

CONDOMINIUM PUBLIC REPORT

Prepared &
Issued by: Co-Developers
Address

Milton C. Gibbs, Pagapan Gibbs and Pasook S. Gibbs
4132 Montova Drive, Los Angeles, CA 90008.

Project Name (\*): "PAGA'S MAKAPALA 'ĀINA"
Project Address: Makapala, North Kohala, Island, County and State of Hawaii

Registration No. 4098
(Partial conversion)

Effective date: February 10, 1999
Expiration date: March 10, 2000

Preparation of this Report:

This report has been prepared by the Co-Developers pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes. 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 Co-Developers 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 Co-Developers when complete information is filed.

X FINAL: The Co-Developers have 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 Declaration
FORM: RECO-30-286/986/189/1190/892/0197

**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 Co-Developers 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 Co-Developers.

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 an 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 owner/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 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 they 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 a 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 sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the Co-Developers will effectively control the affairs of the Association. It is frequently necessary for the Co-Developers to do so during the early stages of development and the Co-Developers 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 Co-Developers to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Co-Developers: Milton C. Gibbs, Pagapan Gibbs and Pasook S. Gibbs Phone: (213) 292-8866  
Name (Business)

4132 Montova Drive, Los Angeles, CA 90008  
Business Address

Names of officers or general partners of Co-Developers who are corporations or partnerships:

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

Real Estate Broker: Unit 2 only: Cynthia Supnet dba Island Star Real Estate Phone: (808) 329-0922  
Name (Business)  
75-5751 Kuakini Hwy., Ste. 207  
Kailua-Kona, HI 96740  
Business Address

Escrow: First American Long & Melone Title Company, Ltd. Phone: (808) 329-4431  
Name (Business)  
75-5706 Hanama Place, Suite 108  
Kailua-Kona, Hawaii 96740  
Business Address

General Contractor: Douglas W. Schilling dba Schilling Construction (Unit 2) Phone: (808) 885-5044  
Name (Business)  
P.O. Box 6240  
Business Address  
Kamuela, HI 96743

Condominium Managing Agent: Self-managed by Association of Apartment Owners Phone: \_\_\_\_\_  
Name (Business)

Attorney for Co-Developers: WALLACE H. GALLUP, JR. Phone: (808) 329-5014  
Name (Business)  
75-5586 Ololi Road, Suite 3007  
Kailua-Kona, Hawaii 96740  
Business Address

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances      Document No. 98-167336  
Book \_\_\_\_\_ Page \_\_\_\_\_

Filed - Land Court      Document Number \_\_\_\_\_

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. 2822  
 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. 98-167337  
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 Co-Developers.

The House Rules for this condominium are:

Proposed                       Adopted                       Co-Developers does not plan to adopt House Rules

E. **Changes to Condominium Documents**

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

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

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

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

2. **Co-Developers:**

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

Co-Developers have reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

**Any time prior to the first recording in the Bureau of Conveyances of the State of Hawaii of a conveyance or transfer (other than for security) of a unit and its appurtenances to a party not a signatory to the Declaration, the Co-Developers may amend the Declaration, the Bylaws and/or the Condominium File Plan in any manner without approval or consent of any unit purchaser.**

**III. THE CONDOMINIUM PROJECT**

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

- Fee Simple:** Individual apartments and the common elements, which includes the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold:** Individual apartments and the common elements, which includes 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 sub-lessor and fee owner is:  
                                  Canceled                     Foreclosed

- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- Individual Apartments in Fee Simple Common Interest in the Underlying Land in Leasehold or Sub-leasehold:**

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provisions.

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 Co-Developers 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 Co-Developers may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The Co-Developers 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: Makapala, North Kohala, Island, County & State of Hawaii Tax Map Key: (3) 5-2-11-5  
(TMK)

Address  TMK is expected to change because N/A

Land Area: 2.69  square feet  acre(s) Zoning: Agriculture Ag 20(a)

Fee Owner: Milton C. Gibbs and Pagapan Gibbs, husband and wife, as T/Entirety, as to 99% undivided interest, as T/Common with Pasook S. Gibbs, unmarried, as T/Severalty, as to 1% undivided interest

Name

4132 Montova Drive, Los Angeles, CA 90008  
Address

Lessor: \_\_\_\_\_  
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: Two (2) Floors Per Building one (1)

Exhibit " A " contains further explanations.

3. Principal Construction Material:

Concrete             Hollow Tile                     Wood

Other WOOD, METAL, GLASS AND OTHER BUILDING MATERIALS

4. Permitted Uses by Zoning:

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

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?  
 Yes                     No

5. Special Use Restrictions:

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

Pets No restrictions (See Bylaws 12.13)

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

Other: \_\_\_\_\_

See Declaration "E.5 For Access and Common Parking Area"

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: Unit 1: One (1) exterior 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>Unit 1</u>	<u>1</u>	<u>3/1-1/2</u>	<u>1,117</u>	_____	_____
<u>Unit 2</u>	<u>1</u>	<u>-0-</u>	_____	<u>20</u>	<u>Greenhouse</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Apartments 2

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

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

**Boundaries of Each Apartment: Each unit includes, but is not limited to, the footing and slab on which it is constructed, the exterior walls and roof, all interior walls, floors, ceilings, columns and partitions, and the finished surfaces thereof, the doors and door frames, window and window frames, the air space within the perimeter of the units, and all fixtures originally installed in the unit. Each unit also includes the garage or carport appurtenant thereto, if any. Each unit shall not include any pipes, shafts, wires, conduits or other utility service lines running through such unit which are utilized for or serve more than one unit, the same being deemed common elements.**

Permitted Alterations to Apartments:

**SEE EXHIBIT "B"**

7. Parking Stalls:

Total Parking Stalls: 4

	<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)	_____	_____	_____	_____	_____	_____	_____
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned Extra for Purchase	_____	<u>4</u>	_____	_____	_____	_____	<u>4</u>
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	<u>4</u>		<u>0</u>		<u>0</u>		<u>4</u>

Each apartment will have the non-exclusive use of at least two (2) parking stall(s).  
Buyers are encourage 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
- Other: Parking area

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 \_\_\_\_\_

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):

Based on a report prepared by an independent registered architect or engineer, it is the Developers' opinion that all structural components and electrical installations material to the use and enjoyment of the condominium units are present sound and appear to be in satisfactory working condition. However, NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ARE MADE AS TO THE EXPECTED USEFUL LIFE OF THE STRUCTURAL COMPONENTS AND MECHANICAL AND ELECTRICAL INSTALLATIONS MATERIAL TO THE USE AND ENJOYMENT OF THE CONDOMINIUM UNITS

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>          </u>	<u>  X  </u>	<u>          </u>

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

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

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

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

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit   "C"  .

as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

[ ] There are no limited common elements in this project.

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

[ X ] described in Exhibit "D".

[ ] 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. 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:

[ X ] described in Exhibit "E".

[ ] as follows:

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 November 17, 1998, and issued by First American Long & Melone Title Corporation.

Blanket Liens:

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

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

[ 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 Co-Developers conveys the apartment to a buyer. Buyer's interest will be affected only if the Co-Developers default and the lien is foreclosed prior to conveying the apartment to buyer.

Type of Lien

Mortgage in favor of American Savings Bank, F.S.B. as Mortgagee, and Milton C. Gibbs and Pagapan Gibbs, husband and wife, as Mortgagor (see Exhibit "F")

Effect on Buyer's Interest and Deposit  
If Co-Developers Default or Lien is  
Foreclosed Prior to Conveyance

Buyer's interest will be canceled and full deposit returned to Buyer, 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:

**Any manufacturer's warranties currently in effect.**

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

Unit 1 was originally completed in the year 1938 . Unit 2, greenhouse, was completed in the year 1998 .

**H. Project Phases:**

The Co-Developers  has  have not reserved the right to add to, merge, or phase this condominium.

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



V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

[ ] Notice to Owner Occupants

[ X ] Specimen Sales Contract

Exhibit "H" contains a summary of the pertinent provisions of the sales contract.

[ X ] Escrow Agreement dated October 29, 1998.

Exhibit "I" contains a summary of the pertinent provisions of the escrow contract.

[ X ] Other Specimen Deed

B. Buyer's Right to Cancel Sales Contract:

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

Preliminary Report: Sales made by the Co-Developer are not binding on the prospective buyers. Sales made by the Co-Developer may be binding on the Co-Developer unless the Co-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, Supplementary Report to a Final Report: Sales made by the Co-Developer are binding if:

- A) The Co-Developers deliver to the buyer a copy of:
  - 1) Either the Final 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 Co-Developers 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 Co-Developers 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 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 Co-Developers which have been given 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 Farm Dwelling Notice
- 

Copies of the condominium and sales documents and amendments made by the Co-Developers are available for review through the Co-Developers 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, Hawaii 96809, at a nominal cost.

This Public Report is Registration No. 4098 filed with the Real Estate Commission on December 22, 1998.

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

yellow paper stock     white paper stock     pink paper stock

C. Additional Information Not Covered Above

Disclosure re: Selection of Real Estate Broker

This public report shall not bind a purchaser to the sale of any apartment until (1) the Co-Developers first submit to the Real Estate Commission a duly executed disclosure abstract identifying the undesignated sales agent, and a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, and (2) gives a copy of said disclosure abstract to the purchaser together with a copy of the Public Report.

If the Co-Developers have indicated that they have no intention of selling Unit 1 at this time, but should they later decide to do so, buyer's funds shall not be used for purposes of construction.

Disclosure re: Replacement Reserves Study

Mandatory reserves assessments and collection in effect beginning 1994 budget year.

Co-Developers have not had a reserves study done in accordance with Hawaii Revised Statutes Section 514A-83.6 and Hawaii Administrative Rules, Chapter 107, as amended, in that there are no common elements in this project which are going to be maintained by the Association, as reflected in Exhibit "G".

Mailboxes

Mailboxes have not been provided for the units, as there is no mail delivery to this area. People in this area customarily maintain a post office box at the local post office.

Residential Dwellings within State Land Use Agricultural District

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

FARM DWELLING NOTICE

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

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

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

*Penalty for violation of Section 205-4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000.00. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000.00 for any additional violation.*

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

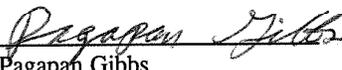
\_\_\_\_\_  
*Signature of Applicant*

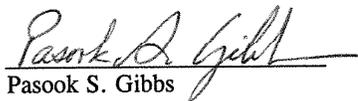
\_\_\_\_\_  
*Signature of Witness*

D. The Co-Developers hereby certify that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the Co-Developers to buyers concerning the project have been reviewed by the Co-Developers and are, to the best of the Co-Developers' knowledge, information and belief, true, correct and complete.

**MILTON C. GIBBS, PAGAPAN GIBBS and PASOOK S. GIBBS**  
Printed Name of Co-Developers

By:  12/15/98  
Milton C. Gibbs Date  
Co-Developer

By:  12/15/98  
Pagapan Gibbs Date  
Co-Developer

By:  12/15/98  
Pasook S. Gibbs Date  
Co-Developer

Distribution:

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

## EXHIBIT "A"

### DESCRIPTION OF BUILDINGS

The project consists of two primary buildings. Each primary building contains one apartment ("unit"). Unit 1 is a one (1) story residential building and is constructed principally of wood, metal, glass and related building materials. Unit 2 is a one (1) story greenhouse and is constructed principally of wood and related building materials. Neither unit has a basement.

## EXHIBIT "B"

### ALTERATION OF PROJECT

The dimensions, area and location of each unit are shown graphically on the Condominium Map. Each unit shall include and contain all space, including but not limited to the residential building(s), if any, and other improvements within the area bounded by the perimeter boundaries of such unit, as follows:

Paragraph L of the declaration provides as follows:

1. Notwithstanding anything to the contrary in this Declaration, each unit owner shall have the right at his sole option at any time and from time to time, as hereinafter set forth, without the consent and/or approval of the owner of the other unit or any other persons or entity, to improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon the yard appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit owner shall have the right without the consent or joinder of any other person to amend this Declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the owner of the altered unit shall duly file such amendment to this Declaration in the Bureau of Conveyances, together with a complete set of the floor plans of such unit as so altered, certified by a registered architect or professional engineer to fully and accurately depict the altered portions of the property as built. If required by the Act, the Board shall be deemed to approve of all such alterations. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, consent to all such alterations and agree to give and shall be deemed to have given the owner of the altered unit a power of attorney to execute an amendment to the declaration solely for the purpose of describing the alterations to such unit in the declaration so that the owner of the altered unit shall hereafter have a power of attorney from all the other unit owners to execute such amendment to the declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable.

2. Any alterations to a unit pursuant to this paragraph L shall be subject to the following conditions:

(a) All building plans for any such alterations shall conform with State and County land use, building and zoning laws and other applicable County ordinances and regulations.

(b) Such alterations may decrease or increase the size of the affected unit, provided that no alteration shall extend or place the unit outside of the limits of the yard (limited common elements) appurtenant to such unit. All improvements (exclusive of fences, walls and/or driveways) constructed after the date of this Declaration shall maintain a minimum setback of twenty (20') feet from all property lines (including all individual limited common element land area perimeter boundaries), or such greater distance as may be required by applicable zoning ordinances.

(c) All such alterations shall be at the sole expense of the unit owner making the change and shall be completed within one year of the commencement thereof and in a manner that will not unreasonably interfere with the other unit owner's use of his unit or yard.

(d) The owner of the altered unit shall have the right to utilize, relocate and realign existing and/or to develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services and when applicable, to add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith; provided that the same shall not cause any interruption in the service of such utilities to any other part of the project, nor shall it unreasonably interfere with the other unit owner's use or enjoyment of his unit or yard or any easement for access purposes to the owner's unit or yard. While an owner may extend overhead utility wires from existing utility poles to a structure within a unit's yard, an owner may not place any utility pole(s) in the unit's yard under any circumstance.

(e) Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a unit shall reserve to all unit owners the rights set forth in this paragraph.

EXHIBIT "C"

COMMON ELEMENTS

The common elements of the project shall specifically include, but are not limited to, the following:

1. The land described in Exhibit "A" attached to the Declaration, in fee simple.
2. All yards, grounds, landscaped areas, retaining walls, parking areas and driveways around and between the units.
3. All central and appurtenant installations for common services, including power, light, water, telephone and sewer.
4. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance and safety, or normally in common use.

EXHIBIT "D"

LIMITED COMMON ELEMENTS

The units shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

Certain parts of the common elements, referred to as the "limited common elements", are designated and set aside for the exclusive use of certain units, and such units shall have appurtenant easements for the exclusive use of such limited common elements. The limited common elements are described in the Declaration as follows:

**PRIVATE LAND AREA OR YARD.** Certain land area of the project, located as shown on the condominium map and designated thereon as limited common element, together with all improvements thereon, is appurtenant to and for the exclusive use of each unit as designated on the condominium map.

<u>Unit No.</u>	<u>Yard No.</u>	<u>Private Land Area</u>
1	1	1.5 acres, more or less, as shown on the Condominium Map.
2	2	1.19 acres, more or less, as shown on the Condominium Map.

**NOTE:** The boundaries of the yard area appurtenant to each unit, as shown on the Condominium File Plan do not represent County-approved subdivided lots. Such boundaries serve only to delineate the limited common element yard area appurtenant to each unit.

**WATER METER AND WATERLINES:** The project is presently served by one (1) waterline with no bill for water usage being issued by the Department of Water Supply in exchange for it running a water line across the Project. If an owner decides to obtain a formal water meter to serve the owner's unit the owner may do so at the owner's sole expense and upon doing so that water meter and any water line attached to it shall be considered to be a limited common element appurtenant to the unit to which they are attached with water usage maintenance, repair and replacement expenses relating thereto being the sole responsibility of the owner of the unit serviced by the water meter and water line.

EXHIBIT "E"

COMMON INTEREST

<u>Unit No.</u>	<u>Undivided Common Interest</u>
1	50%
2	50%

EXHIBIT "F"

ENCUMBRANCES AGAINST TITLE

1. For information regarding real property taxes as may be due and owing, reference is made to the Director of Finance, County of Hawaii.
2. Title to all minerals and metallic mines reserved to the State of Hawaii.
3. Rights of others thereto entitled in and to the continued uninterrupted flow of the Waikane stream.
4. Any and all trails, archeological sites, burial cave(s) and/or burial grounds that may be shown by an accurate on the ground survey.
5. Rights of the State of Hawaii in and to any and all trails, roads, archeological sites, burial ground(s) or cave(s), prehistoric and historic remains, all surface and ground waters appurtenant to said land and the right to capture, divert or impound the same and to occupy and use so much of the land as may be required in the exercise of this right reserved.
6. All customary and traditional gathering and other rights of Native Hawaiians, for subsistence, culture and religious purposes.
7. An easement for pole and wire line purposes, in favor of Hawaii Electric Light Company, Inc., a Hawaii corporation, and Hawaiian Telephone Company, also a Hawaii corporation, dated January 12, 1984, recorded July 29, 1984, in the Bureau of Conveyances, State of Hawaii, in Book 188043, Page 193.
8. Mortgage dated March 26, 1994, recorded in said Bureau as Document No. 94-061086, by and between American Savings Bank, F.S.B. as Mortgagee, and Milton C. Gibbs and Pagapan Gibbs, Husband and wife, as Mortgagor.
9. Grant of Easement in favor of William Akau dated March 24, 1995, recorded in said Bureau as Document No. 95-045251 granting Easement A, 10 feet wide for access purposes, in favor of TMK (3) 5-2-11:4 and TMK (3) 5-2-11:1.  
  
Amendment to grant of easement dated September 1, 1995, recorded in said Bureau as Document No. 96-129086.
10. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, limitations on title and all other provisions as contained in or incorporated by reference that certain Declaration of Condominium Property Regime of Paga's Makapala 'Āina dated August 27, 1998 and recorded in said Bureau as Document Number 98-167336.
11. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, limitations on title and all other provisions as contained in or incorporated by reference in the Bylaws of the Association of Unit Owners of Paga's Makapala 'Āina dated August 27, 1998 and recorded in said Bureau as Document Number 98-167337.
12. Condominium Map No. 2822.

END OF EXHIBIT "F"

EXHIBIT "G"

ESTIMATED MAINTENANCE FEES

The regular maintenance and repair of each unit and appurtenant limited common elements shall be the sole responsibility of each respective unit owner. Section 514A-86, Hawaii Revised Statutes, requires that the association purchase fire insurance to cover the improvements portion of the project. The Declarant anticipates that the association will elect to require each owner to obtain separate fire insurance and liability policies for his respective unit pursuant to Article 7 of the Bylaws. As such, premiums for such policies will be the individual responsibility of each unit owner. The Declarant estimates that the annual premium for a fire insurance policy covering Unit 1 may be approximately \$878.00 and Unit 2 may be approximately \$ 150.00. There will be no common elements that will require maintenance by the association except for the common driveway shown on the Condominium Map which will not require regular maintenance. Any maintenance and repair costs relating to the common driveway will be paid for by special assessments to be called for by the association as and when needed.

The Developer has not conducted a reserve study in accordance with Section 514A-83.6, Hawaii Revised Statutes, as amended, and the replacement reserve rules. Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules as amended.

EXHIBIT "H"

SUMMARY OF  
CONDOMINIUM DEPOSIT RECEIPT AND SALES CONTRACT

The Condominium Deposit Receipt and Sales Contract (the "Sales Contract") contains the price and other terms and conditions under which a purchaser will agree to buy a unit in the Project. Among other things, the Sales Contract states:

- (a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a unit.
- (b) That the purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Sales Contract.
- (c) That the Co-Developers make no representations concerning rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.
- (d) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.
- (e) Requirements relating to the purchaser's financing of the purchase of a unit.
- (f) That the unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Co-Developers may change these documents under certain circumstances.
- (g) That the Co-Developers make no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.
- (h) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
- (i) That the purchaser will not receive interest on deposits made under the Sales Contract.
- (j) In the event of a default by the purchase under the Sales Contract, the Declarant may, in addition to other remedies, be entitled to all deposits paid by the purchaser as liquidated damages.

The Sales Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon purchasers and prospective purchasers to read with care the specimen Sales Contract on file with the Real Estate Commission.