of America

\_\_\_\_\_

17810 133

STATE OF HAWAII )  
COUNTY OF HAWAII ) SS.

On this 12<sup>th</sup> day of April, 1987,  
before me personally appeared SAMUEL STOLTZFUS, JR., to me  
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.

[Signature]  
Notary Public, State of Hawaii

Notary Public, Third  
Judicial Circuit, State of Hawaii

My Commission expires:

STATE OF HAWAII )  
COUNTY OF HAWAII ) SS.

On this 11<sup>th</sup> day of April, 1987,  
before me personally appeared KAZUKO IZUKI, to me known to  
be the person described in and who executed the foregoing  
instrument and acknowledged that she executed the same as  
her free act and deed.

[Signature]  
Notary Public, State of Hawaii

My Commission expires: My Commission Expires  
July 29, 1987

17810 135

- 10. 8° 50' 37.42 feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Koumabulu;
- 11. 71° 10' 33.91 feet along Grant 1604 to Naaimakohu;
- 12. 02° 03' 56.07 feet along Grant 1604 to Naaimakohu;
- 13. 82° 27' 70.77 feet along Grant 1604 to Naaimakohu;
- 14. 67° 15' 09.00 feet along Grant 1604 to Naaimakohu to the point of beginning and containing an area of 1.537 acres, more or less.

Together with Access Easement "A-1", over and across Lot 7, and more particularly described as follows:

Land situated approximately 600 feet East of Mamalahoa Highway at Holoaloa 2nd, North Kona, Island and County of Hawaii, State of Hawaii.

Being portions of lot 7 and Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Koumabulu.

Beginning at the southeasterly corner of this parcel of land, being also the southeasterly corner of Lot 7, the southwesterly corner of lot B and on the northerly side of Grant 1604 to Naaimakohu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHUKO" being 2,808.73 feet South and 13,782.27 feet East and running, by azimuths measured clockwise from true South:

- 1. 76° 53' 30" 416.19 feet along the Northerly side of Grant 1604 to Naaimakohu;
- 2. 180° 00' 133.70 feet along Lot N of the Holoaloa Partition Lots - Mauka Section, along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Koumabulu;
- 3. 90° 00' 112.00 feet along Lot N of the Holoaloa Partition Lots - Mauka Section, along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Koumabulu;
- 4. 180° 00' 36.46 feet along the remainder of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Koumabulu, and along the southerly side of road "B";

~~17810-136~~

- 5. 270° 00' 16.00 Feet along the remainder of Lot 7, along the remainder of Royal Patent 4475, Land Commission Award 7713, Apapa 43 to V. Kamamalu;
- 6. 360° 00' 20.46 Feet along the remainder of Lot 7, along the remainder of Royal Patent 4475, Land Commission Award 7713, Apapa 43 to V. Kamamalu;
- 7. 270° 00' 312.00 Feet along the remainder of Lot 7, along the remainder of Royal Patent 4475, Land Commission Award 7713, Apapa 43 to V. Kamamalu;
- 360° 00' 129.55 Feet along the remainder of Lot 7, along the remainder of Royal Patent 4475, Land Commission Award 7713, Apapa 43 to V. Kamamalu;
- 9. 256° 53' 30" 419.76 Feet along the remainder of Lot 7, along the remainder of Royal Patent 4475, Land Commission Award 7713, Apapa 43 to V. Kamamalu;
- 10. 360° 00' 16.43 Feet along the remainder of Lot 7, along the remainder of Royal Patent 4475, Land Commission Award 7713, Apapa 43 to V. Kamamalu to the point of beginning and containing an area of 0.331 acre.

BEING A PORTION OF THE PREMISES DESCRIBED IN DEED

GRANTOR : DONALD W. BACCHUS, husband of Hazel L. Bacchus, ROBERT P. HART, husband of Shirley J. Hart, and G. Ferguson Beall, husband of Clare C. Beall

GRANTEE : PIANE E. ARTISS, husband of Setsuko Artiss, and Don W. Tuckell, husband of Kazuko Tuckell

TENANCY : as Tenants in Common

DATED : October 2, 1974

RECORDED : filed 12407 Page 114 in the Office of the Registrar of Conveyances at Honolulu

SUBJECT, HOWEVER, TO:

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

END OF EXHIBIT A