

CONDOMINIUM PUBLIC REPORT

Prepared & Issued By:

Developer Pascal Benoist and Pascaline Edith Danielle Laloux, Trustee
Address 125 Peahi Rd., Haiku, Hawaii. 96708

Project Name (\*): Benoist/Laloux Condominium
Address: 125 Peahi Rd., Haiku, Hawaii, 96708

Registration No. 4874 (conversion) Effective Date: August 29, 2002 Expiration Date: September 29, 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.

**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 Report:**

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. The land area beneath and immediately appurtenant to each unit is designated a LIMITED COMMON ELEMENT and does not represent a legally subdivided lot. The lines on the Condominium Map dividing the land into limited common element land areas are for illustration purposes only and should not be construed to be formal subdivision lines.

This Public Report does not constitute an approval of the Project by the Real Estate Commission or any other government agency, nor does it ensure that all County codes, ordinances and subdivision have necessarily been complied with.

1. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. The Purchaser should consult with the appropriate County agencies to determine whether the Purchaser may build a residential dwelling unit, or any other type of structure, on the property.
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 owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.
3. The County of Maui Department of Water Supply has adopted a policy to require that each apartment in a condominium have its separate water meter. This condominium has only one shared meter which is in violation of these rules. Due to the current shortage of water in the Department's upcountry system, it may not be possible to obtain a second meter for this property. BUYER IS CAUTIONED THAT BUYER MAY BE FORCED TO OBTAIN A METER AS A CONDITION TO THE BUYER'S USE, EXPANSION OR CONSTRUCTION OF BUYER'S APARTMENT. A METER MAY NOT BE AVAILABLE AT THAT TIME. IN THE MEANTIME THE SHARED METER VIOLATES THE RULES OF THE DEPARTMENT OF WATER SUPPLY. BUYER IS REFERRED TO THE DEPARTMENT OF WATER SUPPLY FOR ADDITIONAL INFORMATION.
4. Each apartment has its own cesspool. The approximate location of the cesspool appurtenant to Apartment A is shown on the Condominium Map. The approximate location of the cesspool appurtenant to Apartment B is not shown on the Condominium Map, however the developer believes it to be APPROXIMATELY 25 feet due north from the northeast corner of Apartment B. Any County sewer service is not available. The owner of each apartment shall be responsible for the cost of maintaining, operating and/or replacing said apartment's system. This may include upgrading a cesspool to a septic system as required by the proper governmental agency. No representations or warranties are made as to the quality, useful life, replacement cost, operating cost, or maintenance cost of the cesspools and appurtenances.
5. The land may be subject to rollback real property taxes. The failure of an owner to observe restrictions on the use of the land may cancel the County dedication and special real property tax assessment. Please refer to the Director of Finance, County of Maui, for further information.
6. As shown on the Condominium Map, an area of approximately .313 acres in Limited Common Element A and approximately .578 acres in Limited Common Element B (see notes 3 and 4 on the Condominium Map) are in the process of being taken by the State of Hawaii by eminent domain and will be excluded from the condominium land upon such taking becoming effective.

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

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

**I. PERSONS CONNECTED WITH THE PROJECT**

Developer: Pascal Benoist and  
Pascaline Edith Danielle Laloux, Trustee Phone: (808) 575-7327  
Name\* (Business)  
125 Peahi Road  
Business Address  
Haiku, Hawaii, 96708

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

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

Real Estate Broker\*: Hugh Starr & Co., Inc. Phone: (808) 573-0081  
Name (Business)  
3620 Baldwin Ave, Suite 206-A  
Business Address  
Makawao, Hawaii, 96768

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 871-2200  
Name (Business)  
80 Puunene Avenue  
Business Address  
Kahului, Hawaii, 96732

General Contractor\*: N/A Phone: N/A  
Name (Business)  
N/A  
Business Address  
N/A

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

Attorney for Developer: Thomas D. Welch Jr.  
Mancini, Welch & Geiger LLP Phone: (808) 871-8351  
Name (Business)  
33 Lono Avenue, # 470  
Business Address  
Kahului, Hawaii, 96732-1681

\* 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. 2002-047282  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

First Amendment of Declaration of Condominium Property Regime of Benoist/Laloux Condominium  
(Condominium Map No. 3411)  
Dated: May 3, 2002  
Recorded: Document No. 2002-086487

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

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 3411  
 Filed - Land Court: Condo Map No. \_\_\_\_\_

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

First Amendment of Declaration of Condominium Property Regime of Benoist/Laloux Condominium,  
(Condominium Map No. 3411)  
Dated: May 3, 2002  
Recorded: Document No. 2002-086487

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. 2002-047283  
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

F. **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>      </u>	<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:

Developer has reserved, and has delegated to each apartment owner, the right to amend the Declaration and Condominium Map to alter, expand and relocate the boundaries of each apartment.

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 Subleasehold: 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 owner/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: Note: The County has not approved the subdivision of the units and their limited common elements into individual subdivided lots. They are being sold as condominiums only.

**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: 125 Peahi Road Tax Map Key (TMK): (2) 2-7-013:026  
Haiku, Hawaii, 96708

Address  TMK is expected to change because N/A

Land Area: 3.468\*  square feet  acres(s) Zoning: Agriculture\*\*

\*As shown on the Condominium Map, an area of approximately .313 acres in Limited Common Element A and approximately .578 acres in Limited Common Element B (see notes 3 and 4 on the Condominium Map) are in the process of being taken by the State of Hawaii by eminent domain and will be excluded from the condominium land upon such taking becoming effective.

\*\*Under the current zoning, Farm Dwelling residential use is permitted on this property, however, only one full size farm dwelling and one farm dwelling with a living area of 1,000 square feet or less are permitted.

Fee Owner: Pascal Benoist and  
Pascaline Edith Danielle Laloux, Trustee  
 Name  
125 Peahi Road  
 Address  
Haiku, Hawaii, 96708

Lessor: N/A  
 Name  
Address

**C. Buildings and Other Improvements:**

1.  New Buildings  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion
2. Number of Buildings: 2 Floors Per Building: Apartment A: 1 Floor  
Apartment B: 2 Floors  
 Exhibit A contains further explanations.

3. Principal Construction Materials:  
 Concrete  Hollow Tile  Wood  
 Other \_\_\_\_\_

4. Uses Permitted Use by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>0</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Other: Farm Dwelling	<u>2</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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



7. Parking Stalls:

Total Parking Stalls: 4\*

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	_____	<u>2</u>	_____	_____	_____	_____	<u>4</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open:	<u>4*</u>		<u>0</u>		<u>0</u>		<u>4</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.

\* Each apartment will have the right to park in the limited common element appurtenant to said apartment.

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming Pool

Storage Area

Recreation Area

Laundry Area

Tennis Court

Trash Chute/Enclosure(s)

Other: Shared Driveway, as shown on Condominium Map

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):

All structural components and mechanical and electrical installations are in good condition and in good working order.

11. Conformance to Present Zoning Code:

- a.  No variances to zoning code have been granted.  
 Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>all</u>	_____	_____
Structures	<u>all</u>	_____	_____
Lot	<u>yes</u>	_____	_____

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

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

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

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

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

- described in Exhibit     A    .  
 as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.  
[ ] There are no limited common elements in this project.

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

[X] described in Exhibit \_\_\_\_\_ A\* .

[ ] 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 \_\_\_\_\_.

[X] as follows: Each apartment will have a 50% common interest.

E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit \_\_\_\_\_ B \_\_\_\_\_ describes the encumbrances against the title contained in the title report dated \_\_\_\_\_ May 17, 2002 \_\_\_\_\_ 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 to State Street Bank and Trust Company, (by assignment from Four Star Mortgage Corporation), Dated June 11, 1999 and recorded In State of Hawaii Bureau of Conveyances as Document No. 2001-067541	Buyer may lose his or her unit but buyer's deposit to be refunded, less any escrow cancellation fee.  All mortgage liens will be paid in full out of the proceeds of the sale of the first apartment and the apartments will be released from the liens at that time.
Mortgage to Residential Funding Corporation. (by assignment from First Magnus Financial Corporation, an Arizona corporation) dated June 20, 2000 and recorded in State of Hawaii Bureau of Conveyances as Document No. 2001-134660	

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

There are no warranties.

2. Appliances:

There are no warranties.

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

Apartment A was completed in 1955. Apartment B was completed in 1999.

**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):

(But see item C.6 above concerning each apartment owner's right to alter, expand or relocate each apartment.)

**IV. CONDOMINIUM MANAGEMENT**

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

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

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

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

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

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit C contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

- C. **Utility Charges for Apartments:**

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

None  Electricity (  Common Elements Only  Common Elements & Apartments)  
 Gas (  Common Elements Only  Common Elements & Apartments)  
 Water  Sewer  Television Cable  
 Other \_\_\_\_\_

\*Water charges are billed by the County of Maui based on the shared water meter. The charges shall be divided between the apartment owners based on actual use measured by a sub-meter.

V. MISCELLANEOUS

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

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit   D   contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement Date   May 3, 2002    
Exhibit   E   contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

B. **Buyer's Right to Cancel Sales Contract:**

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

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

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

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

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

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

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use value of the buyer's apartment or its limited common elements; or (2) the amenities available for the 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 Land Patent Grant Number 7231, Dated March 29, 1919; Deed dated August 27, 1912, recorded in Liber 372 at Page 238; Deed dated November 15, 1912, recorded in Liber 375 at Page 304; Deed dated December 20, 1912, recorded in Liber 375 at Page 330, the aforementioned deeds being generally in reference to water rights, rights of way and railway rights; Hold Harmless Agreement, dated April 10, 1999, recorded as Document No. 99-06603, in reference to indemnifying the County of Maui due to lack of adequate sight distance of the driveway.

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 Consumer Affairs, 1010 Richards Street, 3<sup>rd</sup> 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. 4874 filed with the Real Estate Commission on June 12, 2002.

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**C. Additional Information Not Covered Above**

1. Setbacks. Under the Declaration of Condominium Property Regime, no new structure may be built or old structure expanded within 10 feet of the boundary line separating the Apartment's limited common element from that of the adjacent Apartment's limited common element area.

2. 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. The method of allocation shall be by individual use meters ("submeters") apportioning the water provider's billings between both apartments by proportionate metered water usage.

The County of Maui Department of Water Supply has adopted a policy to require that each apartment in a condominium have its separate water meter. This condominium has only one shared meter which is in violation of these rules. Due to the current shortage of water in the Department's upcountry system, it may not be possible to obtain a second meter for this property. BUYER IS CAUTIONED THAT BUYER MAY BE FORCED TO OBTAIN A METER AS A CONDITION TO THE BUYER'S USE, EXPANSION OR CONSTRUCTION OF BUYER'S APARTMENT. A METER MAY NOT BE AVAILABLE AT THAT TIME. IN THE MEANTIME THE SHARED METER VIOLATES THE RULES OF THE DEPARTMENT OF WATER SUPPLY. BUYER IS REFERRED TO THE DEPARTMENT OF WATER SUPPLY FOR ADDITIONAL INFORMATION.

3. Mailboxes. Each apartment shall have its own separate mailbox.

4. Sewer. Each apartment has its own cesspool. The approximate location of the cesspool appurtenant to Apartment A is shown on the Condominium Map. The approximate location of the cesspool appurtenant to Apartment B is not shown on the Condominium Map, however the developer believes it to be APPROXIMATELY 25 feet due north from the northeast corner of Apartment B. Any County sewer service is not available. The owner of each apartment shall be responsible for the cost of maintaining, operating and/or replacing said apartment's system. This may include upgrading a cesspool to a septic system as required by the proper governmental agency. No representations or warranties are made as to the quality, useful life, replacement cost, operating cost, or maintenance cost of the cesspools and appurtenances.

5. Future Land Taking. As shown on the Condominium Map, an area of approximately .313 acres in Limited Common Element A and approximately .578 acres in Limited Common Element B (see notes 3 and 4 on the Condominium Map) are in the process of being taken by the State of Hawaii by eminent domain and will be excluded from the condominium land upon such taking becoming effective.

6. Limitations. As long as the applicable agricultural zoning and land use laws shall restrict the size of one of the farm dwellings on the land to 1,000 square feet of enclosed living area and limits the number of dwellings, Apartment B shall be required to comply with the requirements of the County of Maui Zoning Ordinances which are applicable to one of the farm dwellings not exceeding 1,000 square feet of enclosed living area on an agriculture zoned lot as long as they shall apply. Only one farm dwelling shall be permitted within each of Limited Common Elements A and B.

7. Lead Paint. Apartment "A" was constructed prior to 1978, therefore there may be lead paint, asbestos and other environmentally harmful materials contained in the building which may be hazardous and which would not be permitted for a new building today.

8. Access. As shown on the Condominium Map, Each apartment has direct access to the limited common element on which the apartment is located, which in turn provides access to the common element driveway which in turn provides access to a public road (Peahi Road).



## EXHIBIT A

### BENOIST/LALOUX CONDOMINIUM

#### DESCRIPTION OF BUILDINGS:

The condominium consists of two separate apartments, each of which is a residential dwelling, plus a freestanding open carport appurtenant to Apartment "B" which is a limited common element. Each apartment is located on that portion of the land defined on the Condominium File Plan as a limited common element appurtenant to and for the exclusive use of said apartment. Each building is constructed primarily of wood, glass and related materials. Upon expansion, relocation, construction or reconstruction of any apartment by any owner(s) thereof as provided in the Declaration, the modified or new building containing any apartment may be constructed of any other building material meeting applicable building codes, including but not limited to concrete, masonry, plaster, wood, glass or related materials.

#### DESCRIPTION OF APARTMENTS:

The condominium shall consist of two (2) apartments designated Apartment "A" and Apartment "B", with Apartment "A" the westernmost and Apartment "B" the easternmost. Each apartment is shown on the Condominium File Plan.

Apartment "A" is a one-story residence, containing 1,446 square feet of net living area, and includes 2 bedrooms, 2 bathrooms, 1 kitchen, 1 living room, a family room, an office, and carport.

Apartment "B" is a two-story residence, containing 720 square feet of net living area, and includes 1 bedroom, 1 ½ (one and one half) bathrooms, 1 kitchen, 1 living room, a loft/storage room, covered deck, an uncovered deck, and an external stairway.

Each apartment has direct access to the limited common element on which the apartment is located, which in turn provides access to the common element driveway which in turn provides access to a public road (Peahi Road).

The boundaries of each apartment shall consist of the exterior finished surface of all exterior walls, roofs, doors, windows, and also include all foundations and underpinnings, and other appurtenant structures and facilities within said boundaries. The responsibility for maintenance, repair, replacement and reconstruction and insurance of each apartment is delegated to the owner(s) of said apartment, and all of the cost thereof shall be borne by the owner(s) of said apartment, at no cost to the owner(s) of any other apartment or the association.

#### LOCATION, RELOCATION, AND NUMBERING OF APARTMENTS:

Each apartment is located as shown on the condominium file plan. The apartments are lettered "A" and "B" consecutively from west to east. As provided in Section K.2. of the Declaration, at the option of the owner(s) of each apartment, said apartment may be relocated to any other location within the limited common element appurtenant to said apartment, and the boundaries of said apartment may be changed, by amendment to the Declaration as provided in Section K.2. of the Declaration; provided however, that (a) all construction in connection

therewith shall comply with all applicable zoning and building codes; and (b) no portion of the structure comprising an apartment or other structure shall be constructed outside of the boundaries of the area designated for said unit as its limited common element as shown on the Condominium File Plan.

APPROXIMATE FLOOR AREA OF APARTMENTS:

<u>Apartment</u>	<u>Floor Area</u>
A	1,446 square feet of living area 270 square feet of other area
B	720 square feet of living area 555 square feet of other area

NOTE: THE FLOOR AREAS ARE APPROXIMATE ONLY. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR APARTMENT.

COMMON ELEMENTS:

The common elements include the land described in Exhibit "A" in fee simple, the common element driveway, the shared water meter and the limited common elements described below. The common elements shall also include any other utility installations serving more than one apartment.

LIMITED COMMON ELEMENTS:

Each apartment has appurtenant to it and for its exclusive use the land described in the condominium file plan as appurtenant thereto. The file plan describes these areas as "Limited Common Element A" appurtenant to Apartment A and "Limited Common Element B" appurtenant to Apartment B. Each area is appurtenant to and for the exclusive use of its apartment and which is physically located on said limited common element as shown on the condominium file plan. Each limited common element includes the land located underneath the apartment located thereon. Also appurtenant to Apartment "B" is a freestanding open carport including 480 square feet of area, as a limited common element.

EXHIBIT B

**Encumbrances against Title**

1. Any and all Real Property Taxes that may be due and owing. Refer to the Department of Finance, County of Maui, for more information.

Tax Key: (2) 2-7-013-026    Area Assessed: 3.060 acres

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

3. GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED

DATED : May 20, 1959

RECORDED : Liber 3639    Page 133

GRANTING : a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines, and/or underground power lines, etc., for the transmission of electricity over, across, through and under the land.

4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LAND PATENT GRANT NUMBER 7231

DATED : March 29, 1919

The foregoing includes, but is not limited to restrictions, reservations and exceptions contained in certain deeds, as follows, to-wit: (a) Deed from Haiku Sugar Company and others to the State of Hawaii, dated August 27, 1912, recorded in Liber 372 at Page 238; (b) Deed from the Central Mill Company, Limited, and others to the State of Hawaii, dated November 15, 1912, recorded in Liber 375 at Page 304; and (c) Deed from the Maui Railroad and Steamship Company to the State of Hawaii, dated December 20, 1912, recorded in Liber 375 at page 330. These restrictions refer, in general, to reservations of certain water rights, rights of way and railway rights.

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : HOLD HARMLESS AGREEMENT

DATED : April 10, 1999

RECORDED : Document No. 99-066036

PARTIES : by and between PASCALINE LALOUX and with the COUNTY OF MAUI

6. MORTGAGE

LOAN/ACCOUNT NO. 486668

MORTGAGOR : PASCAL BENOIST, unmarried, and PASCALINE EDITH  
DANIELLE LALOUX, single

MORTGAGEE : FOUR STAR MORTGAGE CORPORATION, a Hawaii corporation

DATED : June 8, 1999  
RECORDED : Document No. 99-095138  
AMOUNT : \$194,000.00

ABOVE MORTGAGE BY MESNE ASSIGNMENTS ASSIGNED

TO : STATE STREET BANK AND TRUST COMPANY as  
custodian/trustee

DATED : June 11, 1999  
RECORDED : Document No. 2001-067541

7. MORTGAGE

LOAN/ACCOUNT NO. 92500853

MORTGAGOR : PASCAL BENOIST, unmarried and PASCALINE EDITH  
DANIELLE LALOUX, wife of Martin Alan Kramer

MORTGAGEE : FIRST MAGNUS FINANCIAL CORPORATION, an Arizona  
corporation

DATED : June 13, 2000  
RECORDED : Document No. 2000-084231  
AMOUNT : \$35,000.00

ABOVE MORTGAGE ASSIGNED

TO : RESIDENTIAL FUNDING CORPORATION

DATED : June 20, 2000  
RECORDED : Document No. 2001-134660

8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR  
"BENOIST/LALOUX CONDOMINIUM" CONDOMINIUM  
PROJECT

DATED : January 29, 2002  
RECORDED : Document No. 2002-047282  
MAP : 3411 and any amendments thereto

Said Declaration was amended by instrument dated May 3, 2002, recorded as  
Document No. 2002-086487.

9. The terms and provisions, including the failure to comply with any covenants, conditions  
and reservations, contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS

DATED : January 29, 2002  
RECORDED : Document No. 2002-047283

EXHIBIT C

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>
A	\$100.00 per month x 12 = \$1200.00 per year
B	\$100.00 per month x 12 = \$1200.00 per year

*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  
    [ ] common elements only  
    [ ] common elements and apartments  
Elevator  
Gas  
    [ ] common elements only  
    [ ] common elements and apartments  
Refuse Collection  
Telephone  
Water and Sewer (†)

\$140.00/month x 12 months = \$1680.00

Maintenance, Repairs and Supplies

Building  
Grounds

Management

NONE

Management Fee  
Payroll and Payroll Taxes  
Office Expenses

Insurance

Reserves(\*) (Common Area Roadway)

\$50.00/month x 12 months = \$600.00

Taxes and Government Assessments

Audit Fees

\$10/month x 12 months = \$120.00

Other

TOTAL

\$2400.00

I, the undersigned condominium developer for the Benoist/Laloux 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.

Pascal Benoist

(Signature)

Date

Pascal Benoist

(Signature)

Date

as Attorney-in-Fact/Agent for Pascaline Edith Danielle Laloux, Trustee  
by General Power of Attorney

(\*) 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.

(\*\*) This reserve study is not based on a reserve study required by Hawaii law. The reserve study will be performed by the Association of Apartment Owners.

(†) Water use will be metered and billed based on actual amounts used by each apartment.

EXHIBIT D

SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

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

- a. The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.
- b. That the purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Deposit Receipt and Sales Contract.
- c. That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefit to be derived from the purchase of an apartment.
- d. That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.
- e. Requirements relating to the purchaser's financing of the purchase of an apartment.
- f. That the apartment and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.
- g. That the Developer makes no warranties regarding the apartment, the Project or anything installed or contained in the apartment or the Project.
- h. That the Project may be subject to ongoing sales activities which may result in certain annoyances to the purchaser.
- i. That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

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

EXHIBIT E

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- a. Escrow will let the purchaser know when payments are due.
- b. Escrow will arrange for the purchaser to sign all necessary documents.
- c. The purchaser will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a purchaser's funds and says what will happen to the funds upon a default under the Sales Contract. The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. It is incumbent upon purchasers and prospective purchasers to read with care the executed Escrow Agreement on file with the Real Estate Commission.