

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer: MICHAEL JOHN MYERS, JR. and CAROLINE ANNE MYERS

Address: 2891 Pua Nani Street, Lihue, Kauai, Hawaii

Project Name(\*): LIHUE VALLEY ESTATES

Address: 2891 Puanani Street, Lihue, Kauai, Hawaii 96766

Registration No. 2408

Effective date: February 28, 1996

Expiration date: March 28, 1997

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 governmental agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

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

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

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

Type of Report:

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

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

X SUPPLEMENTARY: (pink) This report updates information contained in the: [ ] Preliminary Public Report dated: [X] Final Public Report dated: August 15, 1991 [ ] Supplementary Public Report dated:

And

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

(\*) Exactly as named in the Declaration

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report

Not Required - disclosure 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:

1. The public report format currently in use by the Real Estate Commission ("Commission") is different from that upon which the Final public report for this project was issued. Although this Supplementary report supersedes the Final report, if a prospective purchaser desires to compare the Final report to the Supplementary, information contained on a specific page of the Supplementary report will not coincide to the same page number in the Final report. Therefore, it is suggested that the table of contents be referred to when making comparisons between the reports. **Although the Lihue Valley Estates condominium project consists of three units, this Supplementary report is to be used in connection with the sale of only Unit 1. Unit 2 and Unit 3 are not presently for sale by the owner.**

2. The project now consist of three units, being units 1 (formerly unit I), unit 2 (the new unit), and unit 3 (formerly unit II). See Exhibit A for a description of each of the units. The common interest appurtenant to each unit is now 33 1/3rd% (it was formerly 50% each when there were only two units in the project).

3. Two residential structures have been constructed. Unit 1 contains one two-story residential structure and unit 3 has one residential structure with a detached carport. Unit 2 consist of a utility storage structure. See Exhibit A for a more detailed description of the units.

4. The Association of Apartments Owners have filed and recorded a Restatement and Amendment to Declaration of Condominium Property dated September 13, 1995, in the Office of the Assistant Registrar, Land Court, State of Hawaii, as Document No. 2275748 and Condominium Map No. 834 was also amended by the addition of the floor plans, elevations, and site plan for the improvements constituting the three present units. Each lender that had a mortgage lien on the units in the Project provided a consent and joinder to the foregoing amendments.

**5. THE REAL ESTATE AGENT FOR THE OWNERS OF THE UNIT 1 IS KAUAI REALTY, INCORPORATED. UNITS 2 AND 3 ARE NOT PRESENTLY FOR SALE. IF THE DEVELOPER WISHES TO SELL UNIT 2, THE DEVELOPER WILL OBTAIN A SUPPLEMENTARY PUBLIC REPORT THAT PERMITS SUCH SALE TO OCCUR PRIOR TO MARKETING IT.**

SPECIAL NOTICE:

THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES, WHICH MAY BE BUILT UPON THE PROPERTY. THEREFORE, UNLESS THE PURCHASER IS PURCHASING AN EXISTING RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE ALSO IS 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, UPON THE PROPERTY.

1. This Public Report does not constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it ensure that all county codes, ordinances and subdivisions requirements have necessarily been complied with.

2. This Project does not involve the sale of individual subdivided lots. The land area beneath and immediate adjacent to each unit as shown on the condominium map is designated as a limited common element and does not represent a legally subdivided lot. The dotted lines on the condominium map merely represent the approximate location of the limited common element assigned to each unit.

3. Facilities and improvements normally associated with County approved subdivisions may not necessarily be provided for and services such as County street maintenance and trash collection will not be available for interior roads.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS FOR FURTHER INFORMATION REGARDING THE FORGOING.

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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. The 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 of 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 spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: MICHAEL JOHN MYERS, JR. and CAROLINE ANNE MYERS Phone: (808) 246-3474  
Name (Business)  
2891 Pua Nani Street  
Business Address  
Lihue, Kauai, Hawaii 96766

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker: Kauai Realty, Incorporated Phone: (808) 245-1651  
Name (Business)  
P. O. Box 1246  
Business Address  
Lihue, Kauai, Hawaii 96766

Escrow: Security Title Corporation Phone: (808) 245-6975  
Name (Business)  
4370 Kukui Grove Street, Suite 203  
Business Address  
Lihue, Kauai, Hawaii 96766

General Contractor: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name (Business)  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

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

Attorney for Developer: Michael H. Sakai, Esq. Phone: (808) 531-4171  
Name (Business)  
201 Merchant Street, Suite 902  
Business Address  
Honolulu, Hawaii 96813

**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. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 1803119

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

Restatement and Amendment to Declaration of Condominium Property Regime (Including Conveyance and Re-Conveyance of Common Interest) dated September 13, 1995, filed as Land Court Document No. 2275748.

- 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. \_\_\_\_\_  
 Filed - Land Court Condo Map No. 834

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

Amended with the Restatement described in A above.

- 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 manners which affect how the condominium project will be governed.

The Bylaws for this condominium re:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 1803120

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

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

The House Rules for this condominium are:

Proposed                                       Adopted                                       Developer does not plan to adopt House Rules

E. Changes to Condominium Documents

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

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

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

\*The percentage 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:



Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed period 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 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: 2891A, 2891C and 2891D Puanani Street, Lihue, Kauai, Hawaii 96766  
Tax Map Key: (4) 3-6-11:106 and 114 (TMK)

Address  TMK is expected to change because the new unit 2 may be assigned its own tax map key number.

Land Area: 55,165  square feet  acre(s)  Zoning: R-6

Fee Owner : Michael John Myers, Jr. and Caroline Anne Myers (Units 1 and 2)  
 Name  
2891 Pua Nani Street  
 Address  
Lihue, Kauai, Hawaii 96766

Sublessor: N/A  
 Name  
 Address

C. Buildings and Other Improvements:

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

2. Number of Buildings: 4 Floors Per Building two - Unit 1; one - Units 2 and 3  
 Exhibit A contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other wood siding, Architect 80 roofing, and other allied materials

4. Permitted Uses by Zoning:

	No of <u>Apts.</u>	Use Permitted <u>By Zoning</u>		No. of <u>Apts.</u>	Use Determined <u>By Zoning</u>
<input checked="" type="checkbox"/> Residential	<u>2</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Agricultural	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Other: <u>storage shed</u>	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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

5. Special Use Restrictions:

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

Pets: Need approval by Board of Directors

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

Other: Declaration of Restrictive Covenants for Puanani Terrace Subdivision (see Exhibit "G")

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>	<u>Net Storage Area (sf)</u>
<u>1</u>	<u>1</u>	<u>3/2</u>	<u>1792</u>	<u>840</u>	
<u>2</u>	<u>1</u>	<u>0/0</u>			<u>36</u>
<u>3</u>	<u>1</u>	<u>3/2</u>	<u>1101</u>	<u>189</u>	
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Apartments: 3

\*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:

The boundaries of each unit is the exterior finished surfaces of the units perimeter walls, roofs, foundations, windows and frames, doors, beams and post.

Permitted Alterations to Apartments:

Each unit owner may alter the structure and any other improvements located within their unit's limited common land area with the approval of the Declarant or as otherwise provided in this Declaration.

7. Parking Stalls:

Total Parking Stalls: 6

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>TOTAL</u>
Assigned (for each unit)	<u>2 (Units 1 and 3)</u>		_____	_____	_____	_____	<u>4</u>
Guest Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	<u>2*</u>	_____	_____	_____	_____	_____
Total Covered & Open	<u>6</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.

Unit 2: There is space for at least two uncovered parking stalls within the limited common land area of Unit 2.

Commercial parking garage permitted in condominium project.

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

8. Recreational and Other Common Facilities:

There are no recreational facilities

Swimming pool                       Storage Area                       Recreation Area

Laundry Area                       Tennis Court                       Trash Chute

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

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

There are no violations.                       Violations will not be cured.

Violations and cost to cure are listed below.     Violations will be cured by \_\_\_\_\_

10. Conditions and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

(For conversions of residential apartments in existence for at least five years):

Not Applicable

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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

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

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>  x  </u>	<u>      </u>	<u>      </u>
Structures	<u>  x  </u>	<u>      </u>	<u>      </u>
Lot	<u>  x  </u>	<u>      </u>	<u>      </u>

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

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

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

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

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

described in Exhibit   B  .

as follows:

2. Limited Common Elements: 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:

Unit 1 -	33 1/3 %
Unit 2 -	33 1/3 %
Unit 3 -	<u>33 1/3 %</u>
	100.00 %

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 December 1, 1995 and issued by Security Title Corporation.

Blanket Liens:

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

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	If a foreclosure occurs, purchaser's interest in a sales contract may be terminated. Purchaser's deposits will be refunded, less escrow cancellation fees.

F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

None. There are no warranties, express or implied.

2. Appliances:

None. There are no warranties, express or implied.

G. Status of Construction and Estimated Completion Date:

The construction of the various units were completed as follows:

Unit 1: June, 1994

Unit 2: June, 1995

Unit 3: September, 1994

H. Project Phases:

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

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



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 F contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated October 1, 1995

Exhibit F 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 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 a 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 as 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 form the time the report(s) were delivered to the buyer; or

3) The apartment is conveyed to the buyer within 30 days form 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 Report issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as restated and amended.
  - C) Bylaws of the Association of Apartment Owners.
  - D) House Rules. (None)
  - E) Condominium Map.
  - 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, Hawaii 96809, at a nominal cost.

This Public Report is part of Registration No. 2408 filed with the Real Estate Commission on March 19, 1991.

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

NOT A SUBDIVISION. This is a condominium project which should not be confused with a subdivision. A purchaser of an apartment unit will be conveyed an apartment unit together with an "undivided" percentage interest in the common elements of the project. The entire parcel of land upon which the project is situated is designated as a common element. That portion of the common element which each purchaser has the exclusive right to use is called a limited common element or area, but is not a separate, legally subdivided lot.

MAINTENANCE FEES. All costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective apartment owner. The cost of maintaining Easement A (driveway) will be a common expense, however there should not be any maintenance required for it.

Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners purchase fire insurance to cover the improvements of the Project, and that premiums be common expenses. Developer anticipates that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses. Developer estimates such annual premium expense to be about \$950.00 for Unit A and \$900.00 for Unit B per year each for Units A and B. This estimate was prepared in accordance with generally accepted accounting principles.

The only utility that is not separately metered is water. In the event a submeter for water usage is installed by the Developer, each Unit will then be allocated its share of the expenses for water based on actual usage.

INSURANCE. The owners of the apartments in the Project have elected to maintain individual homeowner insurance policies. The fire and hazard coverage for unit 1 is approximately \$1120.00. It is estimated that coverage for unit 2 is \$500.00.

NOT ORIGINAL DEVELOPERS. Michael and Caroline Myers ("Myers") were not the original developers of the Lihue Valley Estates condominium project. The Project was originally developed by Daniel and Eleanor Ortiz and Paul and Amy Townsley ("Ortiz and Townsley"). Ortiz and Townsley developed the Project as a two unit condominium consisting of storage structures and registered the Project with the Real Estate Commission, State of Hawaii, under Reg. No. 2408. Myers purchased unit I and subsequently constructed the improvements necessary to convert unit I into the present units 1 and 2. The purpose of this Supplementary Public Report is to reflect the construction that has occurred and also to enable the Myers to sell new units 1 and 2.



EXHIBIT "A"

Description of Apartments

The Project consists of the following three (3) apartments:

a. Unit 1 (2891A Pua Nani). One freehold estate consisting of an existing two story residential structure constructed principally of wood, wood siding, concrete, with Architect 80 roofing. The main living area is constructed on a post and pier foundation and the garage has a concrete slab foundation. The first floor of the structure contains the entry, living room, dining room, kitchen, three bedrooms, two bathrooms, and porch in the front of the structure with a patio/deck at the rear of the structure. The first floor also includes a breezeway which connects the first floor living area to the two car garage and the garage also has an attached laundry room. The second floor contains a living room, kitchen, one bedroom and one bathroom. There is an exterior stairway leading from the ground level to the second floor lanai and entry. The net living area of the first floor is 1272, the front porch contains 306 square feet, the rear deck contains 266 square feet, the breezeway contains 90 square feet, the garage contains 400 square feet, the laundry room consist of 120 square feet, the net living are of the second floor is 520 square feet, and the second floor lanai is 268 square feet. The land area surrounding Unit I as delineated and described in the Condominium Map as Limited Common Land Area 1 is a limited common element for Unit 1 and is for the exclusive use of Unit 1.

b. Unit 2 (2891C Pua Nani). One freehold estate consisting of an existing utility and storage structure constructed principally of wood with a concrete pier foundation. The net living area of Unit 2 is 36 square feet. The land area surrounding Unit 2 as delineated and described in the Condominium Map as Limited Common Land Area 2 is a limited common element for Unit 2 and is for the exclusive use of Unit 2.

c. Unit 3 (2891D Pua Nani). One freehold estate consisting of an existing one story residential structure constructed principally of wood, concrete, with Architect 80 roofing. The residential structure is constructed on a post and pier foundation and the detached carport has a concrete slab foundation. The residential structure contains the living room, dining room, kitchen, three bedrooms, two bathrooms, and an entry deck and rear deck. The detached two car carport contains an area for laundry. The net living area of the structure is 1101 square feet, the front entry deck contains 88 square feet, the rear deck with stairs contains 189 square feet, and the detached two car carport contains

460 square feet. The land area surrounding Unit 3 as delineated and described in the Condominium Map as Limited Common Land Area 3 is a limited common element for Unit 3 and is for the exclusive use of Unit 3.

EXHIBIT "B"

Common Elements

The common elements of the Project and which the units have immediate access to include:

- a. The land in fee simple.
- b. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, drainage, hot and cold water and like utilities.
- c. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project including the easements described in Paragraph 6.0.
- d. The common driveway consisting of approximately 3,101 square feet.

Limited Common Elements

The land area delineated and designated in the Condominium Map are limited common elements of a unit and consist of the following:

- A. Unit 1. The land area surrounding and under Unit 1 is a limited common element of Unit 1 and is for the exclusive use of Unit 1 and consists of approximately 14,686 square feet.
- B. Unit 2. The land area surrounding and under Unit 2 is a limited common element of Unit 2 and is for the exclusive use of Unit 2 and consists of approximately 19,402 square feet.
- C. Unit 3. The land area surrounding and under Unit 3 is a limited common element of Unit 3 and is for the exclusive use of Unit 3 and consists of approximately 17,976 square feet.

EXHIBIT "C"

Encumbrances Against Title

1. Title to all minerals and metallic mines reserved to the State of Hawaii.

2. Right-of-Entry in favor of Citizens Utilities Company, a Delaware corporation, duly authorized to do business in the State of Hawaii, and GTE Hawaiian Telephone Company, Incorporated, a Hawaii corporation, dated June 29, 1989, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1661523, an easement for the purposes of building, etc., pole and wire lines and/or underground lines, etc., subject to the terms and conditions contained herein (also affects other property).

3. Easement "262" (1,651 square feet), for access and powerline purposes, as shown on Map 89, as set forth by Land Court Order No. 96412, filed on December 12, 1989.

4. Easement "271" (1,450 square feet), for access and utility purposes, as shown on Map 89, as set forth by Land Court Order No. 96412, filed on December 12, 1989.

6. Restrictions, covenants and conditions as contained in the Declaration of Restrictive Covenants dated April 5, 1990, filed in said Office, as Document No. 1720267, to which reference is hereby made (also affects other property).

7. Perpetual covenants and conditions as set forth in Deed dated July 29, 1990, to which reference is hereby made, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), filed in said Office, as Document No. 1752719.

8. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Declaration of Condominium Property Regime, dated December 6, 1990, filed in said Office, as Document No. 1803119, and Condominium Map No. 834, as amended, to which reference is hereby made.

The foregoing Declaration of Condominium Property Regime was amended by the following:

<u>Dated</u>	<u>Document No.</u>
September 13, 1995	2275748

Said Declaration was amended by a Restatement and Amendment to Declaration of Condominium Property Regime (Including Conveyance and Re-Conveyance of Common Interest), dated September 13, 1995, filed in said Office, as Document No. 2275748, together with Joinders filed as Document Nos. 2275749, 2275750 and 2275751.

9. By-Laws of the Association of Unit Owners of Lihue Valley Estates, dated January 14, 1991, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 91-010768.

10. The terms and provisions of that certain Wavier of Construction Drawings dated June 10, 1993, made by and between Paul G. Townsley, Amy E. Townsley, Michael J. Myers, Jr., Caroline A. Myers, Daniel J. Ortiz, and Eleanor F. Ortiz, "Owners", and the County of Kauai, through its Department of Water, "DOW", recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 93-117616, to which reference is hereby made.

11. Grant in favor of Citizens Utilities Company, a Delaware corporation, and GTE Hawaiian Telephone Company, Incorporated, a Hawaii corporation, dated April 2, 1993, for a perpetual right and easement to build, etc., poles and wire lines, and/or underground lines over, under, upon, across and through a portion of the land herein described, the easement area designated as "E-1", recorded in said Bureau, as Document No. 93-148385.

12. As to Unit 1:

(a) Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in that certain (original) Apartment Deed dated August 17, 1992, filed in said Office, as Document No. 1962222, to which reference is hereby made.

13. As to Unit 3:

(a) Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in that certain (original) Apartment Deed dated August 25, 1993, filed in said Office, as Document No. 2061419, to which reference is hereby made.

14. Any and all easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as

created by or mentioned in said Declaration, as amended, and/or in said Apartment Deed, and/or as shown on said Condominium Map No. 834, as amended.

15. As to Unit 1:

a) Mortgage dated June 17, 1994, in favor of Countrywide Funding Corporation, which is organized and existing under the laws of the State of New York, filed in said Office, as Document No. 2157721, and noted on Transfer Certificate of Title No. 466,063. Said Mortgage was assigned by an assignment dated June 26, 1995, in favor of Fleet Real Estate Funding Corp, a South Carolina corporation, filed in said Office, as Document No. 2245235.

16. As to Unit 3:

a) Mortgage dated March 29, 1995, in favor of Territorial Savings and Loan, a Hawaii corporation, filed in said Office, as Document No. 2228612, and noted on Transfer Certificate of Title No. 466,065.

17. The effect, if any, of that certain Waiver of Construction Draws dated June 23, 1995, executed by Caroline A. Myers, Michael J. Myers, Jr., Pamela L. Barklow, and John A. Barklow, recorded in said Bureau, as Document No. 95-087027, to which reference is hereby made.

18. For real property taxes due and owing, your attention is directed to the Director of Finance, County of Kauai.

EXHIBIT "D"

Estimate of Initial Maintenance Fees

<u>Unit</u>	<u>Month</u>	<u>Annual</u>
1	-0-	-0-
2	-0-	-0-
3	-0-	-0-

Estimate of Maintenance Fee Disbursements:

Monthly x 12 months = Yearly Total

Utilities and Services  $\phi$

Air Conditioning  $\phi$

Electricity

[ ] common elements only

[ ] common elements and apartments

Elevator

Gas

Refuse Collection

Telephone

Water and Sewer

Maintenance, Repairs and Supplies

Building

Grounds

Management

Management Fee

Payroll and Payroll Taxes

Office Expenses

Insurance

Reserves(\*)

Taxes and Government Assessments

Audit Fees

Other

TOTAL  $\phi$

I, Michael Myers, Jr, as agent and ~~employed by~~ XXXXXXXXXXXXXXXXXXXXXXXXXXXX the condominium managing agent or the developer, for the condominium project LIHUE VALLEY ESTATES, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Michael John Myers, Jr.  
MICHAEL MYERS, Jr.

(\*) Mandatory reserves in effect January 1, 1993

Date: December 27, 1995

EXHIBIT "E"

Summary of Sales Contract

The sales contract contains the purchase price, description and location of the apartment and other terms and conditions under which a Buyer will agree to buy an apartment in the Project.

Among other things, the sales contract:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Buyer will pay the purchase price.

2. Identifies the escrow agent and states that Buyer's deposit will be held in escrow until the sales contract is closed or canceled.

3. Requires that Buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

4. Provides the following remedies, in the event of default under the sales contract:

by Buyer:

- a. Seller may bring an action against Buyer for breach of contract;
- b. Seller may retain Buyer's initial deposit;
- c. Buyer shall be responsible for expenses incurred.

by Seller:

- a. Buyer may bring an action against Seller for breach of Contract;
- b. Buyer may bring an action compelling Seller to perform under contract;
- c. Seller shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

5. Allocation of payment of closing costs.

The sales contract contains various other provisions which Buyer should become acquainted with.

EXHIBIT "F"

Summary of Escrow Agreement

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

(a) Developer or Escrow will let purchasers know when payments are due.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement says under what conditions a refund will be made to a purchaser. Refunds can occur under the following situations:

i) If Purchaser elects to cancel the transaction in accordance with the receipt for the Final Public Report;

ii) The Developer and purchaser agree to terminate the Sales Contract;

iii) if the Developer exercises any right to cancel the transaction which it may have reserved.

NOTE: If a transaction is cancelled, the purchaser must return all documents to the Developer.

(d) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract. If a purchaser defaults, all deposits previously placed into Escrow will be forfeited by purchaser and Escrow may release such funds to Developer. See paragraph 11 of Escrow Agreement.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

1720267

APR 09 1990

TIME 10:52-4

CTS 342,660  
342,661

LAND COURT SYSTEM

REGULAR SYSTEM

RETURN BY: MAIL ( ) PICKUP (X) TO:  
TANAKA & KAWATA, ATTORNEYS AT LAW, A LAW CORPORATION  
333 Queen Street, Suite 600  
Honolulu, Hawaii 96813  
(808) 523-7581

DECLARATION OF RESTRICTIVE COVENANTS

PUANANI TERRACE SUBDIVISION

LIHUE, KAUAI, HAWAII  
STATE OF HAWAII

Our Lot = 952

WHEREAS AINALANI ASSOCIATES, a Hawaii general partnership, (hereinafter called "Declarant"), is the owner of Lot 888 as shown on Map 88, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1087, and being a portion of the land described in Transfer Certificate of Title No. 342,661, and Lots 889 to 961, inclusive, (excluding Lot 956, which was conveyed to another) as shown on Map 89 filed in with said Land Court Application 1087, and being the land described in Transfer Certificate of Title No. 342,660, known as the Puanani Terrace Subdivision and consisting of 67 house lots (Lot 888 as shown on Map 88 and Lots 889 to 954, inclusive) two lots for further subdivision (Lots 957 and 958), and four roadway lots (Lots 955, 959, 960 and 961); and

WHEREAS, Declarant desires that Lot 888 as shown on Map 88 and Lots 889 through 954, inclusive, as shown on Map 89 of Land Court Application 1087, be subject to certain restrictive covenants relative to the use thereof for the purposes of establishing and ensuring a sound and proper subdivision for residential purposes:

NOW, THEREFORE, Declarant does hereby declare that Lot 888 as shown on Map 88 and Lots 889 to 954, inclusive, as shown on Map 89 of Land Court Application 1087, being developed by Declarant as part of "Puanani Terrace Subdivision", (hereinafter collectively called "Lots"), excluding all roadway lots (Lots 955, 959, 960 and 961) and excluding Lots 956, 957 and 958 as shown on Map 89, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following declarations, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said Lots, and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Puanani Terrace Subdivision, as a whole and each of said Lots situated therein. All of the provisions of this Declaration are intended to create mutual equitable servitudes upon each of said Lots in favor of each and all other Lots, to create reciprocal rights between the respective owners of all of said Lots. All of

EXHIBIT "G"

such provisions shall, as to the owner of each Lot, his heirs, devisees, personal representatives, successors or assigns operate as covenants running with the land for the benefit of each and all other Lots and their respective owners.

(1) Lot 888 as shown on Map 88 and Lots 889 through 954, inclusive, shall be used for residential purposes only; except that Declarant may use certain Lots for sales purposes on a temporary basis as provided below in Section (2). No building shall be erected, altered, placed or permitted to remain on said Lots other than one detached single family dwelling not more than two (2) stories in height with at least two bedrooms in addition to a living room, and private garage or carport (herein "main structure") except that (a) another single family dwelling may be located on a Lot, if allowed by the ordinances or regulations of the County of Kauai and the rules and regulations of the Department of Health of the State of Hawaii, and (b) a duplex residential dwelling can be located on Lot 919. The floor area of the main structure, exclusive of a garage or carport, shall be not less than nine hundred sixty (960) square feet. Any dwelling to be constructed on each of said Lots shall be completed not more than twelve (12) months after visible commencement of construction thereon; subject to extension for events beyond the control of the Lot Owner, such as inclement weather, strikes or acts of God, but in no event beyond seven hundred (700) calendar days after visible commencement of construction thereon. The entire exterior surfaces of all buildings and structures on each of said Lots except the roofs, glass materials, metal items, or other pre-painted items, shall be painted or stained. For the first five (5) years from the date hereof, any repainting of the exterior of any building or structure or replacement of any roof, shall be done using the same color of paint or stain as the original paint or stain. Asphalt shingles, glazed tiles, mineral roll roofing and all other roofing materials which have a finished surface that will produce glare or have reflective qualities are prohibited.

(2) Notwithstanding any language contained herein to the contrary, Declarant has the right to use any Lot, even though sold to a third party by Declarant, for sales or construction purposes. For purposes of this Declaration, "sales or construction purposes" shall include but shall not be limited to the following uses on, to or under any Lot: to locate a model home on any Lot; to park cars of customers and sales or construction personnel; to establish and operate a sales office; to locate signs, banners, lighting devices or other items to identify the model homes and sales office; to establish and operate a construction site office and storage area; and to provide temporary electrical, telephone, water and sewer services to and on each Lot, model home, sales or construction site office.

(3) No used or secondhand lumber shall be incorporated in the construction of any improvements erected upon said Lots nor shall any building be placed or re-erected upon said Lots which previously had been used in another location. Neither shall tin, corrugated aluminum, steel or fiberglass panels, or any other reflective metal or material be used in the construction of the roof of any building or structure on any of said Lots.

(4) Any dwelling constructed on Lots 944 to 954, inclusive, shall not have more than three (3) bedrooms located therein, unless authorized in writing by the Department of Health of the State of Hawaii.

134  
35  
(5) Lots 913, 914, 915, 916, 935, 936, 937 and 945 shall be subject to a landscape restriction and building setback along the frontage of these lots as shown on Map 89. No trees, shrubs or plants greater than two (2) feet in height can be grown or

planted or maintained in the landscape restriction area. No building shall be constructed in the area from the street to the setback line on these lots. This restriction is necessary to preserve a safe line of sight along the following Roadway Lots: Lot 959 (Aukoi Street), Lot 961 (Aheahe Street), Lot 959 (Aukoi Street) as shown on Map 89, and Lot 964 as shown on Map 90 (Puanani Street).

(6) Lots 889, 919, 920, and 926 shall not have any direct access to Lot 961 (Aheahe Street).

(7) No noxious or offensive activity shall be conducted or permitted to occur or be permitted to be conducted upon any of said Lots nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Neither shall any unusable or inoperable automobile or other vehicle be stored on any of said Lots.

(8) No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any of said Lots at any time as a residence either temporarily or permanently.

(9) No animals, livestock or poultry, including bees, pigs and chickens, shall be raised, bred or kept on any of said Lots for any purpose except dogs or cats.

(10) None of said Lots shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and at all times shall be kept and used in accordance with all governmental laws, ordinances and regulations.

(11) All deeds, mortgages, agreements of sale, leases, or other conveyances made or delivered by any legal or equitable owner of any of said Lot 888 and Lots 889 through 954, inclusive, or interest therein, shall be subject to the same covenants, conditions and restrictions as set forth herein whether or not expressly contained in such conveyance, mortgage, agreement of sale, lease or other conveyance. Every deed, mortgage, agreement of sale, lease or other conveyance shall contain the following provision:

SUBJECT, HOWEVER, to each and all of the covenants, conditions and restrictions contained in that certain Declaration of Restrictive Covenants dated \_\_\_\_\_, 1990, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. \_\_\_\_\_.

(12) Notwithstanding any language, direct or implied, contained herein, these restrictive covenants do not apply to the roadway lots (Lots 955, 959, 960 and 961) and Lots 956, 957 and 958. Declarant reserves the right to subdivide Lots 957 and 958 into lots of smaller area or to consolidate and develop the consolidated lot as a residential development and at that time to establish such restrictive covenants applicable to the subdivided lots or consolidated lot as Declarant, in its discretion, shall determine. Declarant may, but is not required to do so, establish these restrictive covenants as binding upon any consolidation/resubdivision of Lots 957 and 958.

(13) These restrictive covenants shall run with the land and shall be binding on all owners of said Lots and all persons claiming by, through or under them, except as provided in paragraph (14) and hereinbelow, for a period of ten (10) years from the date

these restrictive covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of said Lot 888 and Lots 889 to 954 has been recorded, agreeing to change said covenants in whole or in part; provided, however, that the restrictive covenants set forth in paragraphs (4) to (6) above, inclusive, shall be perpetual and shall not be subject to revocation or modification without the prior written approval of the County of Kauai.

(14) For any violation, breach or failure in the observance or performance of any of the restrictive covenants herein contained to be observed or performed by the owner or owners from time to time of said Lots, any owner or owners of any of said Lots shall have, without limitation, a remedy against the violator and the owner or owners of the Lot in question, for suit for injunction, mandatory or restraining, or any other appropriate remedy, and the adoption or pursuit of any one remedy for, or the waiver or acquiescence in, any such violation, breach or failure shall not preclude or prevent the adoption or pursuit of any other remedy thereafter for the same, later or other violation, breach or failure. In the event that legal proceedings are brought for the violation, breach or failure in the observance or performance of any of said restrictive covenants, all expenses and costs, including reasonable attorneys' fees, shall be charged against the violator and owner or owners of any of said Lots who have violated, breached or failed to observe or perform any of the aforesaid restrictive covenants.

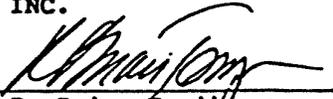
(15) Invalidation or unenforceability of any one of these covenants or any portion thereof by judgment of court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

Dated at Honolulu, Hawaii, this 5<sup>th</sup> day of April,  
1990.

AINALANI ASSOCIATES, a Hawaii  
general partnership

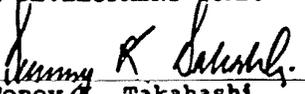
By M/D/T BF, a Hawaii limited  
partnership

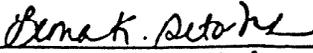
By MDT, INC.

By   
R. Brian Tsujikura  
Its President

Its General Partner

By MALAMA DEVELOPMENT CORP.

By   
Teney K. Takahashi  
Its President

By   
Leona K. Seto-Mook  
Its Assistant Treasurer

Its General Partner

-Declarant-

