

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer PLANTATION PROPERTIES II. LIMITED
Address P. O. Box 6070, Kahului, Maui, Hawaii 96732

Project Name(\*): THE GARDENS UPCOUNTRY
Address: 71 Makawao Avenue, Makawao, Maui, Hawaii 96768

Registration No. 3279 Effective date: February 3, 2003
Expiration date: March 3, 2004

Preparation of this Report:

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

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

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

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

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

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
X SUPPLEMENTARY: (pink) This report updates information contained in the:
And [ ] Supersedes all prior public reports

(\* ) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

Required and attached to this report                       Not Required - Disclosures covered in this report.

**Summary of Changes from Earlier Public 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. Declaration of Condominium Property Regime of The Gardens Upcountry was amended by:

First Amendment to Declaration of Condominium Property Regime of the Gardens Upcountry (As Built Certificate and Parking Reassignments) dated April 26, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-085877, for the purpose of filing the "As Built" architect's certificate regarding the project's condominium map, amending Sheet C-2 of the Condominium Map No. 2627 to show reconfiguration of parking stalls, the elimination of three guest parking stalls located parallel to the project's entry driveway, and changing certain parking stall assignments; and

Second Amendment to Declaration of Condominium Property Regime of the Gardens Upcountry dated November 8, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-203980, that eliminates a reference in Section B.3(f) of the Declaration to three deleted guest parking stalls so that the Declaration conforms to the "As Built" condominium map.

2. Exhibit "D" (Parking Stall Assignments) has been amended to show the reassignment of parking stalls.

3. Exhibit "E" (Common Elements) has been amended to reflect the deletion of the three guest parking stalls.

4. Exhibit "H" (Encumbrances Against Title) has been updated based on a recent title report.

5. Developer's Final Public Report expired on August 5, 2002. Pursuant to Section 16-107-19, Hawaii Administrative Rules, sales contracts executed during the period that the Public Report was not in effect may be rescinded at the option of the purchaser and all monies refunded to the purchaser. The purchaser's right to rescind under this rule shall be void thirty (30) calendar days after receipt of written notification of these rights from the developer or his real estate agent.

6. Developer's attorney of record shall be, Richard J. Kiefer, Esq.

**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. 97-168398  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments:

First Amendment to Declaration of Condominium Property Regime of The Gardens Upcountry, dated April 26, 2002, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-085877.

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. 2627  
 Filed - Land Court Condo Map No. \_\_\_\_\_

The Condominium Map has been amended by the following instruments:

First Amendment to Declaration of Condominium Property Regime of The Gardens Upcountry, dated April 26, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-085877 and accompanying "As Built" Condominium Map, with revised Sheet C-2.

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. 97-168399  
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]:

N/A

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

There are no limited common elements in this project.

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

described in Exhibit “F”.

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 “G”.

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 “H” describes the encumbrances against the title contained in the title report dated October 8, 2002

and issued by Title Guaranty of Hawaii, Inc.

2. Rights Under the Sales Contract. Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners, as amended.
- D) House Rules, if any.
- E) Condominium Map, as amended.
- F) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other: \_\_\_\_\_

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

This Public Report is a part of Registration No. 3279 filed with the Real Estate Commission on April 8, 1998.

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YELLOW paper stock

WHITE paper stock

PINK paper stock

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) (Section 514A- ] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

PLANTATION PROPERTIES II, LIMITED

Printed Name of Developer

By: Marianna Knottenbelt Dec. 2, 2002  
 Duly Authorized Signatory\* Date

MARIANNA KNOTTENBELT, President

Print Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Maui

Planning Department, County of Maui

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

**EXHIBIT "D"**

**CONDOMINIUM PUBLIC REPORT  
THE GARDENS UPCOUNTRY  
PARKING STALL ASSIGNMENTS**

<u>UNIT</u>	<u>STALLS</u>
1	4, 24
2	20, 21
3	5, 28
4	7, 27
5	6, 26
6	1, 25
7	2, 22
8	3, 23
9	8, 29
10	9, 30
11	10, 31
12	11, 32
13	12, 33
14	19, 40
15	18, 39
16	17, 38
17	16, 37
18	15, 36
19	14, 35
20	13, 34

**EXHIBIT "E"**

CONDOMINIUM PUBLIC REPORT  
THE GARDENS UPCOUNTRY  
COMMON ELEMENTS

The Common Elements include, but are not limited to:

- a. The Land in fee simple.
- b. All unfinished, undecorated portions of all perimeter (including party) and load-bearing walls, all structural components, foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter walls and interior load-bearing walls, windows including any film or other coating thereon, skylights and roofs.
- c. All yards, grounds and landscaping and all refuse facilities, if any, whether within or appurtenant to the Project.
- d. All roads, parking areas, driveways and walkways, which are rationally of common use by Owners of more than one Apartment.
- e. All ducts, sewer lines, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities over, under and across the Project which serve more than one Apartment for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution.
- f. Any interest which the Association may acquire in and to any Apartment or Apartments for use by a resident manager or resident managers.
- g. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.
- h. An emergency power generator which is available to service the sewage treatment plant.

**EXHIBIT "H"**

CONDOMINIUM PUBLIC REPORT  
THE GARDENS UPCOUNTRY  
ENCUMBRANCES AGAINST TITLE

1. Real Property Taxes have been fully paid up to and including June 30, 1998.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Grant in favor of Theodore M. Behrmann and Elizabeth W. Behrmann, husband and wife, dated April 4, 1978, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12815 on Page 381, as amended by instrument dated May 28, 1992, recorded as Document No. 92-086803; granting a right and easement for access and utility purposes over, across, through and under the land described herein.
4. Grant in favor of Theodore M. Behrmann and Elizabeth W. Behrmann, husband and wife, dated February 14, ---- (acknowledged March 17, 1987 and February 14, 1987), recorded in said Bureau of Conveyances in Liber 20494 on Page 469, as amended by instrument dated May 28, 1992, recorded as Document No. 92-086803; granting a non-exclusive right and easement to install and maintain underground utilities, to install and maintain a facility for refuse collection and storage, and to pass over, across, through and under the following described "easement area":

EASEMENT 1  
TAX MAP KEY: 2-3-44: PARCEL 31

All of that certain parcel of land, being an easement over, under and across Parcel 31 of Tax Map Key: 2-3-44, in favor of Lot 1 of the "Fernandez-Behrmann Subdivision", being a portion of Royal Patent Grant Number 963 to Kahainapule, situated at Kauau, Makawao, Island and County of Maui, State of Hawaii, and being more particularly described as follows:

Beginning at the northerly corner of this easement, said point being also the northerly corner of said Parcel 31 and the westerly corner of said Lot 1 of the "Fernandez-Behrmann Subdivision", the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE" being:

11,555.34 feet north  
5,775.49 feet west

and running by azimuths measured clockwise from true South:

1. 319° 31' 00" 332.64 feet along said Lot 1 and along the remainder of said Grant 963 to Kahainapule;
2. 53° 31' 00" 38.28 feet along existing easement for access and utility purposes recorded in Liber 12815 at Page 381-383 and along the remainders of said Parcel 31 and said Grant 963 to Kahainapule;
3. 167° 33' 00" 28.00 feet along the remainders of said Parcel 31 and said Grant 963 to Kahainapule;
4. 137° 45' 00" 42.00 feet along same and along an existing barbed wire fence;
5. 221° 00' 00" 8.00 feet along same;
6. 150° 14' 00" 45.23 feet along same;
7. 139° 31' 00" 217.62 feet along same to the northwesterly boundary of said Parcel 31;
8. 229° 21' 00" 10.00 feet along Lot 2 of the "Fernandez-Behrmann Subdivision" and along the remainder of said Grant 963 to Kahainapule to the point of beginning and containing an area of 4,744 square feet, more or less.

5. Easement "A" (area 7,376 square feet) for access and utility purposes, in favor of Lot 1 of the "Fernandez-Behrmann Subdivision" and Lot 2 of the "H. Furumoto Subdivision", as shown on subdivision map prepared by Albert S. Saiki, Registered Professional Land Surveyor, dated October 18, 1991, revised October 21, 1991, described as follows:

Beginning at a pipe at the southeast corner of this Easement, being also the northwest corner of Lot 3 (Makawao Avenue Widening) of the "H. Furumoto Subdivision", the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE" being 11,121.30 feet north and 5,445.10 feet west and running by azimuths measured clockwise from true South:

1. 137° 27' 40" 214.98 feet along Makawao Avenue, Lot 30-B, M & G Janosko Subdivision, and Lot 2, H. Furumoto Subdivision;
2. 233° 31' 38.28 feet along the remainder of Lot 2, H. Furumoto Subdivision;
3. 319° 31' 215.59 feet along Lot 1, Fernandez-Behrmann Subdivision, to a pipe;
4. 56° 00' 29.84 feet along Lot 3, H. Furumoto Subdivision;
5. 53° 31' 8.03 feet along Lot 3, H. Furumoto Subdivision, to the point of beginning and containing an area of 7,376 square feet, more or less.

6. The terms and provisions, including the failure to comply with any covenants, conditions and reservations contained in that certain Unilateral Agreement and Declaration for Conditional Zoning dated November 8, 1991, recorded in said Bureau of Conveyances as Document No. 91-159841.

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

Instrument	:	Declaration of Condominium Property Regime of The Gardens Upcountry
Dated	:	November 24, 1997
Recorded	:	Document No. 97-168398
Map	:	2627 and any amendments thereto

Said Declaration was amended by (a) First Amendment to Declaration of Condominium Property Regime of the Gardens Upcountry (As Built Certificate and Parking Reassignments) dated April 26, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-085877, and (b) Second Amendment to Declaration of Condominium Property Regime of the Gardens Upcountry dated November 8, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-203980.

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

Instrument	:	Bylaws of Association of Apartment Owners of The Gardens Upcountry
Dated	:	November 24, 1997
Recorded	:	Document No. 97-168399