

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Bert S. Shiroma, Trustee; Debra M. Y. Lau Shiroma, Trustee; Developer Paul R. Nagamine, Trustee and Dawn M. Nagamine, Trustee; Address 911 Wailupe Drive, Wailuku, Maui, HI 96793

Project Name (\*): 77 WAIALE CONDOMINIUM; Address: 77 Waiale Drive, Wailuku, Maui, HI 96793

Registration No. 4544; Effective date: February 27, 2001; Expiration date: March 27, 2002

Preparation of this Report:

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

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

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

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

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

Type of Report:

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

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

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

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

(\* ) Exactly as named in the Declaration. This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request. FORM: RECO-3G 285/986/189/1190/892/G197/1098/0800

**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. Where land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** it is not a legally subdivided lot. 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.**

## TABLE OF CONTENTS

	Page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure Abstract	2
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH THE PROJECT	5
Developer	
Attorney for Developer	
General Contractor	
Real Estate Broker	
Escrow Company	
Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A: BUILDING AND IMPROVEMENTS	
EXHIBIT B: PARKING STALLS	
EXHIBIT C: COMMON ELEMENTS	
EXHIBIT D: LIMITED COMMON ELEMENTS	
EXHIBIT E: ENCUMBRANCES AGAINST TITLE	
EXHIBIT F: ESTIMATE OF INITIAL MAINTENANCE FEES	
EXHIBIT G: SUMMARY OF SALES CONTRACT	
EXHIBIT H: SUMMARY OF ESCROW AGREEMENT	

## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

**I. PERSONS CONNECTED WITH THE PROJECT**

Developer: Bert S. Shiroma, Trustee; Debra M.Y. Lau Shiroma, Trustee Shiroma - (808) 244-3139  
 Paul R. Nagamine, Trustee; Dawn M. Nagamine, Trustee Name\* Phone: Nagamine - (808) 244-3159  
 911 Wailupe Drive (Business)  
 Business Address  
 Wailuku, HI 96793

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a limited liability company (LLC) (attach separate sheet if necessary):  
 Not Applicable

Real Estate Broker\*: None selected. See page 20 Phone: \_\_\_\_\_  
 Name (Business)  
 Business Address

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 244-7924  
 Name (Business)  
 2103 Wells Street, Suite C  
 Business Address  
 Waiuku, HI 96793

General Contractor\*: Akinaka Construction, Inc. Phone: (808) 572-1494  
 Name (Business)  
 P.O. Box 378, Haiku, HI 96708  
 Business Address

Condominium Managing Agent\*: None - Self Managed by the Association Phone: \_\_\_\_\_  
 Name of Apartment Owners (Business)  
 Business Address

Attorney for Developer: Thomas A. Bodden Phone: (808) 244-8222  
 Name (Business)  
 Bodden & Muraoka  
 Business Address  
 24 N. Church St., #200  
 Wailuku, Hawaii 96793

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

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

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

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

The Declaration for this condominium is:

Proposed

Recorded - Bureau of Conveyances: Document No. 2000-171859

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. 3194

Filed - Land Court Condo Map No. \_\_\_\_\_

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

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

The Bylaws for this condominium are:

Proposed

Recorded - Bureau of Conveyances: Document No. 2000-171860

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>Not Applicable</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:

~ While Developer has not reserved the right to change the Declaration, Condominium Map or House Rules, Developer has reserved the following rights, for so long as Developer owns a unit in the Project.

1. Developer has reserved the right to grant perpetual easements in gross through, over or across the land or any common element to any public utility or government agency and to relocate or terminate any existing easement.
2. Developer has reserved the right to dedicate and convey a portion of the land to the County of Maui or similar government agency for road-widening or similar purposes.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

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

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     Monthly             Quarterly  
                                  Semi-Annually     Annually

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

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:             Canceled             Foreclosed

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

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

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

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

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:     Monthly             Quarterly  
                                  Semi-Annually     Annually

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

Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

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

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

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

**B. Underlying Land:**

Address: 77 Wailale Road Tax Map Key (TMK): (II) 3-4-10: 30  
Wailuku, Maui, Hawaii 96793

Address  TMK is expected to change because Neither the address nor the  
TMK are expected to change

Land Area: 15,392  square feet  acre(s) Zoning: B-2 Community Business

Fee Owner: Bert S. Shiroma, Trustee; Debra M. Y. Lau Shiroma, Trustee  
 Paul R. Nagamine, Trustee; Dawn M. Nagamine, Trustee

Name  
 911 Wailupe Drive  
 Address  
 Wailuku, HI 96793

Lessor: None  
 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: 1 Floors Per Building: 1

Exhibit A contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other \_\_\_\_\_

4. Uses Permitted by Zoning:

	No. of <u>Apts.</u>	<u>Use Permitted By Zoning</u>	
<input type="checkbox"/> Residential	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Commercial	<u>4</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other	<u>0</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

5. Special Use Restrictions:

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

Pets: No pets permitted, except for those animals assisting handicapped persons and otherwise exempt by law.

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

Other: Business Commercial use in compliance with applicable zoning ordinance.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0      Stairways: 0      Trash Chutes: 0

Apt. Type	Quantity	Rooms BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
<u>101</u>	<u>1</u>	<u>3</u>	<u>452</u>	_____	_____
<u>102</u>	<u>1</u>	<u>9</u>	<u>926</u>	_____	_____
<u>103</u>	<u>1</u>	<u>3</u>	<u>618</u>	_____	_____
<u>104</u>	<u>1</u>	<u>3</u>	<u>760</u>	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 4

**\* 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:

Space measured horizontally by the distance between the unfinished interior surface of exterior walls, the exterior of any windows and doors, and the midpoint of interior party walls, and vertically by the distance between the unfinished interior surface of the floor and unfinished, interior surface of the roof.

Permitted Alterations to Apartments:

Interior, non-structural alterations may be made at any time by the unit owner, in accordance with applicable law.

Structural alterations are subject to the approval of the Board of Directors and upon obtaining all applicable approvals and permits.

All costs associated with alterations shall be at the unit owner's sole cost and expense.

Apartments Designated for Owner-Occupants Only: line 8.48 **NOT APPLICABLE**

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has \_\_\_\_\_ elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 17

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>0</u>	<u>14</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>16</u>
Guest	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Unassigned	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Extra for Purchase	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Other: <u>Handicapped</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
Total Covered & Open:	<u>15</u>		<u>2</u>		<u>0</u>		<u>17</u>

Each apartment will have the exclusive use of at least 2 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 B 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: Electrical closet and common maintenance storage closet

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):

Not Applicable

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	<input checked="" type="checkbox"/>	_____	_____
Structures	<input checked="" type="checkbox"/>	_____	_____
Lot	<input checked="" type="checkbox"/>	_____	_____

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

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

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

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

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

described in Exhibit   C  .

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit D\*.

as follows:

\*Note: Land areas referenced herein are not legally subdivided lots.

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: Each unit has an undivided interest in all common elements based upon the ratio of the size of each unit to the size of all units, as follows:

<u>Unit</u>	<u>Common Interest</u>
101	16.4%
102	33.6%
103	22.4%
104	27.6%

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 E describes the encumbrances against the title contained in the title report dated December 12, 2000 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.

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>
Mortgage	The entire project is subject to a construction loan mortgage to Bank of Hawaii. This mortgage will be released as each apartment is conveyed. No purchaser's funds will be used during construction and all deposits will be returned to purchasers by escrow if Developer defaults.

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:

Statutory contractor's one-year warranty will apply to building and all apartments.

2. Appliances: **NOT APPLICABLE**

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

Construction is scheduled to be completed by February 25, 2001.

H. **Project Phases:**

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

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



V. MISCELLANEOUS

A. **Sales Documents Filed With the Real Estate Commission:**

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

- [ ] Notice to Owner Occupants
- [✕] Specimen Sales Contract  
Exhibit G contains a summary of the pertinent provisions of the sales contract.
- [✕] Escrow Agreement dated December 19, 2000  
1. Exhibit H contains a summary of the pertinent provisions of the escrow agreement.
- [ ] Other \_\_\_\_\_

*NOTE: All units will be sold by Declarant to entities owned by or affiliated with one or more, but not all members of Declarant. No units will be offered for sale to any other purchaser.*

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. 4544 filed with the Real Estate Commission on December 27, 2000.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

C. **Additional Information Not Covered Above**

Disclosure regarding selection of Real Estate Broker

The developer(s), as Trustee(s), have not selected a real estate broker for the sale of the condominium units in the project at this time. In the event the Developer chooses to use a real estate broker for the sale of a condominium unit, prior to entering into a binding contract for such sale the Developer shall : (1) submit to the Real Estate Commission a duly executed copy of a broker listing agreement with a Hawaii licensed real estate broker, together with a duly executed Disclosure Abstract identifying the designated broker and "Trustees" as an "Owner" as defined under Section 467-2(1), Hawaii Revised Statutes; and (2) provide a copy of the Disclosure Abstract to the purchaser together with a copy of this Public Report.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A- ] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. 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.

BERT S. SHIROMA, Trustee; DEBRA M. Y. LAU SHIROMA, Trustee  
 PAUL R. NAGAMINE, Trustee; DAWN M. NAGAMINE, Trustee

---

Printed Name of Developer

By: Bert S. Shiroma DEC 20 2008  
 Duly Authorized Signatory\* Date

By: Debra M. Y. Lau Shiroma  
 Duly Authorized Signatory\*

By: Paul R. Nagamine  
 Duly Authorized Signatory\*

By: Dawn M. Nagamine  
 Duly Authorized Signatory\*

---

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Maui

Planning Department, County of Maui

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

**EXHIBIT "A"**

77 WAIALE CONDOMINIUM

Building and Improvements

77 Waiale Condominium is located at 77 Waiale Road, Wailuku, Island and County of Maui, State of Hawaii, on 15,392 square feet land identified by Tax Map Key No. (II) 3-4-10-30.

77 Waiale Condominium consists of one, one-story commercial building comprising four commercial units or apartments, an electrical closet, a maintenance storage closet, no attic, no basement, and no stairways.

Access to the project is provided on Wells Street and on Waiale Road.

The four (4) freehold estates, referred to herein as "apartments" or "units," are designated and depicted on the Condominium Map and are numbered 101 through 104. All units are non-residential commercial units located on the ground floor of the building.

Unit "101" contains three (3) rooms constituting 452 square feet of net enclosed area.

Unit "102" contains nine (9) rooms constituting 926 square feet of net enclosed area.

Unit "103" contains three (3) rooms constituting 618 square feet of net enclosed area.

Unit "104" contains three (3) rooms constituting 760 square feet of net enclosed area.

Each unit will consist of the space measured horizontally by the distances between the unfinished interior surface of its exterior walls, the exterior of any windows or doors, and the midpoint of any interior party walls; and measured vertically by the distances between the unfinished interior surface of its floor and the unfinished interior surface of the roof, but not including any common elements or limited common elements appurtenant to another unit, and will be deemed to include the portions of the building so described. Each unit shall also be deemed to include all the walls and partitions within its perimeter walls including paper, wallpaper or other wall covering as well as carpeting, floor covering, drop-ceiling and built-in fixtures, if any.

The units shall not be deemed to include pipes, wires, conduits or other utility or service lines running through any such unit, if any, which are utilized for or serve more than one unit, the same being deemed common elements.



**EXHIBIT "B"**

77 WAIALE CONDOMINIUM

Parking Stalls

Each unit shall have a specified number of parking stalls appurtenant to it. The unit number and number of parking stalls assigned to each unit are as enumerated as follows:

<u>Unit</u>	<u>Number of Appurtenant Parking Stalls</u>
101	Two standard uncovered parking stalls
102	One compact and five standard uncovered parking stalls
103	Two standard uncovered parking stalls
104	One compact and five standard uncovered parking stalls

**EXHIBIT "C"**

77 WAIALE CONDOMINIUM

Common Elements

The common elements of the project will include the following:

- (a) The Land in fee simple;
- (b) All roofs, foundations, floor slabs, girders, beams and supports, perimeter walls (excluding non-load bearing interior walls, party walls and partitions of units, if any), floors and all other structural elements of the building;
- (c) All roads, driveways, walkways, easements, accessways, pavement and all exterior parking spaces;
- (d) All grounds, gardens and landscaped areas, landscaping, planters, boundary walls, fences, railings and gutters;
- (e) Any pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one unit for services such as power, light, gas, water, sewer, telephone and television or other signal distribution, if any;
- (f) Water heaters, installed within the common elements area, to service one or more of the separate units;
- (g) All areas, structures or facilities of the project, within or outside of the building, which are for common use or which serve more than one unit space, such as trash receptacle areas, electrical rooms, machine, mechanical and equipment rooms, entranceways and loading zones;
- (h) 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, including the irrigation and sprinkler system and outside and other lighting fixtures for lighting other than that inside the units; and
- (i) Any and all tangible personal property, vehicles, accounts, general intangibles, instruments and money held by or belonging to, and any unit acquired and held by, the Association of Apartment Owners, or its agents, for the administration, maintenance, safety and operation of the common elements of the Condominium Property Regime, or for the common use and benefit of the unit owners.

## EXHIBIT "D"

### 77 WAIALE CONDOMINIUM

#### Limited Common Elements

Certain parts of the common elements, herein called the "limited common elements," or "exclusive limited common elements" are hereby designated and set aside for the exclusive use of the certain apartment or apartments, and such apartment or apartments shall have appurtenant thereto easements for the exclusive use of such limited common elements as follows:

(a) Parking Stalls. Each unit shall have a specified number of parking stalls appurtenant to it. The unit number and number of parking stalls assigned to each unit are as enumerated on Exhibit "B" attached hereto.

Any parking area not specifically indicated as limited common elements including the loading zone and handicapped parking (i.e., any located in the general common elements area) shall be subject to the control and regulation of the Board, which may designate some or all of such stalls for guest parking.

(b) Certain Equipment. Any pump, motor, fan, compressor or duct, or any installation for power, light, telephone, gas, hot and cold water, heating, refrigeration, television, sewage disposal, air conditions, or other utilities (including all pipes, ducts, wires, cables and conduits used in connection therewith, up to the point, if any, of connection of said pipes, etc. to the (common element) portion of such pipe, etc. which serves more than one unit), regardless of whether located in a common element, designed to serve only one unit (that is, not designed or existing for common use), shall be appurtenant to such unit, as a limited common element, and the same shall be reserved for the exclusive use and benefit of such unit, and all costs and expenses of every description pertaining thereto, including, but not limited to, the cost of the maintenance, repair and replacement thereof, and the making of any additions and improvements thereto, shall be charged to the owner of such unit.

## EXHIBIT "E"

### 77 WAIALE CONDOMINIUM

#### Encumbrances Against Title

A preliminary title report, prepared by Title Guaranty of Hawaii, Inc. as of December 12, 2000, indicates that the following encumbrances presently exist against the title of the land which constitutes the 77 Waiale Condominium project.

1. Any real property taxes which may be due and owing. Reference is made to the County of Maui Real Property Tax Division.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Reservation unto the Wailuku Sugar Company of any and all water rights of any nature belonging or appurtenant to the land described herein, as contained in Deed dated November 25, 1952, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 2653, page 331.
4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the SECTION VI(c) AGREEMENT FOR CENTRAL MAUI AREAS, dated November 20, 1990, between ALBERT Y. KANNO, a single person, PAUL R. NAGAMINE and DAWN M. NAGAMINE, husband and wife, YASUO NAGAMINE, husband of Claire H. Nagamine, WAYNE I. ARAKAKI, husband of Alice S. Arakaki, and BERT S. SHIROMA and DEBRA M. Y. L. SHIROMA, husband and wife, and DEPARTMENT OF WATER SUPPLY of the County of Maui, recorded in said Bureau as Document No. 90-180334.
5. Restriction of vehicular access rights along the last 100.62 feet of course two (2), and the entire length of course three (3) and the first 18.00 feet of course four (4) of LOT 2-A, as shown on surveyor's map prepared by Bruce R. Lee, Licensed Professional Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., dated August 27, 1999.
6. Existing Sewer Easement No. 1, as shown on survey map prepared by Bruce R. Lee, Licensed Professional Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., dated November 3, 1992, revised February 10, 1995 and August 28, 1995, as depicted on the map attached to this Exhibit "E."

7. Existing sewer lateral connecting to sewer manhole within Lot 1 running towards Waiale Road as described by Letter dated December 19, 1996, by Tanaka Engineers, Inc. to Title Guaranty of Hawaii, Inc., as depicted on the map attached to this Exhibit "E."
8. Grant dated February 26, 1999, recorded in said Bureau as Document No. 99-034020, to the COUNTY OF MAUI, a political subdivision and body corporation of the state of Hawaii, granting a perpetual and exclusive right and easement for sewerline purposes, as depicted on the map attached to this Exhibit "E."
9. As to ITEM II (Right of Way): Rights of others who may own undivided interest(s), or have easement or access rights, in said parcel.
10. Mortgage dated May 11, 2000, in the amount of \$500,000 in favor of Bank of Hawaii, a Hawaii corporation, recorded in said Bureau as Document No. 2000-069119. A partial release of mortgage dated October 27, 2000, releasing Lot 2-B, was recorded as Document No. 2000-156687.
11. Declaration of Condominium Property Regime for 77 Waiale Condominium dated November 17, 2000, recorded in said Bureau as Document No. 2000-171859.
12. By-Laws of the Association of Apartment Owners dated November 17, 2000 and recorded in said Bureau as Document No. 2000-171860.

NOTE: Item 10 above (Mortgage), obtained by the developer in connection with construction of the project, will be released (as to any unit conveyed) prior to the conveyance of any unit by the developer to a purchaser, as required under the terms of the Escrow Agreement.

EXHIBIT   F  

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>
101	\$193.52                      \$2,322.24
102	\$396.48                      \$4,757.76
103	\$264.32                      \$3,171.84
104	\$325.68                      \$3,908.16

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:**

Monthly Fee x 12 months = Yearly Total

Utilities and Services

Air Conditioning		
Electricity		
<input checked="" type="checkbox"/> common elements only	\$ 125.00	\$ 1,500
<input type="checkbox"/> common elements and apartments		
Elevator		
Gas		
<input type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and apartments		
Refuse Collection	\$ 104.00	\$ 1,248
Telephone N/A		
Water and Sewer	\$ 100.00	\$ 1,200

Maintenance, Repairs and Supplies

Building	\$ 200.00	\$ 2,400
Grounds		

Management

Management Fee		
Payroll and Payroll Taxes		
Office Expenses		
Insurance	\$ 181.00	\$ 2,172
Reserves(*)	\$ 470.00	\$ 5,640

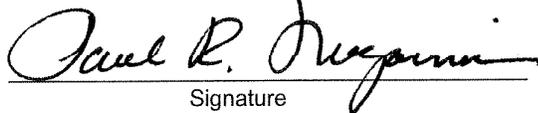
Taxes and Government Assessments

Audit Fees

Other

TOTAL		\$14,160
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I, PAUL R. NAGAMINE, Trustee, as agent for the developer for the **77 WAIALE 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

DEC 20 2000  
 \_\_\_\_\_  
 Date

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

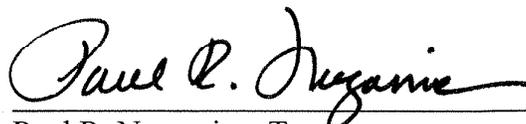
Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

77 WAIALE CONDOMINIUM  
Common Elements Replacement Reserves Analysis

<u>Item</u>	<u>Replacement Cost</u>	<u>Replacement Period</u>	<u>Year</u>	<u>Month</u>
Building Paint	\$12,000	5 years	\$2,400	\$ 200.00
Building Roof	33,150	25 years	1,326	110.50
Paving	13,000	10 years	1,300	108.33
Misc/Contingency	9,000	15 years	600	50.00
TOTAL			\$5,626	\$470.00

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

Dated: DEC 20 2000



Paul R. Nagamine, Trustee  
Agent for Developer

## **EXHIBIT "G"**

### **77 WAIALE CONDOMINIUM Summary of Fee Simple Commercial Condominium Sales Contract**

Each unit in 77 Waiale Condominium will be sold by the developer, Bert S. Shiroma, Trustee under Declaration of Revocable Trust of Bert S. Shiroma dated April 24, 1987, Debra M. Y. Lau Shiroma, Trustee under Declaration of Revocable Trust of Debra M. Y. Lau Shiroma dated April 24, 1987, Paul R. Nagamine, Trustee under Declaration of Revocable Trust of Paul R. Nagamine dated March 22, 1993, and Dawn M. Nagamine, Trustee under Declaration of Revocable Trust of Dawn M. Nagamine dated March 22, 1993, to the respective purchaser pursuant to the terms of a Fee Simple Commercial Condominium Sales Contract.

The Contract provides for the sale of an individual apartment unit, in fee simple, together with an appurtenant percentage of the common elements of the project, including the land, as more specifically described in the Condominium Declaration.

The Contract specifies the terms under which the purchase price shall be paid, including an initial deposit to be paid at the time of signing, an additional deposit to be paid within a specified number of days after the seller's acceptance of the Contract, and final payment to be paid at closing.

The Contract also provides an estimate of the project maintenance fee, start up fee and closing costs that will also be required of the purchaser at closing.

Each of the standard terms and conditions of the Contract is summarized briefly below. Complete terms and provisions are contained in the Contract itself, and in the event of any question of interpretation, or conflict between the terms of the Contract and of this summary, the terms of the Contract shall apply. Therefore, a prospective purchaser is urged to read the entire Contract, carefully and in detail, and to consult with his or her own advisors if any questions exist, before signing the Contract.

#### **Section Summaries**

1. **PROJECT INFORMATION.** Names the Seller and the location of the project, which contains a total of 4 commercial units.
2. **DESCRIPTION OF PROPERTY AND INTEREST CONVEYED.** Indicates that each apartment or unit is as described in the Condominium Declaration and on the Condominium Map and consists of the area within the interior of the described perimeter boundaries.

3. BUYER'S FINANCIAL CAPABILITIES. Includes a representation by Buyer that Buyer has the financial capability, in cash or cash and funds to be obtained by loan, to make all payments required of Buyer under the Contract. If Buyer is to pay any portion of the purchase by mortgage financing, this section imposes specific requirements as to method and time of application related thereto.

4. ESCROW AGREEMENT, INTEREST. This paragraph summarizes the Escrow Agreement, pursuant to which a Buyer's funds shall be held in escrow pending closing of the transaction and any interest earned with respect to that Buyer's deposit shall be credited to Buyer. A summary of the Escrow Agreement and complete copy of that agreement is attached to this Public Report.

5. UNCLAIMED REFUNDS. Provides that any amounts refundable to Buyer which are not claimed within 60 days of transmittal of notice thereof from escrow to Buyer may be deposited with such depository as selected by escrow.

6. CONDOMINIUM DEED; CLOSING. Provides that Seller shall provide to Buyer, at closing, a Commercial Condominium Unit Deed, and sets forth the timing and procedures for pre-closing and actual closing of the transaction.

7. OTHER CLOSING COSTS. Describes other additional expenses that will be incurred and payable by Buyer at closing, including real property tax, maintenance fees, insurance, etc.

8. ACCEPTANCE OF CONDOMINIUM DOCUMENTS. Acknowledges that Buyer has received, reviewed, approved and accepts all condominium documents, including but not limited to the Declaration, Bylaws, Escrow Agreement, and form of Commercial Condominium Unit Deed.

9. CONDOMINIUM MAP. Refers to the Condominium Map, and states that the Buyer agrees that the Condominium Map, floor plans and elevations are not intended to constitute any representation or warranty by Seller.

10. RISK OF LOSS; CONDEMNATION. Provides that risk of loss rests with Seller until the closing date and thereafter with Buyer, and provides that no taking by eminent domain of any easement or limited right or portion of the common element, which does not substantially interfere with or diminish the practical enjoyment or use by Buyer of the common elements as originally planned, shall be deemed grounds for cancellation of the Contract.

11. ESTIMATED MONTHLY MAINTENANCE COSTS. Confirms that Buyer has examined and approved the schedule of estimated monthly maintenance charges and acknowledges that these are estimates only.

12. AUTHORITY OF SELLER. Provides that Buyer authorizes Seller to exercise all powers of the Association and Board and officers of the Association, including voting, until the first annual meeting of the Association.

13. MANAGING AGENT. Specifies that if a managing agent is retained to manage the project, the contract of that managing agent shall have a term not exceeding one year from the date of the first organizational meeting of the Association and shall contain provisions that it may be terminated on not more than 60 days notice.

14. NO PRESENT TRANSFER. Provides the Sales Contract does not constitute a present transfer of any interest in the property.

15. CHANGES IN PROJECT. Provides that the Seller reserves the right to make changes in the condominium documents as and to the extent required by law, any title and company or institutional mortgagee or other indicated purposes as Seller deems necessary, provided that such changes do not materially change Buyer's rights under the Contract or the apartment to be purchased thereunder. This section also provides that the Seller retains the right to grant easements over portions of the land, and/or to dedicate portions of the land for road-widening purposes, and in connection therewith Seller is granted a power of attorney to sign on Buyer's behalf.

16. CHANGES IN CIRCUMSTANCES. Provides that if, due to changes in indicated circumstances, the Seller determines it is not possible or practical to proceed with the sale, Seller may cancel the Contract without further obligation to Buyer.

17. SALES BASED ON PRELIMINARY REPORT. Provides that any sales, contract entered into prior to the issuance of a final public report shall constitute a reservation agreement only.

18. DEFAULT. Provides the Seller with various remedies in the event of default by Buyer.

19. NO ASSIGNMENT OR TRANSFER OF SALES CONTRACT. Provides that the Buyer may not assign or transfer the Contract or any rights thereunder.

20. NO RENTAL REPRESENTATION. Provides that the Seller makes no representations as to the ability to rent the subject apartment.

21. DISCLAIMER. Contains a disclaimer by Seller as to any representation or other statements pertaining to development of the Project or improvements not consistent with those described in the Declaration and Condominium Map.

22. DEFINITIONS. Provides definitions of the terms Seller and Buyer.

23. NOTICES. Provides that any notice delivered personally or deposited in the United States mail, postage pre-paid, addressed to the other party shall be deemed delivered 48 hours after deposit.

24. GENERAL PROVISIONS. Provides that time shall be of the essence, that Hawaii law should be used in interpreting and governing the Contract, and that if any provision of the Contract is declared ineffective, the remaining portions of the Contract shall remain in full force and effect.

25. ENTIRE AGREEMENT. Provides that the Contract contains the entire agreement between Seller and Buyer and supersedes any and all prior negotiations, representations, etc.

26. SELLER'S APPROVAL. Provides that the Contract shall not be binding upon Seller until ratified and accepted in writing by Seller.

27. CONTINUATION OF OBLIGATIONS. Provides that, except to the extent fulfilled at or prior to closing, all provisions of the Contract shall survive the execution and filing of the Commercial Condominium Deed.

28. PURCHASERS' FUNDS. All purchasers' funds shall be placed in an escrow account. Purchasers' funds shall not be disbursed to pay for construction costs or other expenses of the project until both the completion of the apartment to be conveyed and the closing of the sale. If closing is to occur prior to the expiration of the applicable mechanic's lien period, the developer shall provide releases and protect the purchaser from the obligations thereunder.

NOTE: THIS IS INTENDED ONLY AS A BRIEF SUMMARY OF THE SALES CONTRACT. NO PORTION OF THIS SUMMARY IS INTENDED TO MODIFY, WAIVE OR CHANGE ANY PROVISION OF THE CONTRACT ITSELF, AND THIS SUMMARY SHALL NOT CONSTITUTE A PORTION OF, OR AN AMENDMENT OR MODIFICATION OF, THE SUBJECT CONTRACT. THE TERMS OF THE ACTUAL CONTRACT BETWEEN SELLER AND BUYER (AND ONLY THOSE TERMS) SHALL APPLY.

## **EXHIBIT "H"**

### 77 WAIALE CONDOMINIUM Summary of Escrow Agreement dated December 19, 2000

Escrow Agreement between Title Guaranty Escrow Services Inc., a Hawaii corporation as "Escrow" and Bert S. Shiroma, Trustee under Declaration of Revocable Trust of Bert S. Shiroma dated April 24, 1987, Debra M. Y. Lau Shiroma, Trustee under Declaration of Revocable Trust of Debra M. Y. Lau Shiroma dated April 24, 1987, Paul R. Nagamine, Trustee under Declaration of Revocable Trust of Paul R. Nagamine dated March 22, 1993, and Dawn M. Nagamine, Trustee under Declaration of Revocable Trust of Dawn M. Nagamine dated March 22, 1993, as "Developer."

The Escrow Agreement provides the terms under which a Fee Simple Commercial Condominium Sales Contract between the Developer as Seller and any prospective purchaser as Buyer will be deposited with and held and administered by Escrow, and also provides for the deposit of funds by Buyer and the retention and distribution of the same by Escrow.

Each of the standard terms and conditions of the Escrow Agreement is summarized briefly below. Complete terms and provisions are contained in the Escrow Agreement itself, and in the event of any question of interpretation, or conflict between the terms of the Agreement and of this summary, the terms of the Agreement shall apply.

#### **Section Summaries.**

1. SALES CONTRACTS DEPOSITED IN ESCROW. Provides that when the Seller/Developer obtains a sales contract from the Buyer, and the same has been accepted and ratified by Seller, it shall be promptly deposited with Escrow.
2. RECEIPT OF FUNDS BY ESCROW. Provides that all funds received from any Buyer shall be promptly deposited with Escrow.
3. CONDITIONS TO BE MET PRIOR TO DISBURSEMENT. Provides the conditions which must be satisfied prior to the release of any funds from Escrow to the Seller/Developer.
4. DISBURSEMENTS OF PURCHASER'S FUNDS. Provides that no Purchaser's funds shall be disbursed by Escrow to Developer prior to the closing of that Purchaser's unit purchase transaction.
5. RETURN OF FUNDS AND DOCUMENTS. States the terms under which Purchaser funds, and documents signed by either party, are to be returned to the respective party, either by reason of the cancellation of the Escrow or exercise by a Purchaser of his rights to rescind as set forth

in the Contract and applicable Hawaii law. This section provides for imposition by Escrow of a cancellation fee of not less than \$25.00 per unit.

6. UNCLAIMED FUNDS. Provides that if any funds to which a party is entitled are not claimed with 60 days of delivery of notice thereof by Escrow, Escrow may deposit the same with a depository of its choosing.

7. CLOSING. Sets forth the conditions for and procedure for closing.

8. PARTIAL CLOSING. Provides that the Developer may close the sale of some units without closing the sale of all units.

9. DEFECTS IN DOCUMENTS. Provides that if, by reason of any defect in the document, closing cannot occur on the date intended, Escrow is authorized to proceed with closing at any day within five business days following the originally identified closing date without need for further authorization from any party.

10. PURCHASER'S DEFAULT. Provides for the disposition of funds and cancellation of Escrow in the event of any of various defaults by Purchaser under the Sales Contract.

11. PROTECTION OF ESCROW. Provides for the release and indemnification of Escrow from liability for any act taken by Escrow in accordance with the terms of the Contract.

12. BINDING EFFECT. Provides that the Agreement will be binding upon the parties, their respective successors and assigns.

13. TERMINATION. Provides that the Agreement may be terminated upon 15 days notice by either party to the other, provided that in the event of termination, transactions in process thereunder at that time shall be completed under the terms of the agreement.

14. STATUTORY PROVISIONS CONTROL. Provides that anything in the Contract notwithstanding, the provisions of Chapter 514A of the Hawaii Revised Statutes (Condominium Property Act), if in conflict with the Escrow Agreement, shall control.

15. COMPENSATION OF ESCROW. Provides for the payment to Escrow of fees for its services.

**NOTE:** THIS IS INTENDED ONLY AS A BRIEF SUMMARY OF THE ESCROW AGREEMENT. NO PORTION OF THIS SUMMARY IS INTENDED TO MODIFY, WAIVE OR CHANGE ANY PROVISION OF THE ESCROW AGREEMENT ITSELF, AND THIS SUMMARY SHALL NOT CONSTITUTE A PORTION OF OR AN AMENDMENT OR MODIFICATION OF THE AGREEMENT. THE TERMS OF THE ACTUAL AGREEMENT BETWEEN ESCROW AND THE SELLER/DEVELOPER (AND ONLY THOSE TERMS) SHALL APPLY.