

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer WILLIAM CHRIS WITHERS and VIRGINIA L. WITHERS

Address 576 Papau Hikina Place, Kihei, Hawaii 96753

Project Name(*): MAKAWAO GARDENS

Address: 21 Makani Road, Makawao, Hawaii 96768

Registration No. 3796 (Conversion) Effective date: October 17, 1997

Expiration date: November 17, 1998

Preparation of this Report:

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

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

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

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

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

Type of Report:

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

X FINAL: The developer has legally created a condominium and has filed complete information with the Commission.

- [X] No prior reports have been issued.
[] This report supersedes all prior public reports.
[] This report must be read together with

SUPPLEMENTARY: This report updates information contained in the:
[] Preliminary Public Report dated:
[] Final Public Report dated:
[] Supplementary Public Report dated:

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

(* Exactly as named in the Declaration

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report 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. It does not involve the sale of individual subdivided lots. 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.

1. This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency, nor does it ensure that all applicable County codes, ordinances and subdivision requirements have been complied with.

2. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

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

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General Information On Condominiums

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

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

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

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

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

You 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: WILLIAM CHRIS WITHERS
and VIRGINIA L. WITHERS Phone: (808) 879-3367
Name (Business)
576 Papau Hikina Place
Business Address
Kihei, Hawaii 96753

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

N/A

Real Estate
Broker: PARADISE FOUND PROPERTIES, INC. Phone: (808) 573-0033
Name (Business)
133 Makawao Avenue
Business Address
Pukalani, Hawaii 96768

Escrow: TITLE GUARANTY ESCROW SERVICES, INC. Phone: (808) 879-1551
Name (Business)
41 East Lipoa Street, Suite 29
Business Address
Kihei, Hawaii 96753

General
Contractor: N/A (condominium conversion) Phone: _____
Name (Business)

Business Address

Condominium
Managing
Agent: Self-Managed Phone: _____
Name (Business)

Business Address

Attorney for
Developer: GRANT Y. M. CHUN, Esq. Phone: (808) 242-4535
Name (Business)
2200 Main Street, Suite 400
Business Address
Wailuku, Hawaii 96793

**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. 97-102682
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. 2583
 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. 97-102683
Book _____ Page _____
 Filed - Land Court: Document No. _____

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

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents**

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

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

| | <u>Minimum Set by Law</u> | <u>This Condominium</u> |
|--------------------------------|-------------------------------|--------------------------|
| Declaration (and Condo Map) | 75%* | <u>75%</u> |
| Bylaws | 65% | <u>65%</u> |
| House Rules | --- | <u>Majority of Board</u> |

* 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:

See Exhibit "A".

[] 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: 21 Makani Road Tax Map Key (TMK): (2) 2-4-18:35
Makawao, Hawaii 96768

[] Address [X] TMK is expected to change because of establishment of condominium property regime, each apartment will have a separate tax map CPR number.

Land Area: 34,592 [X] square feet [] acre(s) Zoning: Interim*

*[The "Interim" zoning designation is used for various areas in the County of Maui which have not been the subject of a formally adopted comprehensive zoning ordinance and map. Permitted uses in such areas are defined in Maui County Code Chapter 19.02.]

Fee Owner: WILLIAM CHRIS WITHERS and VIRGINIA L. WITHERS
 Name
576 Papau Hikina Place
 Address
Kihei, Hawaii 96753

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: 5 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 checked="" type="checkbox"/> Residential | <u>5</u> | <input checked="" 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 type="checkbox"/> Agricultural | ___ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Hotel | ___ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Recreational | ___ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Timeshare | ___ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Other: _____ | ___ | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

Yes No

5. Special Use Restrictions:

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

[X] Pets: 1 dog (30 lbs. or less), 1 cat or 2 birds; No poultry.

[] Number of Occupants: _____

[X] Other: No more than 2 vehicles per dwelling.

[] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

| <u>Apt. Type</u> | <u>Quantity</u> | <u>BR/Bath</u> | <u>Net Living Area (sf)*</u> | <u>Net Other Area (sf)</u> | <u>(Identify)</u> |
|------------------|-----------------|----------------|------------------------------|----------------------------|-------------------|
| <u>A</u> | <u>4</u> | <u>2/1</u> | <u>672</u> | <u>200</u> | <u>carport</u> |
| <u>B</u> | <u>1</u> | <u>2/1</u> | <u>672</u> | <u>200</u> | <u>carport</u> |
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |

Total Number of Apartments: 5

*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:

See Exhibit "B".

Permitted Alterations to Apartments:

See Exhibit "C".

7. Parking Stalls:

Total Parking Stalls: 5*

| | <u>Regular</u> | | <u>Compact</u> | | <u>Tandem</u> | | <u>TOTAL</u> |
|--------------------------|----------------|---------------|----------------|---------------|----------------|---------------|---------------|
| | <u>Covered</u> | <u>Open</u> | <u>Covered</u> | <u>Open</u> | <u>Covered</u> | <u>Open</u> | |
| Assigned (for each unit) | <u>1</u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u>5</u> |
| Guest Unassigned | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| Extra for Purchase | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| Other: <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| Total Covered & Open: | <u>5</u> | <u> </u> | <u>0</u> | <u> </u> | <u>0</u> | <u> </u> | <u>5</u> |

Each apartment will have the exclusive use of at least 1 parking stall(s).
Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.
- Exhibit contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool Storage Area Recreation Area
- Laundry Area Tennis Court Trash Chute/Enclosure(s)
- Other:

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

- There are no violations. Violations will not be cured.
- Violations and cost to cure are listed below: Violations will be cured by (Date)

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

Apt. No. 3 was constructed in 1971. Apt. Nos. 1, 2, 4 and 5 were constructed in 1972. Developer has renovated the apartments with new carpets, vinyl flooring, cabinets, roofs, appliances, countertops, and interior and exterior paint. Developer makes no representations as to the expected useful life of the apartments.

*[NOTE: Although there is only one (1) carport provided per unit, an occupant's second vehicle may be parked within the limited common area appurtenant to said unit so long as vehicles are not parked in such a fashion as to impair accessibility of other occupants of the Project.

11. Conformance to Present Zoning Code

a. No variances to zoning code have been granted.

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

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 "D".

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 "E".

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:

| | |
|---------|-----|
| Unit #1 | 20% |
| Unit #2 | 20% |
| Unit #3 | 20% |
| Unit #4 | 20% |
| Unit #5 | 20% |

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 "F" describes the encumbrances against the title contained in the title report dated 8/08/97 and issued by Title Guaranty of Hawaii, Inc.

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> |
|--|---|
| Mortgage through GE Capital Hawaii, Inc. | Refund Buyer's deposits and cancel sales contract. |

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:

See NOTE below.

2. Appliances: The only warranty, if any, will be the warranty of the manufacturer.

NOTE: Except as provided above, Developer disclaims any implied warranty of habitability, any implied warranty of merchantability, any implied warranty of fitness for a particular purpose or use, any implied warranty of workmanship and any other express or implied warranties, with respect to the apartments, the project or the common elements of the project.

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

The buildings which are the subject of this report were constructed in 1971 and 1972.

H. Project Phases:

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

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

IV. CONDOMINIUM MANAGEMENT

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

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer the Developer or the Developer's affiliate.
- self-managed by the Association of Apartment Owners Other: _____

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, 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 "G" contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- None Electricity (_____ Common Elements only _____ Common Elements & Apartments)
- Gas (_____ Common Elements only _____ Common Elements & Apartments)
- Water Sewer Television Cable
- Other Maintenance and Pumping of Cesspools; Trash Pickup

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:

- [X] Notice to Owner Occupants
- [X] Specimen Sales Contract
Exhibit "H" contains a summary of the pertinent provisions of the sales contract.
- [X] Escrow Agreement dated 5/29/97
Exhibit "I" contains a summary of the pertinent provisions of the escrow agreement.
- [] Other _____

B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been 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. 3796 filed with the Real Estate Commission on August 13, 1997. (Conversion)

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

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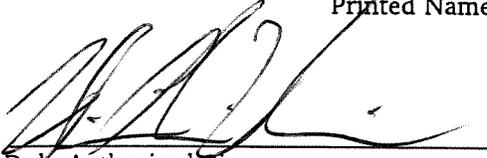
C. Additional Information Not Covered Above

NONE.

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.

WILLIAM CHRIS WITHERS and VIRGINIA L. WITHERS

Printed Name of Developer

By: 
Duly Authorized Signatory

July 21, 1997
Date

WILLIAM CHRIS WITHERS

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Maui
Planning Department, County of Maui

EXHIBIT "A"

**CONDOMINIUM PUBLIC REPORT
MAKAWAO GARDENS
RIGHTS RESERVED BY DEVELOPER**

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

- (a) the right to file "as built" plans, thereby amending the Condominium Map.
- (b) the non-exclusive right to grant easements within the Common Elements for public utility purposes.
- (c) the non-exclusive right to grant easements for any purpose within any landscaped area of the Project and the right to relocate, realign or cancel the same, provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Apartment.
- (d) the right to amend the Declaration and other Condominium Documents to comply with the requirements of any law, mortgage lender or government agency.
- (e) the right to use all areas of the Project to conduct sales of Apartments at the Project until Apartment Deeds are issued to Apartment purchasers with respect to all Apartments in the Project.

EXHIBIT "B"

CONDOMINIUM PUBLIC REPORT MAKAWAO GARDENS BOUNDARIES OF APARTMENTS

The apartments consist of the spaces within the perimeter walls, floors and ceilings of each of the five (5) residential apartment units of the Project, as well as those areas described herein. Each apartment shall be deemed to include:

- (a) all unfinished, undecorated portions of all perimeter and load-bearing walls, all structural components, foundations floor slabs, columns, girders, beams, supports, halls, corridors, exterior stairs and stairways, as applicable, unfinished perimeter walls and interior load-bearing walls, untinted windows, tinted windows including any film or other coating thereon, and roofs;
- (b) all the walls and partitions which are not load-bearing within its perimeter walls;
- (c) any adjoining garage or carport to which such apartment has direct, exclusive access;
- (d) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such apartment which are utilized for and serve only that apartment;
- (e) the surfaces of all walls, floors and ceilings;
- (f) any doors, windows or panels along the perimeters; and
- (g) all appliances and fixtures installed therein.

The residential apartments shall not be deemed to include those items designated as common elements as hereinafter provided.

EXHIBIT "C"

CONDOMINIUM PUBLIC REPORT
MAKAWAO GARDENS
PERMITTED ALTERATIONS TO APARTMENTS

Each Owner of an Apartment shall have the right at any time and from time to time at such Owner's sole cost and expense, and without the necessity of the consent or joinder of the Board or any other Apartment Owner or the amendment of the Declaration, to make any of the following alterations pertaining to the Apartment: to install, maintain, remove, and rearrange partitions and other structures from time to time within such Apartments, and to paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the surfaces of the ceilings, floors and walls of any such Apartment and to finish, alter or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors, and walls as shall be appropriate for the utilization of such Apartment by such Owner or the tenants or lessees thereof; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would jeopardize the soundness or safety of any part of the Project, reduce the value therefor, adversely affect any other Apartment or affect or impair any easement or rights of any other Apartment Owner.

EXHIBIT "D"

CONDOMINIUM PUBLIC REPORT MAKAWAO GARDENS COMMON ELEMENTS

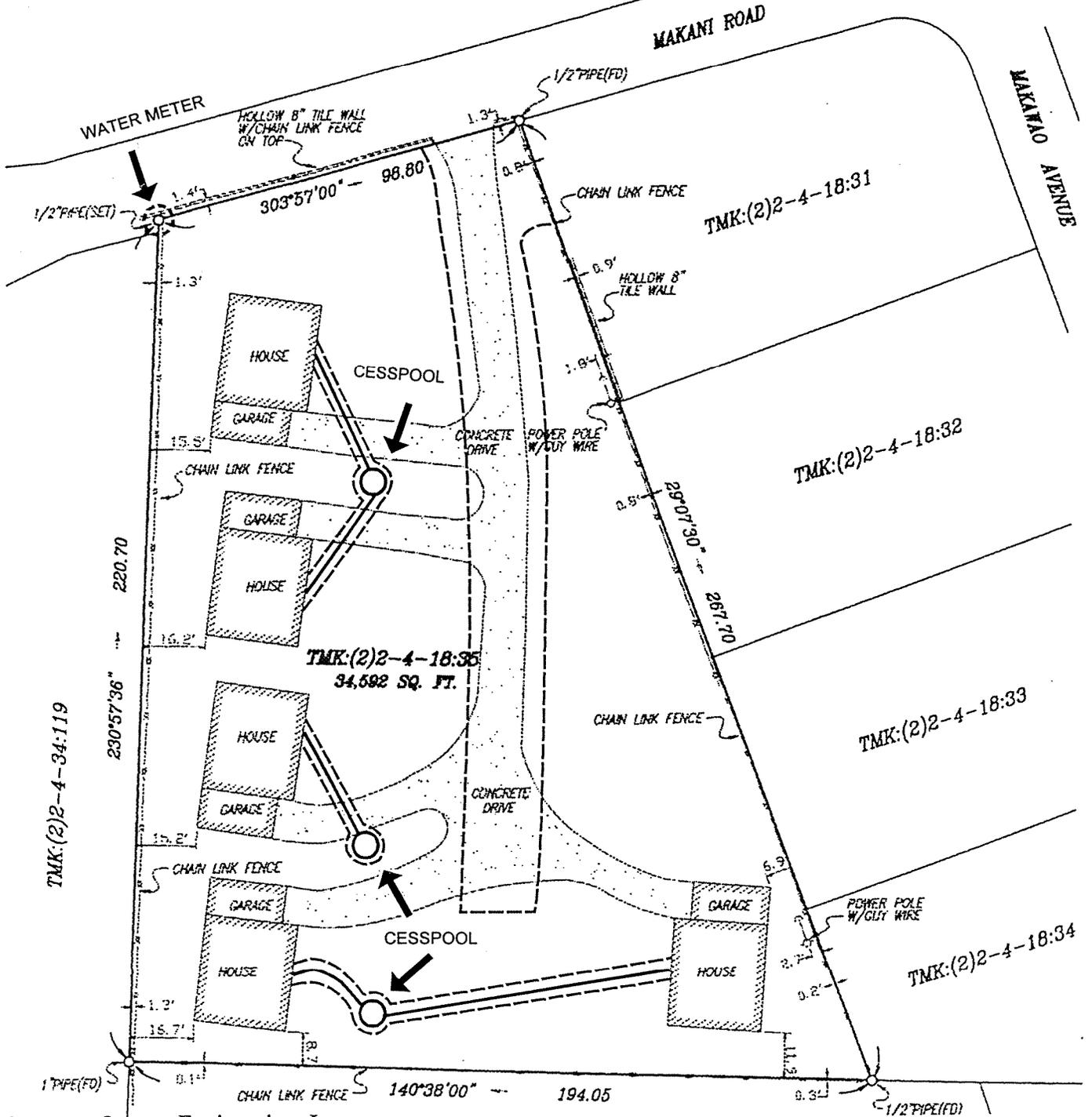
The Common Elements include, but are not limited to:

1. The Land in fee simple.
2. The main driveway leading from Makani Road to each of the individual driveways serving individual apartment units as shown on the attached diagram.
3. All ducts, cesspools and cesspool connection lines, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities over, under and across the Project for services such as power, light, water, gas, cesspool, refuse, collection and radio and television signal distribution. Water meter and cesspool locations are shown on the attached diagram.

[NOTE: Cesspool and Sewage System Lines: The waste system for the entire property is serviced by three (3) cesspools which, along with the lines running from them to the various condominium apartment units constitute portions of the common elements in Makawao Gardens, as depicted on the attachment hereto. The common area designation for these systems ends at the clean-out valve which is located just outside the point where each of the lines enters a given condominium apartment unit. The clean-out valve and all piping running into the condominium apartment unit is deemed to be part of the condominium unit. It should be noted that should the system fail or should substantial modifications occur to the structures within the Project, Department of Health Regulations may require that the cesspool system be replaced with a septic tank wastewater sewage treatment system.]

4. Any interest which the Association may acquire in and to any Apartment or Apartments for use by a resident manager or resident managers.
5. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

ATTACHMENT
TO
EXHIBIT "D"



Source: Otomo Engineering Inc.

Makawao Gardens Condominium
Common Elements

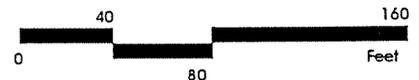


EXHIBIT "E"

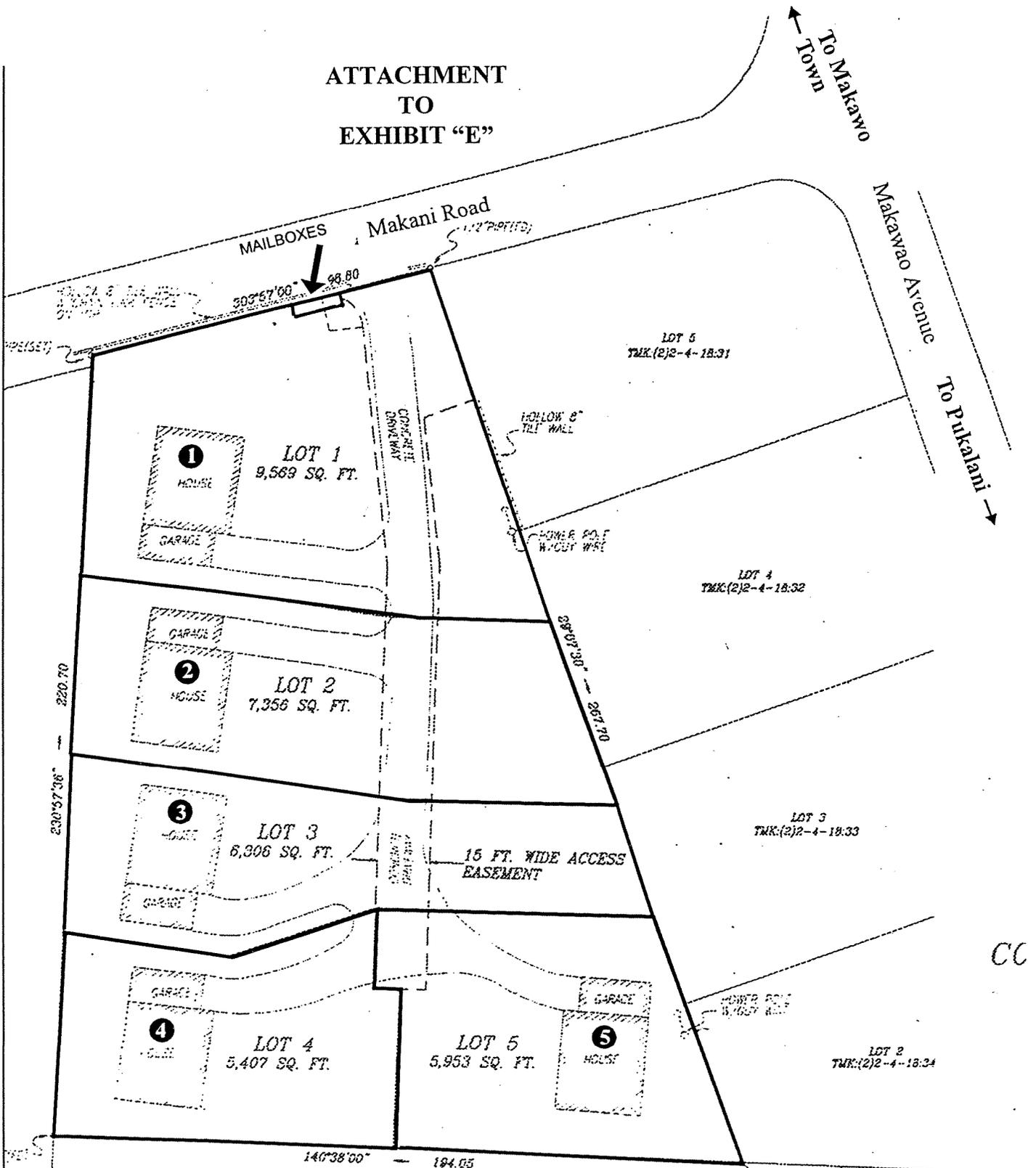
CONDOMINIUM PUBLIC REPORT
MAKAWAO GARDENS
LIMITED COMMON ELEMENTS

Certain parts of the Common Elements, herein called the "Limited Common Elements", are hereby designated, set aside and reserved for the exclusive use of certain Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as set forth herein. The costs and expenses of every description pertaining to the Limited Common Elements, including but not limited to maintenance, repair, replacement, improvement or additions to the Limited Common Elements shall be charged to the Owner of the Apartment to which the Limited Common Element shall be appurtenant, and if there is more than one Apartment to which the Limited Common Elements shall be appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Apartments except as otherwise provided in the Declaration.

1. All yards, grounds and landscaping, with the exception of portions thereof designated as common elements as indicated on the attachment to Exhibit "D" herein, shall be designated as a limited common element to the individual apartments as indicated on the attached diagram.

2. All driveway areas or portions thereof which are for the sole use of a given apartment are designated as limited common elements as indicated on the attached diagram.

ATTACHMENT
TO
EXHIBIT "E"



Source: Otomo Engineering Inc.

Makawao Gardens Condominium
Limited Common Elements



Prepared for: C. Withers

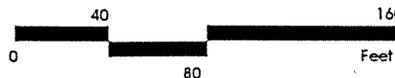


EXHIBIT "F"

CONDOMINIUM PUBLIC REPORT
MAKAWAO GARDENS
ENCUMBRANCES AGAINST TITLE

1. Real Property Taxes for the Fiscal Year July 1, 1997 - June 30, 1998.

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

3. Mortgage, Security Agreement and Financing Statement

Mortgagor : William Chris Withers and Virginia L. Withers, husband and wife

Mortgagee : GE Capital Hawaii, Inc., a Hawaii corporation

Dated : August 13, 1996

Recorded : Document No. 96-117541

Amount : \$307,500.00

EXHIBIT "G"

CONDOMINIUM PUBLIC REPORT
MAKAWAO GARDENS
ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

| <u>Apartment</u> | <u>Monthly Fee</u> x 12 months = <u>Yearly Total</u> |
|------------------|--|
| 1 | \$50.41 \$604.92 |
| 2 | \$50.41 \$604.92 |
| 3 | \$50.41 \$604.92 |
| 4 | \$50.41 \$604.92 |
| 5 | \$50.41 \$604.92 |

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

Estimate of Maintenance Fee Disbursements:

| | <u>Monthly</u> x 12 months = <u>Yearly Total</u> | |
|---|--|-------------------|
| Utilities and Services | | |
| Trash Pickup @ \$60 per apartment | \$ 25.00 | \$ 300.00 |
| Management | | |
| Office Expenses | \$ 8.33 | \$ 100.00 |
| Insurance | | |
| Common Area Liability Insurance | \$ 41.67 | \$ 500.00 |
| Reserves (*) | | |
| Sewage (cesspool) systems replacement costs | \$133.33 | \$1,600.00 |
| Water lines | \$ 3.33 | \$ 40.00 |
| Road | \$ 17.50 | \$ 210.00 |
| Taxes and Government Assessments | | |
| Common Area Real Property Taxes | \$ 10.42 | \$ 125.00 |
| Other | | |
| Miscellaneous | \$ 12.50 | \$ 150.00 |
| TOTAL | \$252.08 | \$3,025.00 |

I, **Harold V. White, of Thayer, James & Black, CPAs, Inc.**, as agent for/and/or employed by **William Chris Withers**, the developer for the **Makawao Gardens** condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.



Signature

7/22/97

Date

(*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach this exhibit as an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with Section 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

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

**ATTACHMENT
TO
EXHIBIT "G"**

Estimate of Initial Maintenance Fees
and
Estimate of Maintenance Fee Disbursements

Statement as to Reserve Study

The Developer has conducted a reserve study in accordance with Section 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

EXHIBIT "H"

CONDOMINIUM PUBLIC REPORT
MAKAWAO GARDENS
SUMMARY OF RESERVATION AGREEMENT, SALES
CONTRACT AND RECEIPT ("SALES CONTRACT")

The unexecuted Sales Contract, filed with the Commission, provides for, among other things, a description of the apartment to be sold, the purchase price, the time, manner, and place of payment, the Purchaser's obligations regarding mortgage financing, Developer's warranties and disclaimers regarding the construction, and the remedies of Developer and of Purchaser in the event of a default under the Contract.

Among other provisions, the specimen Sales Contract and Deposit provides:

1. The Sales Contract prohibits the Purchaser from selling or assigning the Sales Contract.
2. Developer has made no representations and has not authorized any representations to be made by any sales agent concerning any services or arrangements relating to the rental or sale or management of the Purchaser's Apartment.
3. Interest is payable on Purchaser's deposits except as follows: no interest on any deposits held less than sixty (60) days by escrow; no interest where a Purchaser's deposit is retained by Seller pursuant to the terms of this Sales Contract upon Purchaser's default; no interest on any deposits for the period prior to the time of the issuance of the First Public Report; no interest on any deposits held during any period after the first closing of the sale of an apartment in the Project; no interest in the event the Seller elects to refund Purchaser's deposit following Purchaser's default; and no interest in any other case where the Sales Contract expressly provides that such interest shall be retained by the Developer. Any interest earned on deposits in Escrow which is not required by the terms of this Sales Contract to be paid to Purchaser shall be paid to Seller. The rate of interest paid to Purchaser shall be the Passbook Rate of Interest paid on the special savings account to be established by Escrow at a federally insured Hawaii bank.

4. In the event of the enactment of new laws or other events beyond the Developer's control which occur after the Sales Contract becomes binding, Developer will have the option to cancel the Project or increase the price of apartments (in which case the Purchaser will have thirty (30) days to agree to the price increase or rescind the contract).

5. The Sales Contract is subject to the provisions of the Declaration, Bylaws, and other condominium documents.

6. The Purchaser of an Apartment in the Project is subject to ongoing sales activity by the Developer.

7. Seller intends to pre-close this sale by having all documents necessary for closing executed and deposited with Escrow prior to the time of closing up to and including 120 days prior to Seller's estimated Closing Date.

8. Except for the Seller's limited warranty stated in the contract, the Seller makes no express warranties. The Seller disclaims any implied warranty of habitability, any implied warranty of merchantability, any implied warranty of fitness for a particular purpose or use, any implied warranty of workmanship and any other express or implied warranties with respect to the apartment, or the common elements or the project.

9. The Sales Contract is a reservation agreement until such time as a copy of the Final Public Report together with the receipt form required by Hawaii Revised Statutes Section 514A-62 is delivered to the Purchaser, the Purchaser has had an opportunity to read said report, and the Purchaser is deemed to have accepted the report.

It is incumbent on the Purchaser that he read the full text of the Sales Contract.

EXHIBIT "I"

CONDOMINIUM PUBLIC REPORT MAKAWAO GARDENS SUMMARY OF ESCROW AGREEMENT

A copy of the executed Condominium Escrow Agreement dated May 29, 1997 between Title Guaranty Escrow Services, Inc., a Hawaii corporation, as Escrow, and Developer. The Escrow Agreement provides for the deposit of Purchaser's funds pursuant to the Sales Contract and also provides for the retention or disbursement of the funds. The Escrow Agreement provides in part that a Purchaser shall be entitled to a return of funds and Escrow will pay such funds to Purchaser, without interest, if any one of the following has occurred: (a) Developer and Purchaser make a written request to Escrow to return to Purchaser the funds of Purchaser held by Escrow; or (b) Developer has notified Escrow of Developer's exercise of the option to cancel or rescind the Sales Contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or (c) with respect to a Purchaser whose funds were obtained prior to the issuance of the Final Report, the Purchaser has exercised his right to cancel the contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or (d) Purchaser has exercised his right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended. Escrow also agrees to make refunds to Purchaser, out of the funds then on deposit with Escrow, if the Developer and Purchaser shall so request in writing and any one of the following events has occurred: (a) no sales contract has been offered to the Purchaser who has been placed on the Developer's reservation list of owner-occupant applicants within six months of the issuance of the first public report; or (b) Purchaser has been unable to obtain adequate financing, or a commitment for adequate financing, for Purchaser's reserved unit by a date which is no earlier than fifty (50) calendar days after Developer's execution and acceptance of the sales contract; or (c) the Purchaser has asked to be removed from the final reservation list; or (d) the Purchaser indicates an intention not to execute the sales contract.

Interest on funds in escrow will not be paid after the first disbursement of such funds.

It is incumbent upon a prospective Purchaser to read the executed Escrow Agreement with care.