

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer DANNY JAMES MACKAY AND CAROL JEAN MACKAY
Address 6479 Puupilo Road, Kapaa, Hawaii 96746

Project Name(*): KALET
Address: BEING ALL OF LOT 5-A-1-A-1, PORTION OF LOT 5-A-1-A-1, ALSO WAILUA HOMESTEAD, FIRST SERIES, WAILUA, KAWAIIHAU, KAUAI, HAWAII
Registration No. 4484 Effective date: September 25, 2000
Expiration date: October 25, 2001

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.
 - FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
 - No prior reports have been issued.
 - This report supersedes all prior public reports.
 - This report must be read together with _____
 - SUPPLEMENTARY: (pink) This report updates information contained in the:
 - Preliminary Public Report dated: _____
 - Final Public Report dated: _____
 - Supplementary Public Report dated: _____
- And
- Supersedes all prior public reports.
 - Must be read together with _____
 - This report reactivates the _____ public report(s) which expired on _____

(*) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

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 Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

SPECIAL ATTENTION

This is a CONDOMINIUM PROJECT, not a subdivision. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, 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. The Purchaser should 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.

1. There are presently ONE RESIDENTIAL STRUCTURE AND TWO AGRICULTURAL SHEDS ON THIS PROPERTY, each of which may be defined as an "apartment", under the condominium property act.
2. This public report does not constitute an approval of the project by the Real Estate Commission or any other government agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a LIMITED COMMON ELEMENT and is not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

SPECIAL ATTENTION (CONCLUDED):

4. Facilities and improvements normally associated with County-approved subdivision, 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.

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

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General Information On Condominiums

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

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

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

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

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

You 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: Danny James Mackey Phone: (808) 822-2183
Name* 6479 Puupilo Road
Business Address
Kapaa, Hawaii 96746
(Business)

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership(LLP); or manager and members of a Limited Liability Company(LLC)(attach separate sheet if necessary):

N/A

Real Estate Broker*: Sleeping Giant Realty, Inc. Phone: (808) 245-8831
Name 4480 Ahukini Road
Business Address
Lihue, Hawaii 96766
(Business)

Escrow: First American Long & Melone Title Company, Ltd. Phone: (808) 245-8877
Name Park Plaza 1, 4374 Kukui Grove Ste. 201
Business Address
Lihue, Hawaii 96766
(Business)

General Contractor*: J. M. Pacific Construction, Inc. Phone: (808) 246-1030
Name 3169 Oihana Street
Business Address
Lihue, Hawaii 96766
(Business)

Condominium Managing Agent*: Self Managed by the Association of Phone: _____
Name Apartment Owners (Business)
Business Address

Attorney for Developer: Patrick J. Childs Phone: (808) 245-2863
Name* 4365 Kukui Grove St., Suite 104
Business Address
Lihue, Hawaii 96766
(Business)

* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**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. 2000-116090
Book _____ Page _____
 Filed - Land Court: Document No. _____

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

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

The Condominium Map for this condominium project is:

Proposed
 Recorded - Bureau of Conveyances Condo Map No. 3148
 Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

C. Bylaws of the Association of Apartment Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed
 Recorded - Bureau of Conveyances: Document No. 2000-116091
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:

	Minimum Set by Law	This Condominium
Declaration (and Condo Map)	75%*	100%
Bylaws	65%	65%
House Rules	—	N/A

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

2. **Developer:**

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

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

The Developer may amend the Declaration (and, when applicable, any exhibits to the Declaration and the Condominium Map) (a) as may be provided in the Declaration and (b) to file the “as built” statement required by Section 514A-12 of the Act (i) so long as such verified statement is a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers and the dimensions of the apartments as built, or (ii) so long as the plans filed therewith involve only minor changes to the layout, location or dimensions on the apartments, as built, or any change in any apartment number.

III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

- Fee Simple:** Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold:** 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 the sublessor and fee owner is:
 Canceled Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or 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 provision(s).

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

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

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

Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

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

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

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

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

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

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

B. Underlying Land:

Address: Lot 5-A-1-A-1, Portion of Tax Map Key (TMK): 4/4-2-2:26
Lot 5-A-1-A-1, Wailua Homestead First Series, Wailua, Kauai, Hawaii
 Address TMK is expected to change because _____

Land Area: 7.893 square feet acre(s) Zoning: Agricultural

Fee Owner: Danny James Mackey and Carol Jean Mackey
 Name
6479 Puupilo Road
 Address
Kapaa, Hawaii 96746

Lessor: N/A
 Name

 Address

C. Buildings and Other Improvements:

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

2. Number of Buildings: 3 Floors Per Building 1

Exhibit _____ contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other _____

4. Uses Permitted by Zoning:

	No. of Apts.	Use Permitted By Zoning		No. of Apts.	Use Permitted By Zoning
<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 checked="" type="checkbox"/> Other: <u>sheds</u>	<u>2</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: NO MORE THAN TWO DOGS, NO PIGS, GOATS, BEES, RABBITS, SHEEP OR POULTRY
OF ANY KIND SHALL BE RAISED, BRED, KEPT OR MAINTAINED ON THE PROPERTY
 Number of Occupants: (BYLAWS, PG. 23)

Other: _____

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)*	Net Other Area (sf)	(Identify)
A	1	N/A		20	shed
B	1	N/A		20	shed
C	1	3/4	2368	475	garage/tack
				800	lanai

Total Number of Apartments: 3

*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:

PERIMETER WALL TO PERIMETER WALL, FLOOR TO EXTERIOR OF ROOF.

Permitted Alterations to Apartments:

ANY ALTERATIONS PERMITTED BY LAW.

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 A .

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 A.

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 common interest 33 1/3%
Apartment B common interest 33 1/3%
Apartment C common interest 33 1/3%

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 B describes the encumbrances against the title contained in the title report dated August 22, 2000 and issued by FIRST AMERICAN LONG & MELONE TITLE COMPANY, LTD.

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 Prior to Conveyance</u>
MORTGAGES	THE UNDERLYING MORTGAGE IS SUPERIOR TO AND TAXES PRECEDENCE OVER THE SALES CONTRACT. IF THE DEVELOPER DEFAULTS BUYER SHALL LOSE HIS OPTION TO CONSUMMATE HIS PURCHASE OF THE PROPERTY AND BUYER'S MONEY SHALL BE REFUNDED, LESS ESCROW CANCELLATION FEE.

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:

NONE.

2. Appliances:

NONE.

G. Status of Construction and Date of Completion or Estimated Date of Completion:

APARTMENTS A AND B WERE COMPLETED JULY 24, 2000.

APARTMENT C WAS COMPLETED IN 1987.

H. Project Phases:

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

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

IV. CONDOMINIUM MANAGEMENT

A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management 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
- self-managed by the Association of Apartment Owners
- the Developer or the Developer's affiliate.
- 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, a lien may be placed on your apartment and the apartment may be 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 C 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
- Gas
- Water
- Other _____
- Electricity (_____ Common Elements only _____ Common Elements & Apartments)
- Sewer
- Television Cable

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 D contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated August 16, 2000

Exhibit _____ contains a summary of the pertinent provisions of the escrow agreement.

Other _____

B. Buyer's Right to Cancel Sales Contract:

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

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

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

A) The Developer delivers to the buyer a copy of:

- 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
- 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;

B) The buyer is given an opportunity to read the report(s); **AND**

C) One of the following has occurred:

- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
- 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
- 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

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

- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners, as amended.
- D) House Rules, if any.
- E) Condominium Map, as amended.
- 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 _____

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 4484 filed with the Real Estate Commission on August 24, 2000

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

1. This project is subject to the terms and provisions of that certain Farm Dwelling Agreement dated June 24, 1985, between H. Roger Netzer and the County of Kauai recorded in the Bureau of Conveyances in Book 20217, Page 317. See Exhibit G for a copy of this document
2. Units A, B & C of this project are subject to the flood setback line as shown on survey map prepared by Dennis M. Esaki, Registered Land Surveyor, Certificate No. 4383, attached to instrument dated December 23, 1986, recorded in the Bureau of Conveyances in Book 20217, Page 317. This flood setback line is shown as Building Setback Line on the condominium map.
3. This project is subject to the terms, covenants, conditions, reservations and restrictions contained in the Declaration of Covenants recorded in the Bureau of Conveyances in Book 20643, Page 675. See Exhibit H for a copy of this document.
4. The condominium interest created hereby is on agriculturally zoned land and, as such, is subject to all restrictions associated therewith. This is not residentially-zoned property and the Developer does not warrant that any residence will be permitted by the County of Kauai within any specific limited common element. Agricultural properties are subject to density requirements that may change. Any such change will effect the number of allowable units that may be placed on the underlying land.
5. This project is subject to Easement "1", being a perpetual non-exclusive easement for roadway and utility purposes in favor of this lot over and across Lot 5-A-2-A as shown as Easement "1" on the condominium map and recorded with the Bureau of Conveyance of the state of Hawaii in Liber 19349 on Page 424.
6. This project is subject to Easement "2", being a perpetual on-exclusive easement for access and utility purposes over and in favor of this lot and over lot 5-A-1-A-2.
7. This project is subject to Easement "3", being a perpetual non-exclusive easement for roadway and utility purposes in favor lot 5-A010A-2 over and across this lot and subject to the terms, covenants and conditions contained in that certain Designation of Easements documents dated April 27, 1987 as shown as easement "3" on the condominium map. Easement "2" and "3" are described in that aforesaid instrument recorded with the State of Hawaii in Liber 20643 on Page 687. See Exhibit I for a copy of this document.
8. No vehicle access shall be allowed along Poo road as shown on the condominium map.

9. This project is subject to Easement "AU-1" a 15 foot wide access and utility easement in favor of Unit B of Puupilo Condominium on Lot 12-A01-B over and across this lot which is described as an attached exhibit to the Puupilo Condominium map recorded in the Bureau of Conveyances as Map No. 2021.
10. Units A & B of this project are subject to the covenants, conditions, restrictions, reservations or obligations of that certain Waiver and Release dated June 12, 2000 made by Danny James Mackey and Carol Jean Mackey, in favor of the County of Kauai recorded as Document No. 2000-082382. No County provided water service exists or may ever exist. Buyer should check into the cost of providing a water meter and other costs relating to obtaining water. See Exhibit K for a copy of this agreement.
11. Maintenance fees. All costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective owner. Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners purchase fire insurance to cover the improvements of the Project, and that premiums be common expenses. Developer anticipates that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses. Developer estimates such annual premium expense to be about \$600.00 per year for each unit. This estimate was prepared in accordance with generally accepted accounting principles.

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.

DANNY JAMES MACKEY
Printed Name of Developer

CAROL JEAN MACKEY
Printed Name of Developer

By: *Danny James Mackey*
Duly Authorized Signatory

By: *Carol Jean Mackey*
Duly Authorized Signatory

DEVELOPER
Printed Name & Title of Signatory

DEVELOPER
Printed Name & Title of Signatory

Distribution:

Department of Finance, COUNTY OF KAUAI
Planning Department, COUNTY OF KAUAI

**Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership(LLP) by the general partner; Limited Liability Company(LLC) by the manager or member; and for an individual by the individual.*

Exhibit "A"

1. Common Elements. The common elements of the Project consist only of the following:

- (i) All the land in fee simple.
- (ii) The limited common elements hereinafter described, subject to the provisions set forth in Paragraph 6.
- (iii) All pipes, wires, conduits, or other utility or service lines, drainage ditches or appurtenant drainage structures retaining walls (if any) and yard fences, which are located outside the apartments and which are utilized for or serve more than one apartment.

(iv) a driveway for access & egress for units A, B & C being same 0.693 acres in area as depicted on the Condominium Map, which common element shall serve units A, B & C for such utility purposes as the same may be necessary. Neither party shall take any action to impede the purposes of this common access, specifically including parking automobiles within the same or taking any action as to curtail traffic or the emplacement of utilities. Each owner shall share equally in the maintenance of the common element so that it may be used as stated herein, provided, however, an owner need not share in expenses associated with the provision and utilities wherein the same solely benefit the other owner.

2. Limited Common Elements. The limited common elements of the Project consist only of the following:

(i) That portion of the Land which is designated as Limited Common Element A, being 1.092 acres in area, on the Condominium Map, is reserved for the exclusive use of Apartment A for the support of the building and other improvements comprising Apartment A, or attendant thereto, and for parking, yard, driveway, agricultural and residential purposes.

(ii) That portion of the Land which is designated as Limited Common Element B, being 2.769 acres in area, on the Condominium Map, is reserved for the exclusive use of Apartment B for the support of the building and other improvements comprising Apartment B, or attendant thereto, and for parking, yard, driveway, agricultural and residential purposes.

(iii) That portion of the Land which is designated as Limited Common Element C, being 3.339 acres in area, on the Condominium Map, is reserved for the exclusive use of Apartment C for the support of the building and other improvements comprising Apartment C, or attendant thereto, and for parking, yard, driveway, agricultural and residential purposes.

NOTICE: This is not a subdivision. The Limited Common Elements
that are reserved for the exclusive use of individual units are not
subdivided parcels. As such they do not fall within the ordinances
of the County of Kauai as the same pertain to subdivision nor do
they derive any benefits therefrom.

EXHIBIT 'B'

ENCUMBRANCES AGAINST TITLE

1. TAXES Tax Map Key: Kauai (4) 4-2-2:26
For Real Property Taxes that may be due or owing, reference is made to the Director of Finance, County of Kauai.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. FARM DWELLING AGREEMENT
By and Between : H. Roger Netzer, and the County of Kauai, Planning
Department
Dated : June 24, 1985
Recorded in the Bureau of Conveyances in Book 18770, Page 754
4. 100 Year Flood Setback as shown on survey map prepared by Dennis M. Esaki, Registered Land Surveyor, Certificate No. 4383, attached to instrument dated December 23, 1986, recorded in the Bureau of Conveyances in Book 20217, Page 317.
5. Terms, covenants, conditions, reservations and restrictions contained in the Declaration
Dated : April 27, 1987
Recorded in the Bureau of Conveyances in Book 20643, Page 675.
But deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c).
6. Easement "3", being a perpetual non-exclusive easement for access and utility purposes in favor of Lot 5-A-1-A-2, as set forth and described in Designation of Easements dated April 27, 1987, recorded in the Bureau of Conveyances in Book 20643, Page 687.
7. Restriction of Vehicle Access Rights along Poo Road as shown on survey map prepared by Dennis M. Esaki, Registered Land Surveyor, Certificate No. 4383, as disclosed by instrument dated May 4, 1987, recorded in the Bureau of Conveyances in Book 20643, Page 701.
8. FARM DWELLING AGREEMENT
By and Between : Dan J. Mackey and Carol J. Mackey , and the County of
Kauai, Planning Department
Dated : June 8, 1987
Recorded in the Bureau of Conveyances in Book 20870, Page 364

9. MORTGAGE

Mortgagor(s) : Dan J. Mackey and Carol J. Mackey, husband and wife
Mortgagee(s) : Bank of Hawaii
Dated : November 9, 1994
Recorded in the Bureau of Conveyances as Documents No. 94-193376
To Secure : \$200,000 and any other amounts and/or obligations secured
Thereby

10. MORTGAGE

Mortgagor(s) : Dan J. Mackey and Carol J. Mackey, husband and wife
Mortgagee(s) : Bank of Hawaii, a Hawaii corporation
Dated : November 16, 1995
Recorded in the Bureau of Conveyances as Documents No. 95-153818
To Secure : \$550,000 and any other amounts and/or obligations secured
thereby

11. SUBORDINATION AGREEMENT

By and Between : Bank of Hawaii, and
Dated : November 16, 1995
Recorded in the Bureau of Conveyances as Document No. 95-153819.
Subordinates Mortgage recorded in the Bureau of Conveyances as Documents
No. 94-193376 to Mortgage recorded in the Bureau of Conveyances as
Documents No. 95-153818

12. SUBORDINATION AGREEMENT

By and Between : Dan J. Mackey and Carol J. Mackey, husband and
wife, Bank of Hawaii, and County of Kauai
Dated : November 16, 1995
Recorded in the Bureau of Conveyances as Document No. 95-153820.
Subordination of Farm Dwelling Agreement recorded in Book 18770, Page 754 to
Mortgage recorded in the Bureau of Conveyances as Documents No. 95-153818

13. MORTGAGE AND FINANCING STATEMENT

Mortgagor(s) : James Mackey, also known as Dan J. Mackey and Carol
Jean Mackey, also known as Carol J. Mackey, husband and
wife
Mortgagee(s) : First Hawaiian Bank, a Hawaii corporation
Dated : February 22, 2000
Recorded in the Bureau of Conveyances as Documents No. 2000-025724.
To Secure : \$750,000.00 and any other amounts and/or obligations
secured thereby

14. ABSOLUTE ASSIGNMENT OF RENTALS AND LESSOR'S INTEREST IN LEASE
Assignor(s) : Danny James Mackey, also known as Dan. J. Mackey and Carol Jean Mackey, also Known as Carol J. Mackey, Husband and Wife
Assignee(s) : First Hawaiian Bank
Dated : February 22, 2000
Recorded in the Bureau of Conveyances as Documents No. 2000-025725.
15. FINANCING STATEMENT
Debtors(s) : Danny James Mackey, also known as Dan J. Mackey and Carol Jean Mackey, also known as Carol J. Mackey, Husband and wife
Secured Party : First Hawaiian Bank
Recorded February 25, 2000 in the Bureau of Conveyances as Document No. 2000-025726.
16. WAIVER AND RELEASE dated June 12, 2000, recorded in the Bureau of Conveyances as Document No. 2000-082382, made by Danny James Mackey and Carol Jean Mackey.
17. The project is subject to Easement "AU-1", a 15' wide access and utility easement in favor of Unit B of Puupilo Condominium on Lot 12-A-1-B over and across this lot which is described as an attached exhibit to the Puupilo Condominium map recorded in the Bureau of Conveyances as Map NO. 2021.
18. Covenants, conditions, restrictions, reservations, easements, liens of assessments, options, powers of attorney, limitations on title and all other provisions contained in or incorporated by reference in the Declaration of Condominium Property Regime dated August 15, 2000, recorded in the Bureau of Conveyances as Documents No. 2000-116090 (By-laws thereto dated August 15, 2000, recorded in the Bureau of Conveyances as document No. 2000-116091, condominium Map No. 3148; any instruments creating the estate or interest herein set forth; and in any other allied instrument referred to in any of the instruments aforesaid.

EXHIBIT C

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 =</u>	<u>Yearly Total</u>
A	\$50.00	\$600.00
B	\$50.00	\$600.00
C	\$50.00	\$600.00

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

EXHIBIT "D"

SUMMARY OF SALES CONTRACT:

The Seller intends to use the Hawaii Association of Realtors' form of Deposit Receipt, Offer and Acceptance ("DROA") as the sales contract for the sale of apartments in the Project. The sales contract contains the purchase price, description and location of the apartment and other terms and conditions under which a Buyer will agree to buy an apartment.

Among other things, the sales contract and addendum:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Buyer will pay the purchase price.

2. Identifies the escrow agent and states that Buyer's deposit will be held in escrow until the sales contract is closed or cancelled.

3. Requires that Buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

4. Provides the following remedies, in the event of default under the sales contract:

by Buyer:

- a. Seller may bring an action against Buyer for breach of contract;
- b. Seller may retain Buyer's initial deposit;
- c. Buyer shall be responsible for expenses incurred.

By Seller:

- a. Buyer may bring an action against Seller for breach of contract;
- b. Buyer may bring an action compelling Seller to perform under contract;
- c. Seller shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

5. Allocation of payment of closing costs.

EXHIBIT "E"

SUMMARY OF ESCROW AGREEMENT:

An escrow Agreement allows the Condominium Buyers' money to be held by a neutral party, the Escrow Agent, until the Seller can deliver good and marketable title to the Condominium. The Escrow Agreement for this project provides for, among other things:

1. That FIRST AMERICAN TITLE LONG & MELONE TITLE COMPANY, LTD. is the Escrow Agent.
2. That, upon execution of a Sales Contract, the Developer shall deliver all money received over to the Escrow Agent.
3. That there shall be no disbursement of the purchaser's deposit until: [a] Escrow receives a copy of "Receipt for Public Report(s) and Notice of Right to Cancel", in the form specified by Section 514A-62 of the Condominium Act for the Final and any Supplementary Public Reports, executed by the purchaser; [b] Escrow has received a certification that the requirements of Section 514A-39 and 514A-63 have been met and [c] until the purchaser's apartment deed is filed in the Bureau of Conveyances of the State of Hawaii.
4. That the Buyer shall receive all public documents relating to the project.
5. That a Buyer's money shall be returned to him under the following conditions: [a] Escrow receives a written request from the Developer and purchaser for the return of purchaser's funds or [b] Developer and purchaser notify Escrow of a rescission or [c] Developer and purchaser notify Escrow that the conditions for a refund under Sections 514A-62 and 514A-63 of the Condominium Act have been met.
6. That, upon the Seller providing good title to the Condominium, the Buyer's money shall be turned over to the Seller.
7. That the Escrow Agent will record with the State of Hawaii all documents requiring such.
8. That, if the Buyer is unable to perform and has money on deposit in escrow, these monies will be turned over to the Seller.

EXHIBIT "F"

**AVERY H. YOUN, ARCHITECT
2980 EWALU STREET #1
LIHUE, HAWAII 96766**

**ARCHITECT'S CONDITION REPORT
"KALEI CONDOMINIUM"**

The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 3576, has inspected Unit C of the condominium project "KALEI Condominium", the original structure being 13 years old of which may be occupied for residential use, situated at Wailua Homesteads, Kauai, and identified as Tax Map Key No. (4) 4-2-22: 26.

The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing, appear to be in satisfactory condition for the stated age thereof and appear to be in sound condition. The structure and related systems and components have an expected useful life in excess of 55 years.

DATED: 8-3, 2000 Kauai, Hawaii.


Avery H. Youn

RECORDATION REQUESTED BY:

EXHIBIT "G"

PLANNING DEPARTMENT, COUNTY OF KAUAI

AFTER RECORDATION, RETURN TO:

85- 73739

85 JUL 10 AM 13

18770 754

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766

RETURN BY: Mail (X) Pickup ()

FARM DWELLING AGREEMENT

THIS AGREEMENT made and entered into as of the 24th day of JUNE, 1985, by and between _____
H. Roger Netzer MD

whose residence and mailing address is 3420 B Kuhio Hwy
Lihue, Kauai, Hawaii 96766

hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI Planning Department, whose business and mailing address is 4280 Rice Street, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT",

W I T N E S S E T H :

WHEREAS, the APPLICANTS warrant and represent that they are the OWNER of that certain parcel of land, Tax Map Key No. 4-2-2:74 LOT # 9, more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use Commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 5, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, a "family" as used in the definition of a "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANTS acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the State Land Use Agriculture District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANTS also acknowledge that failure to abide by this agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes;

NOW THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations, as recited herein; and
2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District Regulations and as recited herein, who derive income from the agricultural activity on the parcel; and
3. That the APPLICANTS and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this agreement; and
4. That this agreement shall be a covenant running with the land and be binding on the APPLICANTS, and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANTS, their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and
5. That this agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations remain in effect; and
6. That the APPLICANTS expressly set forth the provisions of this agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and
7. That this agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANTS.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the 24 day of June, 1985.

APPROVED:

[Signature]
Planning Director

H. Roger Netzer, M.D.

APPROVED AS TO FORM AND LEGALITY:

Applicants

[Signature]
Dep County Attorney

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this 24th day of June, 1985, before me personally appeared H. ROGER NETZER, M.D.

to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Signature]
Notary Public, Fifth Judicial Circuit
State of Hawaii

My commission expires: 11/8/1987

All of that certain parcel of land (Land Patent Grant No. 9227 to Charles S. Dole) being a portion of Lot 9 of Wailua Homesteads (First Series), situate at Wailua, Puna, Island and County of Kauai, State of Hawaii, and more particularly described as follows:

Beginning at a x on stone at the southeast corner of this lot, and on the northeast corner of Lot 12 of Wailua Homesteads, the coordinates of said point of beginning referred to Government Survey Trig. Station "Nonou" being 553.05 feet north and 774.34 feet west, thence running by azimuths measured clockwise from True South:

1. 90° 24' 161.70 feet along Lot 12 of Wailua Homesteads to a x on stone;
2. 104° 04' 248.20 feet along same to a x on stone;
3. 81° 13' 266.60 feet along same to a pipe;
4. 132° 35' 581.60 feet along same to a pipe;
5. 99° 13' 714.60 feet along Lots 12 and 10 crossing over a x on stone at 405.60 feet to x on stone;
6. 165° 41' 305.79 feet along Lot 10 of Wailua Homesteads to a pipe;
7. 211° 10' 330.52 feet along the remainder of Lot 9 of Wailua Homesteads to a pipe;
8. 286° 58' 225.98 feet along a 30-foot wide road right of way;

9. Thence on a curve of radius 135.00 feet to the right, the
direct azimuth and distance being;
309° 07' 30" 101.84 feet;
10. 331° 17' 228.43 feet along same;
11. Thence on a curve of radius 140.00 feet to the left along
same, the direct azimuth and
distance being;
308° 53' 106.70 feet;
12. 286° 29' 180.39 feet along same;
13. Thence on a curve of radius 325.00 feet along same to the
right the direct azimuth and
distance being;
295° 38' 103.36 feet;
14. 304° 47' 171.09 feet along same;
15. Thence on a curve of radius 535.00 along same to the left,
the direct azimuth and distance
being;
299° 54' 30" 90.93 feet;
16. 295° 02' 125.18 feet along same;
17. Thence on a curve of radius 235.00 feet to the right along
same; the direct azimuth and
distance being;
301° 41' 54.43 feet;
18. 308° 20' 197.24 feet along same;
19. Thence on a curve of radius 490.00 feet to the left along
same, the direct azimuth and
distance being;
302° 37' 30" 97.47 feet;

--E X H I B I T A--

(CONTINUED)

20. 296° 55' 12.70 feet along same to a pipe;
21. 26° 55' 5.00 feet along the 40-foot wide road right of way to a pipe;
22. 296° 55' 32.00 feet along same to a pipe;
23. Thence on a curve of radius 90.00 feet to the right along same, the direct azimuth and distance being;
- 311° 55' 46.59 feet to a pipe;
24. Thence on a curve of radius 170.00 feet to the left along same, the direct azimuth and distance being;
- 285° 15' 226.03 feet to a pipe;
25. Thence on a curve of radius 85.80 feet to the right along same, the direct azimuth and distance being;
- 266° 59' 68.17 feet to a pipe;
26. 13° 15' 106.20 feet along Lot 12 of Wailua Homesteads to the point of beginning and containing an area of 11.95 acres.

TOGETHER WITH a perpetual easement and right-of-way for road and utility purposes to be used in common with others thereto entitled over, across, along and under the roadway described as follows:

All of the parcel of land being a portion of Lot 9 of Wailua Homesteads, (First Series), Land Patent Grant 9227 to Charles S. Dole is situated at Wailua, Puna, Island and County of Kauai, State of Hawaii, and more particularly described as follows:

Beginning at a pipe at the South corner of this strip of land, the North corner of Lot 12 of Wailua Homesteads, the end of the 40 feet wide Kalama Road, the direct azimuth and distance to a x on stone being 13° 15' 106.20 feet, thence running by azimuths measured clockwise from true South:

--E X H I B I T A--

(CONTINUED)

1. On a curve of radius 85.80 feet to the left along the remainder of Lot 9 of said Homestead, the direct azimuth and distance being;

86°	59'	68.17 feet to a pipe;
-----	-----	-----------------------
2. Thence again on a curve of radius 170.00 feet to the right along same the direct azimuth and distance being;

105°	15'	226.03 feet to a pipe;
------	-----	------------------------
3. Thence again on a curve of radius 90.00 feet to the left along same; the direct azimuth and distance being;

131°	55'	46.59 feet to a pipe;
------	-----	-----------------------
4. 116° 55' 32.00 feet along same to a pipe;
5. 206° 55' 5.00 feet along same to a pipe;
6. 116° 55' 12.70 feet along same;
7. Thence on a curve of radius 490.00 feet along same to the right, the direct azimuth and distance being;

122°	37'	30"	97.47 feet;
------	-----	-----	-------------
8. 128° 20' 197.24 feet along same;
9. Thence on a curve of radius 235.00 feet along same to the left, the direct azimuth and distance being;

121°	41'	54.43 feet;
------	-----	-------------
10. 115° 02' 125.18 feet along same;
11. Thence on a curve of radius 535.00 feet along same to the right, the direct azimuth and distance being;

119°	54'	30"	90.93 feet;
------	-----	-----	-------------
12. 124° 47' 171.09 feet along same;
13. Thence on a curve of radius 325.00 feet to the left along same, the direct azimuth and distance being;

115°	38'	103.36 feet;
------	-----	--------------
14. 106° 29' 180.39 feet along same;

--E X H I B I T A--

(CONTINUED)

15. Thence on a curve of radius 140.00 feet along same to the right, the direct azimuth and distance being;
 128° 53' 106.70 feet;
16. 151° 17' 228.43 feet along same;
17. Thence on a curve of radius 135.00 feet to the left along same, the direct azimuth and distance being;
 129° 07' 30" 101.84 feet;
18. 106° 58' 225.98 feet along same;
19. 211° 10' 30.94 feet along same to a pipe;
20. 286° 58' 219.39 feet along same;
21. Thence on a curve of radius 165.00 feet along same to the right, the direct azimuth and distance being;
 309° 07' 30" 124.47 feet;
22. 331° 17' 228.43 feet along same;
23. Thence on a curve of radius 110.00 feet along same to the left, the direct azimuth and distance being;
 308° 53' 83.84 feet;
24. 286° 29' 180.39 feet along same;
25. Thence on a curve of radius 355.00 feet along same to the right, the direct azimuth and distance being;
 295° 38' 112.90 feet;
26. 304° 47' 171.09 feet along same;
27. Thence on a curve of radius 505.00 feet along same to the left, the direct azimuth and distance being;
 299° 54' 30" 85.83 feet;
28. 295° 02' 125.18 feet along same;
29. Thence on a curve of radius 265.00 feet along same to the right, the direct azimuth and distance being;
 301° 41' 61.37 feet;

--EXHIBIT A--

(CONTINUED)

30. 308° 20' 197.24 feet along same;
31. Thence on a radius of 460.00 feet along same to the left,
the direct azimuth and distance being;
302° 37' 30" 91.51 feet;
32. 296° 55' 12.70 feet along same;
33. 206° 55' 5.00 feet along same;
34. 296° 55' 32.00 feet along same to a pipe;
35. Thence on a curve of radius 130.00 feet along same to the
right, the direct azimuth and distance being;
311° 55' 67.29 feet;
36. Thence on a curve of radius 130.00 feet along same to the left,
the direct azimuth and distance being;
285° 15' 172.85 feet;
37. Thence on a curve of radius 125.80 feet along same to the
right, the direct azimuth and distance being;
265° 51' 95.32 feet to a pipe;
38. 13° 15' 40.40 feet along the 40 feet wide
Kalama Road to the point
of beginning, and containing
an area of 1.50 acres.

--E X H I B I T A--

(END OF EXHIBIT A)

17)
EXHIBIT "H"

STC 148119

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
RECORDED

RECORDATION REQUESTED BY:

87- 65588

07 MAY 6 48:01

20643 675
S. E. NEUMANN, DEPT. REGISTRAR

AFTER RECORDATION RETURN TO:

Donald Wilson
4370 Kukui Grove St. #201
Lihue, Kauai 96766

RETURN BY: MAIL () PICKUP ()

DECLARATION OF RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, ROGER NETZER, unmarried, whose residence and post office address is 1071 Covington Drive, Los Altos, California 94022, hereinafter called the "Declarant", is the owner of Lot 5-A-1-A, being portions of Grant 9227 and Grant 12217, Wailua Homesteads, First Series, Wailua, Kawaihau, Kauai, Hawaii, and more particularly identified as 4th Taxation Division Tax Map Key: 4-2-02-74; and

WHEREAS, the Declarant has caused the above-described real property to be subdivided into Lots 5-A-1-A-1, 5-A-1-A-2 and 5-A-1-A-3, described in Exhibits "A", "B" and "C", respectively, attached hereto and incorporated herein, which subdivision was approved by the Planning Commission of the County of Kauai at its meeting on March 11 1987; and

WHEREAS, the Declarant desires to declare restrictive covenants regarding the use of the subdivided lots to insure a pleasant and quality environment; and

WHEREAS, the Declarant has agreed with the County of Kauai to declare certain restrictive covenants regarding the use of the subdivided lots of the subject subdivision,

NOW, THEREFORE, the Declarant, in compliance with this agreement with the County of Kauai, does hereby declare as follows:

1. That no direct access off of Easement A which is adjacent to Lots 5-A-1-A-1, 5-A-1-A-2 and 5-A-1-A-3, shall be permitted for Lots 5-A-1-A-1 and 5-A-1-A-2.

2. That Lots 5-A-1-A-1, 5-A-1-A-2 and 5-A-1-A-3 shall be subject to the covenants and restrictions set forth in Exhibits "D" and "E", attached hereto and incorporated herein. In the event of conflict between the restrictive covenants contained in said Exhibits, the stricter of that in conflict shall control.

3. With respect to the covenants contained herein, the same shall run with the land, and jurisdiction may be taken in equity at suit of the Declarant, his heirs, personal representatives, successors or assigns, the County of Kauai with respect to the covenants contained in Exhibit "D", or any other person having an interest in any of the lots subject of said covenants, to restrict or prevent by injunction, mandatory or restraining, any violation of any said covenants upon part of the Declarant, his heirs, personal representatives, successors or assigns, and any person having an interest in the lots, to be observed and performed without prejudice to the right of the Declarant, his heirs, personal representatives, successors or assigns or any other person having an interest in the lots, or the County of Kauai with respect to the covenants contained in Exhibit "D", to adopt or pursue any other remedy thereafter for the same breach or failure, or for any subsequent breach or failure to take any action to recover damages for any breach or failure.

4. Inclusion of the covenants herein contained in any document that they are required to be included may be by reference to this Declaration of Restrictive Covenants.

5. No contract to sell, agreement of sale, deed, mortgage, assignment or lease shall be made or delivered agreeing to sell, selling conveying, mortgaging, assigning or leasing unless such contract to sell, agreement of sale, deed, mortgage, assignment or lease shall contain and be subject to the covenants set forth herein.

6. Invalidation of any of the covenants in this Declaration contained by judgment or court order shall be in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this 27 day of April, 1987.



ROGER NETZER

20643 677

STATE OF CALIFORNIA)
COUNTY OF San Mateo) ss.

On this 27th day of April, 1987, before me personally appeared ROGER WITZER, 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.



Julie Johnston
Notary Public, in and for said
State and County aforesaid

My commission expires: 6/17/88

GM3

EXHIBIT "A"

LOT 5-A-1-A-1

LAND SITUATED AT WAILUA, KAWAIHAU, KAUAI, HAWAII

Being Portions of Grant 9227 and Grant 12217,
Wailua Homesteads, First Series

Beginning at a point at the South corner of this parcel of land on the North side of Puupilo Road, being also the West corner of Lot 5-A-1-A-2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from True South:

- | | | |
|----|----------------------|---|
| 1. | 121 ^o 12' | 15.00 feet along the North side of Puupilo Road; |
| 2. | 211 ^o 12' | 366.33 feet along the remainder of Grant 12217 (Lot 5-A-2-A); |
| 3. | 166 ^o 12' | 30.00 feet along the remainder of Grant 9227 (Lot 5-A-2-A); |
| 4. | 113 ^o 00' | 222.26 feet along the remainder of Grant 9227 (Lot 5-A-2-A); |
| 5. | 58 ^o 15' | 97.95 feet along the remainder of Grant 9227 (Lot 5-A-2-A); |
| 6. | 99 ^o 13' | 437.86 feet along Grant 12217 and Grant 9493 (Lot 12-A-1-B); |
| 7. | 165 ^o 41' | 305.79 feet along Grant 9493 (Lot 12-A-1-B and Lot 12-A-1-A); |
| 8. | 211 ^o 10' | 330.52 feet along the remainder of Grant 9227 (Lot 9-A); |

- 9. 286° 58' 225.98 feet along the remainder of Grant 9227 (Easement "A");
thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of of 135.00 feet, the chord azimuth and distance being:
- 10. 309° 07' 30" 101.84 feet;
- 11. 331° 17' 228.43 feet along the remainder of Grant 9227 (Easement "A");
thence along the remainder of Grant 9227 (Easement "A") on a curve to the left with a radius of 140.00 feet, the chord azimuth and distance being:
- 12. 308° 53' 106.70 feet;
- 13. 286° 29' 180.39 feet along the remainder of Grant 9227 (Easement "A");
- 14. 1° 19' 19" 285.76 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
- 15. 31° 12' 386.40 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A-2) to the point of beginning and containing an Area of 7.893 acres.



February, 1987
Kapaa, Hawaii

DESCRIPTION PREPARED BY:

Dennis M. Esaki
Dennis M. Esaki
Registered Land Surveyor
Certificate Number 4383

EXHIBIT "B"

LOT 5-A-1-A-2

LAND SITUATED AT WAILUA, KAWAIHAU, KAUAI, HAWAII

Being Portions of Grant 9227 and Grant 12217,

Wailua Homesteads, First Series

Beginning at a point at the West corner of this parcel of land on the North side of Puupilo Road, being also the South corner of Lot 5-A-1-A-1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from True South:

- | | | | |
|----|------------------|---------|---|
| 1. | 211 ^o | 12' | 386.40 feet along the remainder of Grant 12217 and Grant 9227 (Lot 5-A-1-A-1); |
| 2. | 181 ^o | 19' 19" | 285.76 feet along the remainder of Grant 9227 (Lot 5-A-1-A-1); |
| | | | thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of 325.00 feet, the chord azimuth and distance being: |
| 3. | 295 ^o | 38' | 103.36 feet; |
| 4. | 304 ^o | 47' | 171.09 feet along the remainder of Grant 9227 (Easement "A"); |
| | | | thence along the remainder of Grant 9227 (Easement "A") on a curve to the left with a radius of 535.00 feet, the chord azimuth and distance being: |
| 5. | 299 ^o | 54' 30" | 90.93 feet; |
| 6. | 295 ^o | 02' | 125.18 feet along the remainder of Grant 9227 (Easement "A"); |

thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of 235.00 feet, the chord azimuth and distance being:

- 7. 301° 41' 54.43 feet;
- 8. 72° 15' 288.51 feet along the remainder of Grant 9227 (Lot 5-A-1-A-3);
- 9. 31° 12' 87.18 feet along the remainder of Grant 9227 (Lot 5-A-1-A-3);
- 10. 132° 35' 215.84 feet along Grant 12217 (Lot 4-A and Lot 5-B);
- 11. 31° 12' 360.29 feet along the remainder of Grant 12217 (Lot 5-B);
- 12. 121° 12' 15.00 feet along the North side of Puupilo Road to the point of beginning and containing an Area of 2.329 acres.



February, 1987
Kapaa, Hawaii

DESCRIPTION PREPARED BY:

[Handwritten Signature]
 Dennis M. Esaki
 Registered Land Surveyor
 Certificate Number 4383

EXHIBIT "C"

LOT 5-A-1-A-3

LAND SITUATED AT WAILUA, KAWAIHAU, KAUAI, HAWAII

Being a Portion of Grant 9227,

Wailua Homesteads, First Series

Beginning at a point at the East corner of this parcel of land, being also the West corner of Poo Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 656.42 feet North and 7,750.00 West, thence running by azimuths measured clockwise from True South:

1. 13^o 15' 106.20 feet along Parcel 126;
2. 90^o 24' 161.70 feet along Grant 12217 (Lots 2-C and 2-B);
3. 104^o 04' 248.20 feet along Grant 12217 (Lots 2-B, 3-C and 3-B);
4. 81^o 13' 266.60 feet along Grant 12217 (Lots 3-B and 4-C);
5. 132^o 35' 305.43 feet along the remainder of Grant 12217 (Lots 4-C, 4-B and 4-A);
6. 211^o 12' 87.18 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
7. 252^o 15' 288.51 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
8. 308^o 20' 197.24 feet along the remainder of Grant 9227 (Easement "A");
 thence along the remainder of Grant 9227 (Easement "A") on a curve to the left with a radius of 490.00 feet, the chord azimuth and distance being:

- 9. 302^o 37' 30" 97.47 feet;
- 10. 296^o 55' 12.70 feet along the remainder of Grant 9227 (Easement "A");
- 11. 26^o 55' 5.00 feet along the remainder of Grant 9227 (Easement "A");
- 12. 296^o 55' 32.00 feet along the remainder of Grant 9227 (Easement "A");

thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of 90.00 feet, the chord azimuth and distance being:

- 13. 311^o 55' 46.59 feet;

thence along the remainder of Grant 9227 (Easement "A") on a curve to the left with a radius of 170.00 feet, the chord azimuth and distance being:

- 14. 285^o 15' 226.03 feet;

thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of 85.80 feet, the chord azimuth and distance being:

- 15. 266^o 59' 68.17 feet to the point of beginning and containing an Area of 3.959 acres.



February, 1987
Kapaa, Hawaii

DESCRIPTION PREPARED BY:

Dennis M. Esaki

Dennis M. Esaki
Registered Land Surveyor
Certificate Number 4383

EXHIBIT "D"

SUBDIVISION OF LOT 5-A-1-A (Wailua Homesteads,
First Series) INTO LOTS 5-A-1-A-1 THROUGH
5-A-1-A-3, INCLUSIVE

COVENANTS AND RESTRICTIONS

1. The use of Lots 5-A-1-A-1, 5-A-1-A-2 and 5-A-1-A-3 shall be limited to those uses permissible in an "A" agricultural district, which are as follows:

- (1) Cultivation of crops, including but not limited to flowers, vegetable, foliage, fruits, forage and timber.
- (2) Game and Fish propagation.
- (3) Raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use.
- (4) Farm dwelling, farm buildings, or activities or uses related to farming and animal husbandry.
- (5) Public institutions and buildings which are necessary for agricultural practices.
- (6) Public and private "open area" types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps.
- (7) Public, private and quasi-public utility lines, and roadways, transformer station, solid waste transfer stations, etc., and appurtenant small buildings such as booster yards for equipment, material, vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures.
- (8) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interest.
- (9) Roadside stands for the sale of agricultural products grown on the premises.
- (10) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-permitted uses.

(11) Agricultural parks.

2. Any dwelling constructed on said Lots shall be a farm dwelling. A farm dwelling shall mean a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling.

3. The aforesaid covenants and restrictions shall run with the land until such time as the land is reclassified to a Land Use District other than Agriculture.

EXHIBIT "E"

SUBDIVISION OF LOT 5-A-1-A (Wailua Homesteads,
First Series) INTO LOTS 5-A-1-A-1 THROUGH
5-A-1-A-3, INCLUSIVE

COVENANTS AND RESTRICTIONS

The use of Lots 5-A-1-A-1, 5-A-1-A-2 and 5-A-1-A-3 and any lot or lots resulting from further subdivision thereof shall be subject to the following restrictive covenants from the date hereof until the first (1st) day of January, 2007:

- (1) No "quonset", "A-Frame" or "dome" type of dwelling, building or structure shall be constructed on any lot.
- (2) All construction shall be of new masonry or lumber materials free of dry rot and termites. No secondhand material shall be used in the construction of any improvements. No existing structure will be permitted to be moved from a different location and placed on a subdivision lot. The use of the following types of roofs is prohibited: (1) asphalt felt roll roofing and (2) corrugated roofing of any kind.
- (3) No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No pigs, goats, bees, rabbits, sheep or poultry of any kind shall be raised, bred, kept or maintained on any Lot. A reasonable number of common household pets may be kept on each lot so long as they are not kept, bred or maintained for any commercial purpose. For purposes of this paragraph, a reasonable number of the common household pets, dogs and/or cats shall mean not more than two (2) of each. Pigs, goats, rabbits, sheep, chickens and ducks shall not be deemed to be common household pets.
- (4) No structure of a temporary character, trailer, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently; no metal shack will be allowed in the subdivision.
- (5) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

ORDER4

EXHIBIT "I"

STC 148119

RECORDATION REQUESTED BY:

87- 65589

STATE OF HAWAII
BUREAU OF CONVIYANCES
RECORDED

07 MAY 6 48: 01

AFTER RECORDATION RETURN TO:

Donald Wilson
4370 Kukui Grove St. #301
Lihue, Kauai 96766

20643 687
STATE OF HAWAII REGISTAR

RETURN BY: MAIL () PICKUP ()

Tax Map Key: 4-2-2-74 (4)

DESIGNATION OF EASEMENTS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, ROGER NETZER, unmarried, whose residence and post office address is 1071 Covington Drive, Los Altos, California 94022, hereinafter called "Netzer" is the owner of Lot 5-A-1-A, being portions of Grant 9227 and Grant 12217, Wailua Homesteads First Series, Wailua, Kawaihau, Kauai, Hawaii, Fourth Taxation Division TMK: 4-2-2-74; and

WHEREAS, Netzer caused said Lot 5-A-1-A to be subdivided into Lots 5-A-1-A-1, 5-A-1-A-2 and 5-A-1-A-3 which subdivision was approved by the Planning Commission of the County of Kauai at its meeting on March 11, 1987; and

WHEREAS, as a condition to the granting of final approval of the subdivision of Lot 5-A-1-A, Netzer agreed to designate non-exclusive perpetual easements for access and utility purposes over and across Easement 2, described in Exhibit "A", affecting Lot 5-A-1-A-2, described in Exhibit "B" in favor of Lot 5-A-1-A-1 described in Exhibit "C", and Easement "3" described in Exhibit "D", affecting Lot 5-A-1-A-1 in favor of Lot 5-A-1-A-2, said Exhibits "A", "B", "C" and "D" are attached hereto and incorporated herein.

NOW THEREFORE, in compliance with his Agreement, Netzer, does hereby designate perpetual, non-exclusive easements for access and utility purposes over, under and across Easement 2, in favor of Lot 5-A-1-A-1 and over, under and across Easement 3, in favor of Lot 5-A-1-A-2 subject to the following terms, covenants and conditions:

1. That the owners of Lots 5-A-1-A-1 and 5-A-1-A-2 and if either of the owners of said Lots should grant easements over, under and across Easements 2 and 3 to the owner(s) of Lot 5-A-2-A, more particularly described in Exhibit "E", attached hereto and incorporated herein, as hereinafter provided, the owner(s) of Lot 5-A-2-A, shall use Easements 2 and 3 as and for a common roadway which provides access to said lots from Puupilo Road and for the purpose of providing utilities to said Lots.

2. That the owners of Lots 5-A-1-A-1 and 5-A-1-A-2 and the owner(s) of Lot 5-A-2-A if the owner(s) of said Lot 5-A-2-A have been granted easements over, under and across Easements 2 and 3 as hereinafter provided, and any person using Easements 2 and 3 with their express or implied consent, shall not unreasonably interfere with the use of Easements 2 and 3 by each other and others entitled thereto.

3. To the extent possible, all utility lines (water, sewer, power and communication) shall be situated within the same general area of Easements 2 and 3 and the owner(s) of either Lot 5-A-1-A-1 or 5-A-1-A-2 or if the owner(s) of Lot 5-A-2-A have been granted Easements over, under and across Easements 2 and 3 as hereinafter provided, the owner(s) of Lot 5-A-2-A, having the utilities installed, shall be and is hereby authorized to grant perpetual non-exclusive easements to the provider of the utilities, over, under and across such portions of Easements 2 and 3 as may be required by the provider of the utilities for the installation, maintenance and repair of utility lines, meters, poles, guys, anchors, transformers and other necessary equipment and appliances under such terms and conditions as may be required by such provider. The owner(s) of the lot requesting the utility service shall be solely responsible for the restoration of Easements 2 and 3 and all improvements thereon after the installation of the utility lines, etc., to the same condition the same were prior to the installation.

4. That the owners of Lots 5-A-1-A-1 and 5-A-1-A-2 and if the owner(s) of Lot 5-A-2-A have been granted easements over, under and across Easements 2 and 3 as hereinafter provided, the owner(s) of Lot 5-A-2-A, shall be responsible for the care, maintenance and repair of Easements 2 and 3 and shall share equally in the cost thereof regardless of the extent of use of

the Easements by such owners, subject to the following conditions:

a. That prior to any work being done with respect to the care, maintenance or repairs of Easements 2 and 3 and the improvements thereon, the owner(s) of the Lot making the determination that such care, maintenance or repair is needed shall in writing notify the owner(s) of the other lot(s) of the need and the estimated cost thereof.

b. Within twenty (20) days of the date of the receipt of the Notice of Need and Estimated Cost, the owner(s) of the other lot(s) receiving such notice shall, in writing, inform the owner(s) sending the Notice of Need and Estimated Cost that such owner(s) disagrees with the need or estimated cost or both. In the event the owner(s) of the lot sending the Notice of Need and Estimated Cost, do not receive any notice from the owner(s) of the other lot(s) within said twenty (20) day period, the need and estimated cost shall be deemed approved by the owner(s) of the other lot(s) and the owner(s) sending the Notice of Need and Estimated Cost shall then be authorized to proceed with the work. The owners of all of the lots shall share equally in the actual cost thereof so long as the same does not exceed the estimated cost by more than five percent (5%). In the event the actual costs exceeds the estimated cost by more than five percent (5%), the owner(s) sending the Notice of Need and Estimated Cost shall be solely responsible for the amount of the actual cost that exceeds the estimated cost by more than five percent (5%).

c. In the event the owner(s) of the Lot sending the Notice of Need and Estimated Cost receives a Notice of Disagreement as hereinabove provided and if said owners cannot by mutual agreement settle their difference, within ten (10) days of the date of the receipt of the Notice of Disagreement, the determination as to the need, the estimated cost or both shall be determined by arbitration as hereinafter provided.

5. That the owner(s) of each Lot using Easements 2 and 3 for roadway and utility purposes shall indemnify and save the owner(s) of the other lot(s) using said easements for such purposes, against and from any and all claims, damages, cost and expenses, including but not limited to, any claims for damages to property and/or injury or death to persons arising out of the use of Easements 2 and 3 by such owner(s) and any person using the same with such owner(s)' express or implied consent, and with any breach or default by such owner(s) of the terms hereof or from any negligent act or omission of such owner(s)' express or implied consent. In the event any action or proceeding be brought against the owner(s) of the other lot(s)

without any fault on such other owner(s) part or any person using Easements 2 and 3 with such other owner(s)' express or implied consent, the owner(s) of the lot(s) shall pay the cost and reasonable attorney's fees incurred by the owner(s) of the other lot(s) and any judgment that may be entered against the other owner(s) of the lot(s) by reason of such action or proceeding.

6. That the Notice herein required to be given shall be either hand delivered or sent by registered mail, return receipt requested.

7. In the event the owners of the lots cannot agree as to the need and/or estimated cost of the care, maintenance and repair of Easements 2 and 3 and/or the improvements thereon, the owners of the lots representing opposing sides of the disagreement (in the event only two lots are involved, the owner(s) of each of lot) with each opposing side entitled to one arbitrator, shall, within ten (10) days of the last day in which they had to mutually settle their differences as set forth in paragraph 5c., each appoint an arbitrator and give notice thereof to the owner(s) of the other lot(s). In case the owner(s) of the lot(s) on one side of the dispute fail to do so, the owner(s) of the lot(s) who has named an arbitrator may apply to the judge of the Fifth Circuit Court of the State of Hawaii, to appoint a second arbitrator. The two arbitrators thus appointed (in either manner) shall appoint a third arbitrator and in case of their failure to do so, any owner of a lot involved in the dispute may have such third appraiser appointed by said Judge. The three appraisers so appointed shall proceed to determine the matter in question and the decision of said appraisers or a majority of them, shall be final, conclusive and binding upon the owners of all of the lots. The cost of the arbitrators shall be borne one-half each by the owner(s) of the lot(s) on opposing sides of the dispute, except that each side shall be responsible for their respective attorney's fees and the fees of witnesses respectively called by them.

8. In the event the owner(s) of Lot 5-A-2-A, desire to use Easements 2 and 3 as and for a roadway and for utility purposes, the owner(s) of either Lot 5-A-1-A-1 or 5-A-1-A-2 shall be and is hereby authorized to grant to the owner(s) of Lot 5-A-2-A a non-exclusive easement for roadway and utility purposes over, under and across said easements subject to all of the terms, covenants and conditions herein contained which shall be binding upon the owner(s) of Lot 5-A-2-A from and after the date of the Grant of Easement.

9. In the event any action or proceeding is brought to enforce any of the terms, covenants and conditions herein contained or any breach or default thereof, the prevailing party shall be entitled to such party's costs and reasonable attorney's fees.

20643 691

10. That any conveyance of Lot 5-A-1-A-1 and/or 5-A-1-A-2 shall be subject to the terms, covenants and conditions herein contained which may be incorporated into the document of conveyance by reference thereto.

11. That the terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the owners of Lots 5-A-1-A-1 and 5-A-1-A-2 and if the owner(s) of Lot 5-A-2-A if said owner(s) have been granted easements over, under and across Easement 2 and 3 as hereinabove provided, the owner(s) of Lot 5-A-2-A, and their respective heirs, devisees, personal representatives, successors and assigns.

AND Netzer, the present owner of Lots 5-A-1-A-1 and 5-A-1-A-2 hereby agrees that all of the terms, covenants and conditions herein contained shall be binding upon him as the owner of said lots and his heirs, devisees, personal representatives, successors and assigns.

IN WITNESS WHEREOF, Netzer has hereunto set his hand this 27 day of April, 1987.

Roger Netzer

ROGER NETZER

STATE OF CALIFORNIA)
COUNTY OF San Mateo) ss.

On this 27th day of April, 1987, before me personally appeared ROGER NETZER, 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.



Julie Johnston

Notary Public

ORDER2

EXHIBIT "A"

LAND SITUATED AT WAILUA, KAWAIIHAU, KAUAI, HAWAII

Being Portions of Grant 12217 and Grant 9227,

Wailua Homesteads, First Series

Beginning at a point at the West corner of this parcel of land on the North side of Puupilo Road, being also the West corner of Lot 5-A-1-A-2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from True South:

- 1. 211° 12' 386.40 feet along the remainder of Grant 12217 and Grant 9227 (Lot 5-A-1-A-1);
- 2. 1° 19' 19' 30.11 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
- 3. 31° 12' 360.29 feet along the remainder of Grant 12217 (Lot 5-B);
- 4. 121° 12' 15.00 feet along the North side of Puupilo Road to the point of beginning and containing an Area of 5,600 square feet.



February, 1987
Kapaa, Hawaii

DESCRIPTION PREPARED BY:

Dennis M. Esaki
 Dennis M. Esaki
 Registered Land Surveyor
 Certificate Number 4383

LOT 5-A-1-A-2

LAND SITUATED AT WAILUA, KAWAII, KAUAI, HAWAII

Being Portions of Grant 9227 and Grant 12217,

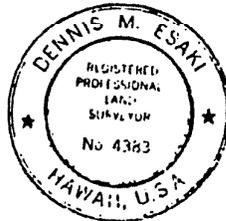
Wailua Homesteads, First Series

Beginning at a point at the West corner of this parcel of land on the North side of Puupilo Road, being also the South corner of Lot 5-A-1-A-1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from True South:

- | | | | |
|----|------------------|---------|---|
| 1. | 211 ^o | 12' | 386.40 feet along the remainder of Grant 12217 and Grant 9227 (Lot 5-A-1-A-1); |
| 2. | 181 ^o | 19' 19" | 285.76 feet along the remainder of Grant 9227 (Lot 5-A-1-A-1); |
| | | | thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of 325.00 feet, the chord azimuth and distance being: |
| 3. | 295 ^o | 38' | 103.36 feet; |
| 4. | 304 ^o | 47' | 171.09 feet along the remainder of Grant 9227 (Easement "A"); |
| | | | thence along the remainder of Grant 9227 (Easement "A") on a curve to the left with a radius of 535.00 feet, the chord azimuth and distance being: |
| 5. | 299 ^o | 54' 30" | 20.93 feet; |
| 6. | 295 ^o | 02' | 125.18 feet along the remainder of Grant 9227 (Easement "A"); |

thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of 235.00 feet, the chord azimuth and distance being:

- 7. 301^o 41' 54.43 feet;
- 8. 72^o 15' 208.51 feet along the remainder of Grant 9227 (Lot 5-A-1-A-3);
- 9. 31^o 12' 87.18 feet along the remainder of Grant 9227 (Lot 5-A-1-A-3);
- 10. 132^o 35' 215.84 feet along Grant 12217 (Lot 4-A and Lot 5-B);
- 11. 31^o 12' 360.29 feet along the remainder of Grant 12217 (Lot 5-B);
- 12. 121^o 12' 15.00 feet along the North side of Puupilo Road to the point of beginning and containing an Area of 2.329 acres.



February, 1987
Kapaa, Hawaii

DESCRIPTION PREPARED BY:

Dennis M. Esaki
Dennis M. Esaki
Registered Land Surveyor
Certificate Number 4383

LOT 5-A-1-A-1

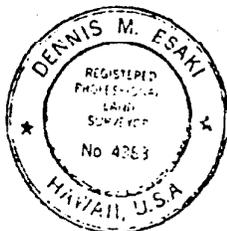
LAND SITUATED AT WAILUA, KAWAIHAU, KAUAI, HAWAII

Being Portions of Grant 9227 and Grant 12217,
Wailua Homesteads, First Series

Beginning at a point at the South corner of this parcel of land on the North side of Puupilo Road, being also the West corner of Lot 5-A-1-A-2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from True South:

1. 121^o 12' 15.00 feet along the North side of Puupilo Road;
2. 211^o 12' 366.33 feet along the remainder of Grant 12217 (Lot 5-A-2-A);
3. 166^o 12' 30.00 feet along the remainder of Grant 9227 (Lot 5-A-2-A);
4. 113^o 00' 222.26 feet along the remainder of Grant 9227 (Lot 5-A-2-A);
5. 58^o 15' 97.95 feet along the remainder of Grant 9227 (Lot 5-A-2-A);
6. 99^o 13' 437.86 feet along Grant 12217 and Grant 9493 (Lot 12-A-1-B);
7. 165^o 41' 305.79 feet along Grant 9493 (Lot 12-A-1-B and Lot 12-A-1-A);
8. 211^o 10' 330.52 feet along the remainder of Grant 9227 (Lot 9-A);

- 9. 286° 58' 225.98 feet along the remainder of Grant 9227 (Easement "A");
thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of of 135.00 feet, the chord azimuth and distance being:
- 10. 309° 07' 30" 101.84 feet;
- 11. 331° 17' 228.43 feet along the remainder of Grant 9227 (Easement "A");
thence along the remainder of Grant 9227 (Easement "A") on a curve to the left with a radius of 140.00 feet, the chord azimuth and distance being:
- 12. 308° 53' 106.70 feet;
- 13. 286° 29' 180.39 feet along the remainder of Grant 9227 (Easement "A");
- 14. 1° 19' 19' 285.76 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
- 15. 31° 12' 386.40 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A-2) to the point of beginning and containing an Area of 7.893 acres.



DESCRIPTION PREPARED BY:

Dennis M. Esaki
 Dennis M. Esaki
 Registered Land Surveyor
 Certificate Number 4383

February, 1987
 Kapaa, Hawaii

20643 697

EXHIBIT "D"

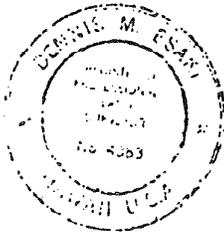
LAND SITUATED AT WAILUA, KAWAIIHAU, KAUAI, HAWAII

Being Portions of Grant 12217 and Grant 9227,

Wailua Homesteads, First Series

Beginning at a point at the South corner of this parcel of land on the North side of Puupilo Road, being also the South corner of Lot 5-A-1-A-1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from True South:

- 1. 121° 12' 15.00 feet along the North side of Puupilo Road;
- 2. 211° 12' 412.51 feet along the remainder of Grant 12217 and Grant 9227 (Lots 5-A-2-A and 5-A-1-A-1);
- 3. 1° 19' 19' 30.11 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
- 4. 31° 12' 386.40 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A-2) to the point of beginning and containing an Area of 5,992 square feet.



- DESCRIPTION PREPARED BY:

Dennis M. Esaki
 Dennis M. Esaki
 Registered Land Surveyor
 Certificate Number 4383

February, 1987
Kapaa, Hawaii

4. The terms and provisions of that certain Farm Dwelling Agreement dated June 24, 1985, recorded on July 10, 1985 in the Bureau of Conveyances of the State of Hawaii in Book 18770 at Page 754, made by and between H. ROGER NETZER, M.D., as "Applicant(s)", and THE COUNTY OF KAUAI, PLANNING DEPARTMENT, as "Department". (affects a portion of the within premises) (also affects other property).

5. Grant dated November 19, 1985, recorded in said Bureau of Conveyances in Book 19149 at Page 651, in favor of CITIZENS UTILITIES COMPANY, a Delaware corporation, granting a perpetual right and easement to build, etc., maintain and operate pole and wire lines and/or underground lines, to use such poles, etc., conduits and other appliances and equipment as may be necessary for the transmission and distribution of electricity to be used for light and power and/or communications and control circuits, etc., over, under, upon, across and through Lot 3, Tax Map Key: 4-2-2-74. (affects a portion of the within premises) (also affects other property).

GM42/wkf

EXHIBIT "E"

LOT 5-A-2-A

LAND SITUATED AT WAILUA, PUNA, KAUAI, HAWAII

Being Portions of Lot 9 and Lot 5,
Wailua Homesteads, First Series

Being also Portions of Grant 9227 and Grant 12216

Beginning at a pipe at the Southeast corner of this parcel of land, on the North side of Puupilo Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 633.88 feet North and 9,036.38 feet West, thence running by azimuths measured clockwise from True South:

- | | | | |
|----|------|---------|--|
| 1. | 121° | 12' | 80.47 feet along the North side of Puupilo Road; |
| 2. | 207° | 33' 30" | 10.02 feet along Grant 9493 (Lot 12-A-1-C); |
| 3. | 113° | 55' | 57.32 feet along Grant 9493 (Lot 12-A-1-C); |
| 4. | 204° | 30' | 312.93 feet along Grant 9493 (Lot 12-A-1-B); |
| 5. | 99° | 13' | 120.00 feet along Grant 9493 (Lot 12-A-1-B); |
| 6. | 238° | 15' | 97.95 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A); |
| 7. | 293° | 00' | 222.26 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A); |
| 8. | 346° | 12' | 30.00 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A); |
| 9. | 31° | 12' | 366.33 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A) to the point of beginning and containing an Area of 1.496 acres. |

SUBJECT, HOWEVER, to the following:

1. "Reserving therefrom an Anchor Easement (5 ft. wide) in favor of Kausi Electric Co., beginning at the Southwest corner of this easement and on the North side of

Puupilo Road, the coordinates of this said point of beginning referred to Government Survey Triangulation Station: "NONOU" being 674.90 feet North and 9,106.73 feet West thence running by azimuths measured clockwise from true South:

1. 248° 06' 13.75 feet;
2. 338° 06' 5.00 feet;
3. 68° 06' 10.00 feet;
4. 121° 12' 6.25 feet along Puupilo Road to the point of beginning and containing an area of 59 square feet";

as reserved in Deed dated August 4, 1978, recorded in Liber 13082 at Page 199.

2. Easement 1 for roadway and utility purposes described as follows:

EASEMENT "1"

LAND SITUATED AT WAILUA, PUNA, KAUAI, HAWAII

Being a Portion of Lot 5-A-2-A,
Wailua Homesteads, First Series

Being also Portions of Grant 9227 and Grant 12217

Beginning at a pipe at the Southeast corner of this parcel of land, at the Southeast corner of Lot 5-A-2-A and on the North side of Puupilo Road, the coordinates of said

EXHIBIT "J"

RECORDATION REQUESTED BY:
PLANNING DEPARTMENT, COUNTY OF KAUAI

AFTER RECORDATION, RETURN TO:
County of Kauai
Planning Department
4280 Rice Street
Lihue, Kauai, Hawaii 96766

87-100596

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

87 JUL 7 2:05

LIBERATED
20870 364
C. F. NEUMANN III, REGISTRAR

RETURN BY: Mail (X) Pickup ()

FARM DWELLING AGREEMENT

THIS AGREEMENT made and entered into as of the 8th
day of June, 1987, by and between
Dan J. Mackey and Carol J. Mackey

whose residence and mailing address is
2035 Analea Street Lihue, HI 96766

hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI
Planning Department, whose business and mailing address is
4280 Rice Street, Lihue, Hawaii 96766, hereinafter called the
"DEPARTMENT",

W I T N E S S E I H :

WHEREAS, the APPLICANTS warrant and represent that they
are the Owner of that certain
parcel of land, Tax Map Key No. 4-2-2-75 9, more
particularly described in Exhibit "A" attached hereto and made
a part hereof; and

WHEREAS, that certain parcel of land is classified
Agriculture by the State Land Use Commission and is zoned
Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the
State Land Use District Regulations only permit "farm
dwellings" within the State Agriculture Land Use District
unless otherwise relieved from the restriction by a special
permit obtained pursuant to Chapter 205, Section 6, Hawaii
Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205,
Hawaii Revised Statutes, and the State Land Use District
Regulations as "a single family dwelling located on and used in
connection with a farm where agricultural activity provides
income to the family occupying the dwelling"; and

WHEREAS, a "family" as used in the definition of a "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANTS acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the State Land Use Agriculture District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANTS also acknowledge that failure to abide by this agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes;

NOW THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations, as recited herein; and
2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District Regulations and as recited herein, who derive income from the agricultural activity on the parcel; and
3. That the APPLICANTS and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this agreement; and
4. That this agreement shall be a covenant running with the land and be binding on the APPLICANTS, and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANTS, their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and
5. That this agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations remain in effect; and
6. That the APPLICANTS expressly set forth the provisions of this agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and
7. That this agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANTS.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the _____ day of _____, 19____.

APPROVED:

[Signature]
Planning Director

[Signature]

APPROVED AS TO FORM AND LEGALITY:

[Signature]
Applicants

[Signature]
Dep. County Attorney

STATE OF HAWAII)
COUNTY OF KAUAI) ss.

On this 8th day of June, 1987, before me personally appeared Dan Mackey & Carol Mackey

to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Signature]
Notary Public, Fifth Judicial Circuit
State of Hawaii

My commission expires: 12/10/88 X

3

EXHIBIT "A"

Lot 5-A-1-A-1

LAND SITUATED AT WAILUA, KAWAIHAU, KAUAI, HAWAII

Being Portions of Grant 9227 and Grant 12217.

Wailua Homesteads, First Series

Beginning at a point at the South corner of this parcel of land on the North side of Puupilo Road, being also the West corner of Lot 5-A-1-A-2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from true South:

1. 121° 12' 15.00 feet along the North side of Puupilo Road;
2. 211° 12' 366.33 feet along the remainder of Grant 12217 (Lot 5-A-2-A);
3. 166° 12' 30.00 feet along the remainder of Grant 9227 (Lot 5-A-2-A);
4. 113° 00' 222.26 feet along the remainder of Grant 9227 (Lot 5-A-2-A);
5. 58° 15' 97.95 feet along the remainder of Grant 9227 (Lot 5-A-2-A);
6. 99° 13' 437.86 feet along Grant 12217 and Grant 9493 (Lot 12-A-1-B);
7. 165° 41' 305.79 feet along Grant 9493 (Lot 12-A-1-B and Lot 12-A-1-A);
8. 211° 10' 330.52 feet along the remainder of Grant 9227 (Lot 9-A);
9. 286° 58' 225.98 feet along the remainder of Grant 9227 (Easement "A");

Thence along the remainder of Grant 9227 (Easement "A") on a curve to the right with a radius of 135.00 feet, the chord azimuth and distance being:

10. 309° 07' 30" 101.84 feet;
11. 331° 17' 228.43 feet along the remainder of Grant 9227 (Easement "A");

Thence along the remainder of Grant 9227 (Easement "A") on a curve to the left with a

radius of 140.00 feet, the chord azimuth and distance being:

- 12. 308° 53' 106.70 feet;
- 13. 286° 29' 180.39 feet along the remainder of Grant 9227 (Easement "A");
- 14. 1° 19' 19" 285.76 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
- 15. 31° 12' 386.40 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A-2) to the point of beginning and containing an area of 7.893 acres.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes over, under and across Easement "2", affecting Lot 5-1-A-1-2, more particularly described as follows:

EASEMENT "2"

LAND SITUATED AT WAILUA, KAWAIHAU, KAUAI, HAWAII

Being Portions of Grant 12217 and Grant 9227,

Wailua Homesteads, First Series

Beginning at a point at the West corner of this parcel of land on the North side of Puupilo Road, being also the West corner of Lot 5-A-1-A-2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from true South:

- 1. 211° 12' 386.40 feet along the remainder of Grant 12217 and Grant 9227 (Lot 5-A-1-A-1);
- 2. 1° 19' 19" 30.11 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
- 3. 31° 12' 360.29 feet along the remainder of Grant 12217 (Lot 5-B);
- 4. 121° 12' 15.00 feet along the North side of Puupilo Road to the point of beginning and containing an area of 5,600 square feet.

TOGETHER WITH all of the rights and subject to the terms, covenants and conditions contained in that certain Designation of Easements dated April 27, 1987, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber _____ at Page _____, which Designation of Easements is incorporated herein by reference thereto.

SUBJECT, HOWEVER, to the following:

1. The terms and provisions of that certain Farm Dwelling Agreement dated June 25, 1985, recorded on July 10, 1985 in said Bureau of Conveyances in Liber 18770 at Page 754, made by and between H. ROGER NETZER, M.D., as "Applicant(s)", and THE COUNTY OF KAUAI, PLANNING DEPARTMENT, as "Department". (affects a portion of the within premises) (also affects other property)

2. A building setback line over and across the northerly portion of Lot 5-A-1-A-1, as shown on Survey Map by Dennis M. Esaki, Registered Land Surveyor, Certificate No. 4383.

3. That certain Declaration of Restrictive Covenants dated April 27, 1987, and recorded in said Bureau of Conveyances in Liber _____ at Page _____.

4. Restriction of vehicular access along Poo Road as shown on Survey Map by Dennis M. Esaki, Registered Land Surveyor, Certificate No. 4383.

5. That certain perpetual non-exclusive easement for access and utility purposes in favor of Lot 5-A-1-A-2 over, under and across Easement "3", which easement is subject to the terms, covenants and conditions contained in that certain Designation of Easements dated April 27, 1987 and recorded in said Bureau of Conveyances in Liber _____ at Page _____, more particularly described as follows:

EASEMENT "3"

LAND SITUATED AT WAILUA, KAWAIHAU, KAUAI, HAWAII

Being Portions of Grant 12217 and Grant 9227,

Wailua Homesteads, First Series

Beginning at a point at the South corner of this parcel of land on the North side of Puupilo Road, being also the South corner of Lot 5-A-1-A-1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 626.11 feet North and 9,023.55 feet West, thence running by azimuths measured clockwise from true South:

1. 121° 12' 15.00 feet along the North side of Puupilo Road;
2. 211° 12' 412.51 feet along the remainder of Grant 12217 and Grant 9227 (Lots 5-A-2-A and 5-A-1-A-1);
3. 1° 19' 19" 30.11 feet along the remainder of Grant 9227 (Lot 5-A-1-A-2);
4. 31° 12' 386.40 feet along the remainder of Grant 9227 and Grant 12217 (Lot 5-A-1-A-2) to the point of beginning and containing an area of 5,992 square feet.

EXHIBIT "K"

R-670

C

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JUN 15, 2000 08:02 AM

Doc No(s) 2000-082382

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

After Recordation Return By: MAIL (XXXXXX) TO:

Carol Mackey
6479 Puupilo Rd
Kapaa, HI 96746

(type/print name & address)

WAIVER AND RELEASE

I (we), Danny James MacKey
Carol Jean Mackey, owners of property located
at TMK: 4-2-22:26, District: Kapaa,
Kauai, Hawaii, Location: 6479 Puupilo Road, whose mailing
address is (are) 6479 Puupilo Rd, Kapaa, HI, have full knowledge and
am aware that the Homes & (we) intend to build
(hereinafter called the "Project") built upon my (our) property which is
presently without water or water services from the County of Kauai, and I
(we) am (are) presently seeking a building permit from the Building Division
of the Department of Public Works of the County of Kauai for such subject
project. & (we) nevertheless desire to commence construction of the subject
project knowing that no County-supplied water service of any kind exists and
acknowledging and accepting the fact that no County-supplied water service
may ever exist at the location;

Therefore, ~~I~~ (we), Danny James Mackey & Carol Jean Mackey, agree, promise and covenant as follows:

1. The issuance to ~~me~~ (us) of a building permit by the County of Kauai for the subject project on the property described above will not be construed by ~~me~~ (us), my (our) agent(s), successor(s) in interest, heir(s) or assign(s) to infer, warrant or guarantee that water or water services will be provided by the County to the property described above at any time in the future;

2. I (we), my (our) agent(s), successor(s) in interest, heir(s) or assign(s) will not use the issuance of the subject building permit as a basis for any claim, action, suit or demand of any kind for the providing of water or water services by the County of Kauai, at this time or any time in the future;

3. I (we), my (our) agent(s), successor(s) in interest, Heir(s) or assign(s) waive(s) any right I (we), he or they do, or does, could or will have to institute any claim, action, suit or demand of any kind which could or will arise out of the absence of County-supplied water or water services at the subject property;

4. Prior to taking any action that affects the title to subject property, I (we) will notify my (our) agent(s), successor(s) in interest, or assign(s) of the entire contents of this Waiver and Release, as such agency, successorship or assignment becomes illegally effected, by having him or them affix his or their signature(s) upon a document attesting to such notice, and will provide to the Building Division a copy of such properly executed document upon execution; and

