

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer: Leonard P. Gomes, Jr., Trustee of the Leonard P. Gomes, Jr. Trust dated 11/21/89; and Donna B. Gomes, Trustee of the Donna B. Gomes Trust dated 11/21/89
Address: P.O. Box 880268, Pukalani, Hawaii 96788

Project Name (*): 45 NANE LANE HOMES
Address: 45 Nane Lane, Pukalani, Hawaii 96768

Registration No. 4751
(Conversion)

Effective date: December 4, 2001
Expiration date: January 4, 2003

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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the:
And [] Supersedes all prior public reports.

(*) 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-30 286/986/189/1190/892/0197/1098/0800

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 apartment 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: COMMON ELEMENTS	
EXHIBIT B: LIMITED COMMON ELEMENTS	
EXHIBIT C: ENCUMBRANCES AGAINST TITLE	
EXHIBIT D: SCHEDULE OF ESTIMATED INITIAL MAINTENANCE FEES	
EXHIBIT E: SUMMARY OF SALES CONTRACT	
EXHIBIT F: SUMMARY OF ESCROW AGREEMENT	
EXHIBIT G: AGREEMENTS RELATING TO (INADEQUATE) FIRE PROTECTIONS (2)	

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: Leonard P. Gomes, Jr., Trustee of the Leonard P. Gomes, Jr. Trust dated 11/21/89
Donna B. Gomes, Trustee of the Donna B. Gomes Trust dated 11/21/89

P.O. Box 880268 Phone: (808) 873-8530
Pukalani, Hawaii 96788

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

Real Estate Broker*: RE/MAX Maui LLC Phone: (808) 579-8293
120 Hana Highway, Suite 120-5 (Business)
Paia, Hawaii 96779

Escrow: Title Guaranty Escrow - Wailuku Phone: (808) 244-7924
35 S. Market Street (Business)
Wailuku, Hawaii 96793

General Contractor*: Not Applicable Phone: _____

Condominium Managing Agent*: Self Managed by the Association of Apartment Owners Phone: _____

Attorney for Developer: Bodden & Muraoka, A Law Corporation Phone: (808) 244-8222
24 N. Church Street, Suite 200 (Business)
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. 2001-129024**
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. 3323**
 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. 2001-129025**
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%*	100%
Bylaws	65%	65%
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. **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:

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:

Fee Owner: LEONARD P. GOMES, JR., Trustee of the Leonard P. Gomes Jr. Trust dated 11/21/89 and
 DONNA B. GOMES, Trustee of the Donna B. Gomes Trust dated 11/21/89, as tenants in
 common, in equal shares

P. O. Box 880268
 Pukalani, Hawaii 96788

Lessor: None

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 2 Floors Per Building: 2

Exhibit _____ contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other _____

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>2</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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

Yes No

5. Special Use Restrictions:

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

- Pets: -- No livestock shall be allowed or kept on any part of the Project.
- No pet shall be a "pest" as defined under HRS §150A-2, or an animal prohibited from importation under applicable sections of Hawaii law.

Number of Occupants: _____

Other: Apartments may be used solely for residential and related purposes.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 (each building) Trash Chutes: 0

Apt Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
1	1	4/3	2,168 sf	468 sf 360 sf	carport/storage deck areas
2	1	4/4	2,220 sf	528 sf 376 sf	carport/storage deck areas

Total Number of Apartments: 2

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

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

Boundaries of Each Apartment:

Each apartment is measured horizontally by the distances between the finished exterior surface of perimeter walls, windows and doors, and vertically by the distances between the finished exterior surface (bottom) of its foundation and floor supports and the finished exterior surface of its 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: Subject to the prior approval of the Board of Directors and upon obtaining all applicable approvals and permits.
- All costs associated with alterations shall be at the apartment owner's sole cost and expense.

Apartments Designated for Owner-Occupants Only: **NOT APPLICABLE TO THIS PROJECT.**
 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.

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	✘	_____	_____
Structures	✘	_____	_____
Lot	✘	_____	_____

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

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

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

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

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

described in Exhibit A .

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit B.

as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit _____.

as follows:

Each apartment shall have appurtenant thereto an equal undivided fifty percent (50%) interest in the common elements of the Project.

- 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 C describes the encumbrances against the title contained in the title report dated August 27, 2001, 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 Prior to Conveyance</u>
Mortgage dated February 11, 1994, in favor of Bank of America, FSB, recorded in the Bureau of Conveyances as Document No. 94-028400, in the amount of \$338,000. Said mortgage was assigned to American Savings Bank, F.S.B., by instrument recorded as Document No. 97-169612.	Mortgage will be released prior to conveyance of any apartment to Buyer. If said lien is foreclosed prior to conveyance to Buyer all of Buyer's deposits will be refunded immediately by escrow.

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:

NO WARRANTIES

2. Appliances:

WARRANTIES OFFERED BY MANUFACTURER OF APPLIANCE, IF ANY.

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

Apartments 1 and 2 were both constructed in 1990.

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 E contains a summary of the pertinent provisions of the sales contract.
- [*] Escrow Agreement dated August 16, 2001
Exhibit F contains a summary of the pertinent provisions of the escrow agreement.
- [*] Other: Agreements Relating to (inadequate) Fire Protections with the Department of Water Supply (2)
Exhibit G contains copies of both Agreements.

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. 4751 filed with the Real Estate Commission on October 9, 2001.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

C. **Additional Information Not Covered Above**

1. **Sex Offender Registration (“Megan’s Law”)**. Hawaii has enacted a law requiring sex offenders to register with the Attorney’s General’s office Hawaii Criminal Justice Data Center. A sex offender must provide certain relevant information including the street name and zip code of the sex offender’s current and future residence and place of employment. This information is no longer available to the public.
2. **Asbestos Disclosure**. Asbestos materials are hazardous to one’s health, particularly if asbestos fibers are released into the air and inhaled. In the past (prior to 1979, but possibly more recently) asbestos was a commonly used insulation material in heating facilities and in certain types of floor and ceiling materials, shingles, plaster products, cement and other building materials. Buyer may wish to make appropriate inquiry into the possible existence of asbestos on the property. Structures having “popcorn” or “cottage cheese” type ceilings may contain asbestos fibers or asbestos-containing material. Such a ceiling should not be disturbed because disturbance could release asbestos fibers in the air. Any disturbance should be done only by licensed abatement contractors.
3. **Hazardous Waste and Toxic Substances Disclosure**. Federal and state laws place strict liability on property owners for dangers caused by hazardous waste and may require that such owner pay for the cost of the cleanup of hazardous substances and other toxic substances. The Developer is only aware of residential use of the property. Buyer may have liability for hazardous substances located on or under the property even if Buyer did not cause such substances to be on or under the property. Therefore, Buyer may wish to make appropriate inquiries into the past use of the property and seek an environmental assessment to ascertain the possible existence of such hazardous substances located on or under the property.
4. **Lead Paint**. Both apartments were constructed in 1990. Every purchaser of any interest in residential real property on which the residence was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint.
5. **Water**. The condominium is served by a single water meter and water use for both apartments will be billed to the Association of Apartment Owners by the County of Maui Department of Water Supply in a single bill. The Association is responsible for paying said charges and will allocate them among the apartment owners as common expense assessments. For purposes of the estimated budget, it is assumed that each apartment will pay an equal share for water.

The County of Maui Department of Water Supply has adopted a policy to require that each apartment in a condominium have a separate meter. Due to the current shortage of water in the Department’s upcountry water system, it may not be possible to obtain a second water meter for this property. BUYER IS CAUTIONED THAT BUYER MAY BE FORCED TO OBTAIN A METER AS A CONDITION TO ANY REMODELING, EXPANSION OR REPLACEMENT OF BUYER’S APARTMENT. BUYER IS REFERRED TO THE DEPARTMENT OF WATER SUPPLY FOR ADDITIONAL INFORMATION.
6. **Sewer**. Each apartment has its own on-site cesspool. County sewer service is not available to

the project. The owner of each apartment shall be responsible for the cost of maintaining and operating said apartment's cesspool. In the event that the County installs sewer service to the property, the owner of each apartment may be required to connect to the County sewer service, at the cost of the owner of each apartment.

7. Representations. Developer, nor any salesperson representing Developer, makes any representation about any rental income or rental, or sales services for an apartment. If Buyer wants to rent or sell the apartment, that will be up to the Buyer, subject to the restrictions contained in the Declaration, By-Laws and any other document affecting the property. Additionally, Developer, nor any salesperson representing Developer, makes any representation about any income from the apartment or any other economic benefit to be derived from the purchase or ownership of the apartment or tax effect of buying an apartment.
8. Access. Nane Lane is a private roadway providing access to the condominium project, as well as Lot 5-A of the Tam Sing Subdivision and Lot 37, from Makawao Avenue. Access to the Project consists of Easement "A" (16 feet wide) and a 14 foot wide easement over the neighboring property (Lot 37). There is currently no agreement between the Developer, Lot 5-A and Lot 37 as to the maintenance and repair of the Nane Lane. The allocation of the cost of any future improvement to Nane Lane would have to be negotiated by the Association of Apartment Owners and the owners of lot 5-A and Lot 37. The Developer, at their own cost and expense, is contemplating, but not obligated, improving a portion of Nane Lane from Makawao Avenue to the Project with asphalt. The estimated maintenance fees and reserve study attached as Exhibit "D" contemplates the Association paying for the cost of maintaining Nane Lane as asphalt from Makawao Avenue to the Project.
9. Fire Protection. When the apartments were constructed, the County of Maui water system was not capable of providing adequate fire protection for each apartment. To obtain approval from the Department of Water Supply to build on the property, the owners were required to sign an Agreement for each apartment where they 1) acknowledged that the water system is not capable of providing adequate fire protection to the property; 2) agreed not to file any claims against the Department of Water Supply; 3) agreed to defend and indemnify the Department of Water Supply from all claims against the Department; and 4) agreed to reimburse the Department of Water Supply for all costs, expenses and judgments, including attorneys fees, incurred in defending any such claim. Each Agreement "runs with the land," which means that they are binding upon all subsequent owners of the property. A copy of each Agreement Relating to Fire Protection for the Project is attached hereto as Exhibit G. The County of Maui Department of Water Supply has confirmed that the water system is still not capable of providing adequate fire protection for the Apartments.

- 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.

**Leonard P. Gomes, Jr., Trustee of the Leonard P. Gomes, Jr. Trust dated 11/21/89; and
Donna B. Gomes, Trustee of the Donna B. Gomes Trust dated 11/21/89**

Printed Name of Developer

By: Leonard P. Gomes, Jr. OCT 02 2001
Duly Authorized Signatory* Date

By: Donna B. Gomes
Duly Authorized Signatory*

Leonard P. Gomes, Jr., Trustee of the Leonard P. Gomes, Jr. Trust dated 11/21/89; and
Donna B. Gomes, Trustee of the Donna B. Gomes Trust dated 11/21/89

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

Common Elements

The common elements of the Project will include the following:

- (a) The Land in fee simple;
- (b) All roads, driveways, walkways, easements, accessways and pavement which service both apartments;
- (c) Any pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project not owned by the service provider, which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television or other signal distribution, if any;
- (d) 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; and
- (e) Any and all tangible personal property, accounts, general intangibles, instruments and money, and any apartment held by or belonging to 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 apartment owners.

The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof or the apartments except as may be provided in the Condominium Documents and By-Laws.

EXHIBIT B

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 specified, and such apartment or apartments shall have appurtenant thereto easements for the exclusive use of such limited common elements as follows:

(a) Yard Areas. Each apartment shall have appurtenant to it one or more land areas, described and depicted as a Limited Common Element or "Yard" Area, as depicted on the Condominium Map. Apartment 1 has appurtenant to it Yard Area 1, consisting of approximately 9,409 square feet. Apartment 2 has appurtenant to it Yard Area 2, consisting of approximately 9,491 square feet.

The Apartment Owners shall have the right to reallocate and reconfigure the location of a Yard Area appurtenant to their respective apartments upon prior notice to the Board of Directors and appropriate amendment to this Declaration and the Condominium Map. The amendment need only be signed and approved by the owners (and their respective mortgagees if any) of the apartments whose Yard Areas are being changed, but must be delivered to the Board of Directors prior to recordation. The amendment shall be effective only upon the recording of the same in the Bureau of Conveyances. All costs and expenses associated with such amendment, including, but not limited to, attorneys fees, architect/engineering fees and recording costs shall be borne by the owner(s) requesting such amendment.

(b) Parking Stalls. Each apartment shall have two (2) standard parking stalls appurtenant to it, each as depicted on the Condominium Map. Apartment 1 has appurtenant to it parking stalls numbered P-1-A and P-1-B. Apartment 2 has appurtenant to it parking stalls numbered P-2-A and P-2-B.

Notwithstanding the fact that stalls are specifically assigned to particular apartments under the Declaration, the Board of Directors shall have the authority from time to time to regulate the usage and numbering of individual stalls, as deemed appropriate for security purposes or otherwise.

Notwithstanding any other provision in this Declaration, apartment owners shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment to this Declaration and the Condominium Map. The amendment need only be signed and approved by the owners (and their respective mortgagees if any) of the apartments whose parking stalls are being changed, but must be delivered to the Board of Directors prior to recordation. The amendment shall be effective only upon the recording of the same in the Bureau of Conveyances. All costs and expenses associated with such amendment, including, but not limited to, attorneys fees, architect/engineering fees and recording costs shall be borne by the owner(s) requesting such amendment.

Any parking area not specifically indicated as limited common elements (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.

(c) Mail Boxes. A separate receptacle for delivery of mail ("mail box") is designated for each apartment within the Project, which mailbox is a limited common element appurtenant to each apartment. Mail boxes will be located along Makawao Avenue as depicted on the Condominium Map. The mailbox number for each apartment shall be: Apartment 1 has mailbox 1 and Apartment 2 has mailbox number 2. The exact location of each mail box, and the design, maintenance and use of the mail box, may be further determined under the By-Laws or House Rules, if any.

EXHIBIT C

Encumbrances Against Title

A preliminary title report, prepared by Title Guaranty of Hawaii, Inc. as of August 27, 2001, indicates that the following encumbrances presently exist against the title of the land which constitutes the 45 Nane Lane Homes Condominium project.

1. Any and all real property taxes that may be due and owing, reference is made to the Tax Assessor's Office, County of Maui.
2. Reservation in favor of the State of Hawaii Title of all mineral and metallic mines.
3. A portion of Easement "B" (16 feet wide) for utility purposes and a right of way for ingress purposes in favor of Joseph Tam Sing, as granted in instrument dated November 23, 1973, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 10552 at Page 176.
4. Grant to Maui Electric Company, Limited and GTE Hawaiian Telephone Company Incorporated dated December 2, 1976, recorded in said Bureau in Liber 11953 at Page 289, granting a perpetual right and easement for utility purposes.
5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Section 14.04.010(E) Agreement Relating to Fire Protection dated October 11, 1989, recorded in said Bureau in Liber 23948 at Page 742, acknowledging that the Department of Water Supply's public water system is incapable of providing adequate fire protection.
6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Section 14.04.010(E) Agreement Relating to Fire Protection dated December 19, 1989, recorded in said Bureau as Document No. 90-029924, acknowledging that the Department of Water Supply's public water system is incapable of providing adequate fire protection.
7. Mortgage dated February 11, 1994, in favor of Bank of America, FSB, recorded in said Bureau as Document No. 94-028400, which mortgage was assigned to American Savings Bank, F.S.B., by instrument recorded in said Bureau as Document No. 97-169612.
8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Declaration of Condominium Property Regime for "45 Nane Lane Homes" Condominium Project dated August 10, 2001, recorded in said Bureau as Document No. 2001-129024, and the map thereof filed in said Bureau as Condominium Map No. 3323.
9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Bylaws of the Association of Apartment Owners of "45 Nane Lane Homes" Condominium Project dated August 10, 2001, recorded in said as Document No. 2001-129025.

EXHIBIT D

**ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>	
1	\$130	\$1,560
2	\$130	\$1,560

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 type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and apartments		
Elevator		
Gas		
<input type="checkbox"/> common elements only		
<input type="checkbox"/> common elements and apartments		
Refuse Collection		
Telephone		
Water and Sewer	\$120	\$1,440

Maintenance, Repairs and Supplies

Building
Grounds

Management

Management Fee		
Payroll and Payroll Taxes		
Office Expenses	\$ 10	\$ 120

Insurance	\$ 50	\$ 600
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Reserves(*)	\$ 80	\$ 960
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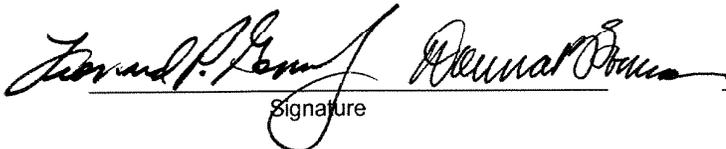
Taxes and Government Assessments

Audit Fees

Other

TOTAL	\$260	\$3,120
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I, **LEONARD P. GOMES, JR.**, Trustee, as developer for the 45 NANE LANE HOMES 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

OCT 02 2001

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.

RESERVE ANALYSIS & CALCULATION

The Declarant has conducted an analysis of the project and its designated common elements to determine a budget for reserves for replacement of common element capital items pursuant to HRS Section 514A-83.6 and Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. That analysis is summarized below.

Common element items, estimated useful life, replacement cost and reserve amount per year.

<u>Item</u>	<u>Useful Life</u>	<u>Replacement Cost</u>	<u>Per Year</u>
Driveway	30 years	\$21,600	\$720
Waterline	30 years	\$ 7,200	\$240

<u>Reserve Amount:</u>	Per Year	Per month	Per Apartment
	\$960	\$80	\$40

EXHIBIT "E"

Summary of Sales Contract

Each apartment in 45 Nane Lane Homes Condominium will be sold by the owners, Leonard P. Gomes, Jr. and Donna B. Gomes, Trustees, to the prospective purchaser pursuant to the terms of the Hawaii Association of Realtors Standard Form Deposit Receipt Offer and Acceptance (DROA) and Addenda attached thereto.

The DROA 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.

Each section of the DROA is summarized briefly below.

SECTION A: AGENCY DISCLOSURE

This section identifies the licensee representing the Seller and Buyer.

SECTION B: DEPOSIT RECEIPT

This section acknowledges receipt of an initial deposit from the Buyer and how it is to be held until closing.

SECTION C: ADDENDA AND OFFER

This section lists the addenda attached to the DROA.

This section also specifies the purchase price, including an initial deposit to be paid at the time of signing, any additional deposits to be paid within a specified number of days after the seller's acceptance of the DROA, other financing information and final payment to be paid at closing.

This section also sets forth the closing date, closing costs, other closing matters, contingency procedures and termination provisions, contingency for cash funds, and other financing contingencies. This section provides for remedies in the event of default by either party. Any dispute or claim arising out of the DROA, may be handled through mediation or arbitration. This section alerts the Buyer to Seller's disclosures concerning asbestos, hazardous waste and "Megan's Law." It also addresses inspections, maintenance, warranties, termite, rental matters, and brokers services and disclaimers.

SECTION D: ACCEPTANCE OR COUNTER OFFER

This section notes Seller's acceptance of Buyer's Offer and Buyer's acknowledgment of Seller's acceptance.

EXISTING "AS IS" CONDITION ADDENDUM

Buyer is advised that the Property is sold in its existing condition. Seller will make no repairs and will convey the Property without any representations or warranties.

CONDOMINIUM ADDENDUM

The terms and conditions of the Condominium Addendum attached to the DROA is summarized briefly below.

1. PROJECT INFORMATION. Name of Seller and the location of the project, which contains a total of two residential apartments.
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. 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 is attached to this Public Report.
4. CONDOMINIUM DEED; CLOSING. Provides that Seller shall provide to Buyer, at closing, a Condominium Apartment Deed, and sets forth the timing and procedures for pre-closing and actual closing of the transaction.
5. 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 Condominium Apartment Deed.
6. 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.
7. 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.
8. 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.

9. 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.

NOTE: THIS IS INTENDED ONLY AS A BRIEF SUMMARY OF THE DROA AND ADDENDA. COMPLETE TERMS AND PROVISIONS ARE CONTAINED IN THE DROA ITSELF, AND IN THE EVENT OF ANY QUESTION OF INTERPRETATION, OR CONFLICT BETWEEN THE TERMS OF THE DROA AND OF THIS SUMMARY, THE TERMS OF THE DROA SHALL APPLY.

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. THEREFORE, A PROSPECTIVE PURCHASER IS URGED TO READ THE ENTIRE DROA, CAREFULLY AND IN DETAIL, AND TO CONSULT WITH HIS OR HER OWN ADVISORS IF ANY QUESTIONS EXIST, BEFORE SIGNING THE DROA.

EXHIBIT F

Summary of Escrow Agreement

Escrow Agreement dated August 16, 2001, between **TITLE GUARANTY ESCROW SERVICES INC.**, a Hawaii corporation, as "Escrow" and **LEONARD P. GOMES, JR.**, Trustee of the **LEONARD P. GOMES, JR.** Trust dated November 21, 1989, and **DONNA B. GOMES**, Trustee of the **DONNA B. GOMES** Trust dated November 21, 1989, as "Developer."

The Escrow Agreement provides the terms under which a Sales Contract between 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 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. **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 apartment 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 one apartment without closing the sale of all apartments.

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 or within five days of learning that the reason which prevented filing and recording no longer exists.

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.

referred to as the "Property"; and

WHEREAS, the Property is within a State Land Use Commission Urban District; and

WHEREAS, the Applicants have submitted Application for Building Permit No. A 89 2826, referred to as the "Application", for the construction of a dwelling/deck, referred to as the "Structure", on the Property; and

WHEREAS, the Department's water system is not capable of providing adequate fire protection to the Property; and

WHEREAS, pursuant to subsection E of section 14.04.010 of the Maui County Code, the requirement that fire hydrant assemblies, and necessary pipelines and appurtenances be installed by a developer in an urban district is not applicable to the construction of the first and second dwelling units on a Property; and

WHEREAS, the Structure will be the first dwelling unit on the Property; and

WHEREAS, the Applicants wish to have the Department approve the Application; now, therefore,

IN CONSIDERATION of the mutual obligations and covenants of the parties as hereinafter set forth, it is hereby understood and agreed by the Applicants and the Department that:

1. The Applicants acknowledge that the Department's public water system is not capable of providing adequate fire protection to the Property.

2. The Department will approve the Application with the full execution of this agreement.

23948 744

3. The Applicants agree that they shall (1) not file any claims against the the Department, its employees and assigns, for property damage, personal injury, or wrongful death resulting from, or in connection with the inadequacy of the existing water system, and/or the Department's approval of the Application; (2) defend and indemnify the Department, its employees and assigns, from and against all claims alleging impropriety in the Department's approval of the Application; and claims for property damage, personal injury, or wrongful death resulting from or in connection with the inadequacy of the existing water system, the Department's approval of the Application, and the provisions of this agreement; and (3) will reimburse the Department, its employees and assigns, for any judgments, costs, and expenses, including attorney's fees incurred in connection with the defense of any such claims.

4. This agreement shall run with the land and shall bind and constitute notice to all subsequent grantees, mortgagees, lienors, and any other person or entity who claims an interest in the Property for as long as the existing water system does not meet with the Department's requirements and standards for fire protection.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the date first above written.

Applicants:


Timothy Donald Clifton

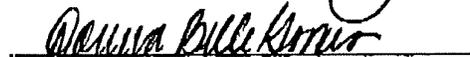
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Recorder's Memo: Legibility of Writing, Typing or Printing UNSATISFACTORY
in this document when received.

23948 745


Tana Tamara Mitchell


Leonard P. Gomes, Jr.


Donna Belle Gomez

Department:


Vince G. Bagoy, Jr.
Its Director

APPROVED AS TO FORM
AND LEGALITY:


Howard Kukahina
Deputy Corporation Counsel
County of Maui

Recorder's Memo: Legibility of Writing, Typing or Printing UNSATISFACTORY
in this document when received.

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On this 11th day of October, 1989, before me personally appeared TIMOTHY DONALD CLIFTON and TANA TAMARA MITCHELL, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Denise Kala Kalaau
Notary Public, State of Hawaii
My commission expires: 6/19/93

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

On this 12th day of October, 1989, before me personally appeared LEONARD P. GOMES, JR. and DONNA BELLE GOMES, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Denise Kala Kalaau
Notary Public, State of Hawaii
My commission expires: 6/19/93

Recorder's Memo: Legibility of Writing, Typing or Printing UNSATISFACTORY in this document when received.

STATE OF HAWAII
COUNTY OF MAUI

)
) ss.
)

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On this 20th day of November, 1980, before me appeared VINCE G. BAGOYO, JR., to me personally known, who, being by me duly sworn, did say that he is the Director of the DEPARTMENT OF WATER SUPPLY of the COUNTY OF MAUI, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said COUNTY OF MAUI, and that the said instrument was signed and sealed in behalf of the DEPARTMENT OF WATER SUPPLY of the said COUNTY OF MAUI pursuant to rules and regulations of the DEPARTMENT OF WATER SUPPLY, and the said VINCE G. BAGOYO, JR., acknowledged the said instrument to be the free act and deed of the said DEPARTMENT OF WATER SUPPLY of the COUNTY OF MAUI.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public, State of Hawaii
My commission expires: 4/19/90

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Recorder's Memo: Legibility of Writing, Typing or Printing UNSATISFACTORY in this document when received.

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RECEIVED
COUNTY OF MAUI
DEPARTMENT OF WATER SUPPLY

DEC 19 1989 9:30

CLERK OF THE COURT
COUNTY OF MAUI

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail

To: Department of Water Supply
County of Maui
P.O. Box 1109
Wailuku, Hawaii 96793

SECTION 14.04.010(E) AGREEMENT
RELATING TO FIRE PROTECTION

THIS AGREEMENT, made and entered into this 19th day of
DECEMBER, 1989, by and between TIMOTHY DONALD
CLIFTON and TANA TAMARA MITCHELL, husband and wife, whose
address is 755-B Kamehameiki Road, Kula, Hawaii 96790, and
LEONARD P. GOMES, JR. and DONNA BELLE GOMES, husband and wife,
whose address is 205 Kaulani Drive, Pukalani, Hawaii 96768,
referred to as the "Applicants", and the DEPARTMENT OF WATER
SUPPLY of the County of Maui, referred to as the "Department",

W I T N E S S E T H:

WHEREAS, the Applicants represent that they are the fee
simple owners of a parcel of real property situate at Pukalani,

Maui, Hawaii, identified as Tax Map Key 2-3-44:54, Lot 5B, referred to as the "Property"; and

WHEREAS, the Property is within a State Land Use Commission Urban District; and

WHEREAS, the Applicants have submitted Application for Building Permit No. A 89 3607, referred to as the "Application", for the construction of a dwelling/carport/deck/wet bar, referred to as the "Structure", on the Property; and

WHEREAS, the Department's water system is not capable of providing adequate fire protection to the Property; and

WHEREAS, pursuant to subsection E of section 14.04.010 of the Maui County Code, the requirement that fire hydrant assemblies, and necessary pipelines and appurtenances be installed by a developer in an urban district is not applicable to the construction of the first and second dwelling units on a Property; and

WHEREAS, the Structure will be the second dwelling unit on the Property; and

WHEREAS, the Applicants wish to have the Department approve the Application; now, therefore,

IN CONSIDERATION of the mutual obligations and covenants of the parties as hereinafter set forth, it is hereby understood and agreed by the Applicants and the Department that:

1. The Applicants acknowledge that the Department's public water system is not capable of providing adequate fire protection to the Property.

2. The Department will approve the Application with the full execution of this agreement.

3. The applicants agree that they shall (1) not file any claims against the the BOARD OF WATER SUPPLY of the County of Maui, referred to as the "Board", its employees and assigns, for property damage, personal injury, or wrongful death resulting from, or in connection with the inadequacy of the existing water system, and/or the Department's approval of the Application; (2) defend and indemnify the Board, its employees and assigns, from and against all claims alleging impropriety in the Department's approval of the Application; and claims for property damage, personal injury, or wrongful death resulting from or in connection with the inadequacy of the existing water system, the Department's approval of the Application, and the provisions of this agreement; and (3) will reimburse the Board, its employees and assigns, for any judgments, costs, and expenses, including attorney's fees incurred in connection with the defense of any such claims.

4. This agreement shall run with the land and shall bind and constitute notice to all subsequent grantees, mortgagees, lienors, and any other person or entity who claims an interest in the Property for as long as the existing water system does not meet with the Department's requirements and standards for fire protection.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the date first above written.

Applicants:

Timothy Donald Clifton
Timothy Donald Clifton

Tana Tamara Mitchell
Tana Tamara Mitchell

Leonard P. Gomes, Jr.
Leonard P. Gomes, Jr.

Donna Belle Gomes
Donna Belle Gomes

Department:

Vince G. Baggio, Jr.
Vince G. Baggio, Jr.
Its Director

APPROVED AS TO FORM
AND LEGALITY:

Howard Fukushima
Howard Fukushima
Deputy Corporation Counsel
County of Maui

Applicants:

Timothy Donald Clifton
Timothy Donald Clifton

Tana Tamara Mitchell
Tana Tamara Mitchell

Leonard P. Gomes, Jr.
Leonard P. Gomes, Jr.

Donna Belle Gomes
Donna Belle Gomes

Department:

Vince G. Babby, Jr.
Vince G. Babby, Jr.
Its Director

APPROVED AS TO FORM
AND LEGALITY:

Howard Fukushima
Howard Fukushima
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 19th day of December, 1989, before me personally appeared TIMOTHY DONALD CLIFTON and TANA TAMARA MITCHELL, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Denise Kala Kaulana
Notary Public, State of Hawaii
My commission expires: 5/19/93

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 19th day of December, 1989, before me personally appeared LEONARD P. GOMES, JR. and DONNA BELLE GOMES, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Denise Kala Kaulana
Notary Public, State of Hawaii
My commission expires: 5/19/93

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 20th day of December, 1989, before me appeared VINCE G. BAGOYO, JR., to me personally known, who, being by me duly sworn, did say that he is the Director of the DEPARTMENT OF WATER SUPPLY of the COUNTY OF MAUI, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said COUNTY OF MAUI, and that the said instrument was signed and sealed in behalf of the DEPARTMENT OF WATER SUPPLY of the said COUNTY OF MAUI pursuant to rules and regulations of the DEPARTMENT OF WATER SUPPLY, and the said VINCE G. BAGOYO, JR., acknowledged the said instrument to be the free act and deed of the said DEPARTMENT OF WATER SUPPLY of the COUNTY OF MAUI.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jeanne M. ...
Notary Public, State of Hawaii
My commission expires: 4/19/90