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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: WILLIAM P. ALLEN, as Trustee Phone: (808)245-6514  
**Name** (Business)  
4374 Kukui Grove Street, Suite 101  
**Business Address**  
Lihue, Kauai, Hawaii 96766

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

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

Real Estate Broker: Paula B. Rudinoff Phone: (808)245-6563  
**Name** (Business)  
4374 Kukui Grove Street, Suite 101  
**Business Address**  
Lihue, Kauai, Hawaii 96766

Escrow: Security Title Corporation Phone: (808)245-6975  
**Name** (Business)  
4374 Kukui Grove Street, Suite 101  
**Business Address**  
Lihue, Kauai, Hawaii, 96766

General Contractor: Kinnaman Construction Phone: (808)245-6614  
**Name** (Business)  
4374 Kukui Grove Street, Suite 101  
**Business Address**  
Lihue, Kauai, Hawaii 96766

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

Attorney for Developer: Michael J. Belles Phone: (808)245-4705  
Case & Lynch (Business)  
**Name**  
4334 Rice Street, Suite 202  
**Business Address**  
Lihue, Kauai, Hawaii 96766

**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. 94-185580  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 2143  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

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

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 94-185581  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

E. Changes to Condominium Documents

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

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

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

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

2. 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:

The Developer reserves the right to change the Declaration and Condominium Map as provided for in Section L.2. of the Declaration, and further the Developer reserves the right to change the Bylaws as provided for in Section 13.5(d) of the Bylaws.

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 Subleaseholds:

- 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 Subleasehold:

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

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

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:             Monthly                             Quarterly  
     Semi-Annually                             Annually

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

[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

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

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

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

**B. Underlying Land:**

Address: Lae Road, Kalaheo Homesteads, Lot 14-B Tax Map Key: (4) 2-4-5-181  
Kalaheo, Kauai, Hawaii 96741 (TMK)

[ ] Address [ ] TMK is expected to change because \_\_\_\_\_  
\_\_\_\_\_

Land Area: 1.50 [ ] square feet [X] acre(s) Zoning: Agriculture

Lessor

(Fee Owner): William P. Allen, Trustee  
**Name**  
4374 Kukui Grove Street, Suite 101  
**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: 2 Floors Per Building 2

Exhibit "A" contains further explanations.

3. Principal Construction Material:

Concrete     Hollow Tile     Wood

Other \_\_\_\_\_

4. Permitted Uses by Zoning:

	<u>No. of</u>	<u>Use Permitted</u>		<u>No. of</u>	<u>Use Determined</u>
	<u>Apts.</u>	<u>By Zoning</u>		<u>Apts.</u>	<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 checked="" type="checkbox"/> Agricultural	<u>    </u>	<input checked="" 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 type="checkbox"/> Other: _____	<u>    </u>	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Yes     No

5. Special Use Restrictions:

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

[X] Pets: No animals or pets other than those allowed pursuant to Section 13.1 of the Bylaws.

[ ] Number of Occupants: \_\_\_\_\_

[X] Other: There are special use restrictions contained in the project documents. See paragraph G. of the Declaration. See also Declaration of Restrictive

[ ] There are no special use restrictions. Covenants for Banyan Meadows Subdivision.

6. Interior (fill in appropriate numbers):

Elevators: 0      Stairways: 1 each      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>
Unit 1	<u>1</u>	<u>5/2½</u>	<u>2,184</u>	<u>208</u>
Unit 2	<u>1</u>	<u>5/2½</u>	<u>2,184</u>	<u>208</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 2

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

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

Boundaries of Each Apartment:

See Exhibit "A"

Permitted Alterations to Apartments:

See Exhibit "B"

7. Parking Stalls:

Total Parking Stalls: 4

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

Each apartment will have the exclusive use of at least 2 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.
- Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool                       Storage Area                       Recreation Area
- Laundry Area                       Tennis Court                       Trash Chute
- Other: \_\_\_\_\_

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

- There are no violations.                       Violations will not be cured.
- Violations and cost to cure are listed below.       Violations will be cured by \_\_\_\_\_

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
(For conversions of residential apartments in existence for at least five years):

N/A

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   "C"  .

as follows:

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

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

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

[ ] described in Exhibit \_\_\_\_\_.

[X] as follows: Certain units shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

Unit	Yard (approx. land area)
1	1.36 acres (59,241.60 sq. ft.)
2	0.14 acre (6,098.40 sq. ft.)

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:

[X] described in Exhibit "D".

[ ] as follows:

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

Exhibit "E" describes the encumbrances against the title contained in the title report dated October 3, 1994 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 specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

- [ ] There are no blanket liens affecting title to the individual apartments.
- [X] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the 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 in favor First Hawaiian Bank, a Hawaii corporation	Buyer's interest will be terminated and Buyer may be entitled to a refund of deposit, 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:**

Common elements - None

Units 1 and 2 are sold "AS IS" and no warranties are applicable.

2. **Appliances:**

Any manufacturer's warranties currently in effect.

G. Status of Construction and Estimated Completion Date:

Construction of Units 1 and 2 were completed in January 1994.

H. Project Phases:

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

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



## V. MISCELLANEOUS

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

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit "G" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated November 14, 1994  
Exhibit "H" 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 or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime.
  - C) Bylaws of the Association of Apartment Owners.
  - D) House Rules.
  - 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 Farm Dwelling Agreement; Declaration of Restrictive Covenants for Banyan Meadows Subdivision.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 3224 filed with the Real Estate Commission on Nov. 17, 1994

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

Pursuant to sections 16-99-3(g) and 16-99-11(d), Hawaii Administrative Rules ("HAR"), prospective purchasers are hereby advised that Developer/Owner William P. Allen (RS-35958) is a current and active Hawaii-licensed real estate sales person associated with Paula B. Rudinoff, who is the principal broker and who will be acting as the sales agent for the project. Mr. Allen will not be acting in any capacity as a real estate sales person with regard to any transaction associated with sales of units within the project. Further, pursuant to section 16-99-11(c), HAR, "(n)o licensee shall advertise 'For Sale by Owner, . . .'"

Further, William P. Allen is the President and a Director of Kinnaman Construction, Inc., a Hawaii corporation, the Contractor associated with this project. Mr. Allen owns fifty percent (50%) of the stock of Kinnaman Construction, Inc.



EXHIBIT "A"

DESCRIPTION OF BUILDINGS

The project consists of two buildings, both of which are two-story buildings. Both buildings are principally wood construction and do not contain a basement. Each building (herein called "unit"), is shown on the Condominium Map.

Unit 1 located as shown on the Condominium Map, contains five (5) bedrooms, 2-1/2 bathrooms, a living room, a family room, a study, a kitchen, closets, and other improvements as shown on the Condominium Map. Unit 1 contains a living area of 2,184 square feet, with a lanai containing 208 square feet, for a total area of 2,392 square feet.

Unit 2 located as shown on the Condominium Map, contains five (5) bedrooms, 2-1/2 bathrooms, a living room, a family room, a study, a kitchen, closets, and other improvements as shown on the Condominium Map. Unit 1 contains a living area of 2,184 square feet, with a lanai containing 208 square feet, for a total area of 2,392 square feet.

The approximate net floor areas of each unit as set forth above is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls.

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

## EXHIBIT "B"

### ALTERATION OF PROJECT

Paragraph J of the Declaration provides that:

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

2. Pursuant to Chapter 205, Hawaii Revised Statutes, each unit owner is entitled to construct a farm dwelling on each limited common element within the Project, and each unit owner is required to enter into an agreement with the County of Kauai certifying that the farm dwelling will be used in connection with a farm or where agricultural activity provides income to the family occupying the farm dwelling. In addition, the Planning Department of the County of Kauai requires that any farm dwelling constructed after the first farm dwelling within the Project requires an inspection by the Planning Department to confirm whether the agricultural activities are being conducted on the Project in accordance with Chapter 205, Hawaii Revised Statutes. Each unit owner in the Project, therefore, shall bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area, for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm dwelling Agreement and

corresponding building permit to all of the units within the Project. Any assessment that may be necessary to maintain agricultural activities pursuant to this paragraph may be imposed upon each unit in accordance with the Bylaws as a common expense of the association in connection with the operation of the Project.

3. Any alteration of the plans of a unit pursuant to this paragraph J shall be subject to the following conditions:

(a) All building plans for any such alterations shall conform with County building or zoning laws and other applicable County ordinances.

(b) Such alterations may decrease or increase the size of the affected unit, provided that no alteration shall extend or place the unit outside of the limits of the yard appurtenant to such unit.

(c) All such alterations shall be at the sole expense of the unit owner making the change and shall be made within one (1) year of the commencement thereof and in a manner that will not unreasonably interfere with the other unit owner's use of his unit or yard.

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

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

\* SPECIAL NOTATION: When applying for zoning permits with the Planning Department of the County of Kauai, 75% of the

owners of the project must sign the permit forms. This requirement is binding on all purchasers as well as future assignees.

The issuance of an effective date for the Condominium Public Report should not be construed to mean that all County Codes and Ordinances have been complied with and all subsequent development and use shall comply with applicable County Codes and Ordinances.

Additionally, the creation of the Condominium Property Regime does not mean that the land has met the subdivision requirements of the County. As such, certain facilities/ improvements normally associated with County approved subdivisions may not be necessarily provided for.

EXHIBIT "C"

COMMON ELEMENTS

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

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

EXHIBIT "D"

COMMON INTEREST

Each Unit shall have appurtenant thereto an undivided fifty percent (50%) interest in all common elements of the property, and the same proportionate share in all common profits and expenses of the project for all other purposes, including voting. The percentage common interest for each unit is determined by apportioning a fifty percent (50%) interest to each of the two (2) units irrespective of the actual land area contained in each of the two (2) units.

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Reservations as contained in Land Patent Grant No. 6318 to which reference is hereby made.
4. Excepting and Reserving a right-of-way across this lot for pipeline purposes.
5. "A road widening reserve along Lae Road as depicted on the final subdivision map dated March 14, 1991. No new structures will be permitted within the reserve; new structures shall be set back from the reserve.", as contained in that certain Declaration of Restrictive Covenants for Banyan Meadows Subdivision, dated August 7, 1990, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-043301, to which reference is hereby made.
6. "The premises may periodically be affected by noise, dust, smoke, soot, ash, odor, or other adverse environmental conditions of any other kind created by surrounding agricultural, industrial, or other non-residential activities, which include specifically but are not limited to cane burning, harvesting, tending, and processing.", as contained in that certain Declaration of Restrictive Covenants for Banyan Meadows Subdivision, dated August 7, 1990, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-043301, to which reference is hereby made.
7. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in that certain Declaration of Restrictive Covenants for Banyan Meadows Subdivision, dated August 7, 1990, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-043301, to which reference is hereby made.
8. Terms and provisions of that certain Conveyance of Water Facility dated November 24, 1993, made by and between William P. Allen, "Owner", and the Board of Water Supply, County of Kauai, "Board", recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-212918.

9. A portion of Access and Utility Easement "AU-1" (21.00 feet wide), affecting Lot 14-B, containing an area of 5,011 square feet, more or less, as contained in that certain Declaration of Restrictive Covenants for Banyan Meadows Subdivision, dated August 7, 1990, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-043301, to which reference is hereby made.
10. The terms and provisions of that certain Farm Dwelling Agreement, dated June 17, 1991, by and between William P. Allen, Living Trust and County of Kauai Planning Department, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-104408, 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 September 8, 1992, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-021771, granting an easement for utility purposes over, under, upon, across and through a portion of Easement "E-1" affecting Lot 14-B.
12. The terms and provisions of that certain William P. Allen Revocable Living Trust under that certain unrecorded Trust Agreement, dated August 7, 1989, as amended, to which reference is hereby made.
13. That certain Mortgage and Financing Statement, dated September 23, 1994, in favor of First Hawaiian Bank, a Hawaii corporation, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-162426.
14. Restrictions, covenants, agreements, obligations, conditions, easements and other provisions set forth in that certain Declaration of Condominium Property Regime of "Banyan Meadows II, Condominium" recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-185580.
15. Condominium Map No. 2143, recorded in the Bureau of Conveyances of the State of Hawaii.
16. Restrictions, covenants, agreements, obligations, conditions, easements and other provisions set forth in that certain Bylaws of the Association of Unit Owners of "Banyan Meadows II Condominium", recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-185581.

EXHIBIT "F"

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>
Unit 1	210 x 12 = \$2,520.00
Unit 2	210 x 12 = \$2,520.00

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.



EXHIBIT "G"

SUMMARY OF SALES CONTRACT  
(DEPOSIT RECEIPT, OFFER AND ACCEPTANCE)

The Deposit Receipt, Offer and Acceptance agreement, including the terms and conditions attached thereto as the CPR Addendum (hereinafter collectively called the "Sales Contract") contain the price and other terms and conditions under which a buyer will agree to buy a unit in the Project. Among other things, the Sales Contract states:

(a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a unit.

(b) That the Buyer acknowledges having received and read a public report (either preliminary, final or supplementary) for the Project prior to signing the Sales Contract.

(c) That the Seller makes no representations concerning rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.

(d) That the Buyer's money will be held in escrow, under the terms of the Escrow Agreement and that the Buyer is bound by the Escrow Agreement.

(e) That there are certain contingencies and requirements relating to the Buyer's financing of the purchase of a unit.

(f) That the unit and the Project will be subject to various other legal documents which the Buyer should examine, and that the Seller may change these documents under certain circumstances.

(g) That the Seller makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.

(h) That the Buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

(i) That the Buyer may or may not receive interest on deposits made under the Sales Contract, depending on what the Seller and Buyer may mutually decide.

(j) That if the Buyer shall default:

(1) The contract may, at the Seller's option, be terminated by written notice to the Buyer; and

(2) Any deposits sums paid by the Buyer shall belong to the Seller as liquidated damages; and

(3) The Seller may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorneys' fees, incurred by reason of default by the Buyer shall be borne by the Buyer.

The Sales Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon Buyer and prospective buyers to read with care the specimen Sales Contract (Deposit Receipt, Offer and Acceptance) on file with the Real Estate Commission.

EXHIBIT "H"

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.

- (d) Escrow may not disburse any purchaser's funds in the construction of the project until completion of the project and the expiration of the mechanic's and materialmen's lien period. Escrow may disburse prior to completion of the project and expiration of the applicable lien period if the Developers would furnish each purchaser an Owners Title Insurance with an endorsement against any future liens placed on the apartments or project as a result of the development, plus providing the Real Estate Commission a release of the General Contractor's lien rights.