

**CONDOMINIUM PUBLIC REPORT**

Prepared &

Issued by: Developer RICHARD GELMAN  
Address 55 Siddall Avenue, Las Vegas, Nevada 89123

Project Name(\*): HANALEI GARDENS CONDOMINIUM  
Address: 5-6657 Kuhio Highway, Wainiha, Kauai, Hawaii

Registration No. 3661                      Effective date: December 4, 1996  
(Conversion)                              Expiration date: January 4, 1998

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, in 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 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:**                      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.  
(yellow)

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

     **SUPPLEMENTARY:**                      This report updated information contained in the:  
(pink)  
   Preliminary Public Report dated: \_\_\_\_\_  
   Final Public Report dated: \_\_\_\_\_  
   Supplementary Public Report dated: \_\_\_\_\_

And    Supersedes all prior public reports  
          Must be read together with \_\_\_\_\_  
          This report reactivates the \_\_\_\_\_  
  public report(s) which expired on \_\_\_\_\_

\_\_\_\_\_  
(\* ) Exactly as named in the Declaration

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

Required and attached to this report                       Not required - disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL ATTENTION**

This is a CONDOMINIUM PROJECT, not a subdivision. The land area beneath and immediately appurtenant to each unit is designated a LIMITED COMMON ELEMENT and is not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

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

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

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## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners 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: RICHARD GELMAN Phone: (702)361-7540  
Name (Business)  
55 Siddall Avenue  
Business Address  
Las Vegas, Nevada 89123

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

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

Real Estate Broker: NA PALI PROPERTIES, INC. Phone: (808)826-7272  
Name (Business)  
P. O. Box 475  
Business Address  
Hanalei, Hawaii 96714

Escrow: First Hawaii Title Corporation Phone: (808)521-3411  
Name (Business)  
201 Merchant Street, Suite 2000  
Business Address  
Honolulu, Hawaii 96813

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

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

Attorney for Developer: Max W. J. Graham, Jr. Phone: (808)245-4705  
Belles Graham Proudfoot & Wilson (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. 96-154489

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. 2478

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. 96-154490

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 interests 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.



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: 5-6657 Kuhio Highway Tax Map Key: (4) 5-8-006-019  
Wainiha, Kauai, Hawaii (TMK)

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

Land Area: 2.905  square feet  acre(s) Zoning: Open

Fee Owner : Richard Gelman  
 Name  
55 Siddall Avenue  
 Address  
Las Vegas, Nevada 89123

Sublessor:  
 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: 3 Floor Per Building 1

Exhibit "A" contains further explanations.

3. Principal Construction Material:

Concrete     Hollow Tile     Wood

Other \_\_\_\_\_

4. Permitted Uses by Zoning:

	No. of Use Permitted		No. of Use Determined	
	<u>Apts.</u>	<u>By Zoning</u>	<u>Apts.</u>	<u>By Zoning</u>
<input type="checkbox"/> Residential	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<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: Household pets in reasonable numbers.

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

Other: See Declaration Paragraph G. and Bylaws, Section 8.4

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 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>Unit A</u>	<u>1</u>	<u>1/1</u>	<u>500</u>	_____
<u>Unit B</u>	<u>1</u>	<u>2/1</u>	<u>655</u>	_____
<u>Unit C</u>	<u>1</u>	<u>2/1</u>	<u>1,040</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:

See Exhibit "A"

Permitted Alterations to Apartments:

See Exhibit "B"

7. Parking Stalls:

Total Parking Stalls: 2

	<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>6</u>
Guest							
Unassigned							
Extra for Purchase							
Other:							
Total Covered & Open	<u>6</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. by Developer.

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

A portion of Unit C encroaches on adjacent property (Lot 287, Wainiha Hui Land; Kauai TMK (4) 5-8-06:18). This encroachment violates County of Kauai sideyard setback requirements. The cost to cure is estimated to be \$5,000.00 and shall be the responsibility of the purchaser.

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):

The system and components of the improvements, including visible structural electrical and plumbing, appear to be in satisfactory condition. The structures have an expected useful life in excess of twenty years.

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>Units A &amp; C</u>	<u>Unit B</u>	_____
Structures	<u>Unit A</u>	<u>Units B &amp; C</u>	_____
Lot	<u>X</u>	_____	_____

SEE Exhibit "J". Before purchasing any units, check with the Developer if you have any questions on the non-conformities, cost to cure.

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 Interests:**

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.

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

described in Exhibit "D".

as follows:

NOTE: Land areas referenced herein are not legally subdivided lots.

3. Common Interests: Each apartment will have an undivided fractional interests in all of the common elements. This interest is called the "common interests." 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 "E".

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 "F" describes the encumbrances against the title contained in the title report dated September 19, 1996 and issued by Title Guaranty of Hawaii, Inc.

**Blanket Liens:**

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	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:

None. Units are sold "as is".

- 2. Appliances:

Any manufacturer's warranties currently in effect.

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

Unit A was completed in 1994.

Unit B was completed in 1971.

Unit C was completed in 1972.

**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 "H" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated November 6, 1996  
Exhibit "I" 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 the 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 \_\_\_\_\_

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. 3661 filed with the Real Estate Commission on 11/18/96.

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C. **Additional Information Not Covered Above**

Paragraph M. of the Declaration, attached hereto as Exhibit "J", describes the non-conforming uses and structures on the Property. Note that Unit C has an illegal nonconformity and that it will be the purchaser's responsibility to cure such; also that Unit B may have to be transformed into a non-residential unit if Units A or C is destroyed.

D. 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.

RICHARD GELMAN

\_\_\_\_\_  
Name of Developer

By:  10/9/96  
Duly Authorized Signatory Date

RICHARD GELMAN, Owner/Developer

\_\_\_\_\_  
print name & title of person signing above

Distribution:

Department of Finance, County of Kauai  
Planning Department, County of Kauai  
Federal Housing Administration

## EXHIBIT "A"

### DESCRIPTION OF BUILDINGS

The project consists of three (3) buildings, all of which are one-story buildings. All buildings are principally wood construction and do not contain a basement. Each building (herein called "unit") is shown on the Condominium Map.

Unit A located as shown on the Condominium Map, contains one bedroom, a bathroom, a living room, a kitchen, and closets. Unit A contains a living area of 500 square feet, with an exterior deck, stairs and landing area of 255 square feet, for a total area of 755 square feet.

Unit B located as shown on the Condominium Map, contains two bedrooms, one bathroom, a living room, a den, a kitchen, closets, and other improvements as shown on the Condominium Map. Unit B contains a living area of 655 square feet, porch areas of 216 square feet, storage area of 366 square feet, for a total area of 1,237 square feet.

Unit C located as shown on the Condominium Map, contains two bedrooms, one bathroom, a living room, a den, a kitchen, closets, and other improvements as shown on the Condominium Map. Unit C contains a living area of 1,040 square feet, with an exterior porches and stairs of 167 square feet, for a total area of 1,207 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.**

### LIMITS OF UNITS

Each unit includes, but is not limited to, the footings or slab on which it is constructed, the exterior walls and roof, all interior walls, floors, ceilings, columns and partitions, and the finished surfaces thereof, the doors and door frames, windows and window frames, the air space within the perimeters of the unit, and all fixtures originally installed in the unit. Each unit shall not include any pipes, shafts, wires, conduits or other utility or service lines running through such unit which are utilized for or serve more than one unit, the same being deemed common elements as hereinafter provided.

**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 any 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 limited common element 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. 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. 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 future 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 easements 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"**

**LIMITED COMMON ELEMENTS**

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

1. Private Yards. The yard upon which each unit is located, as shown on the Condominium Map, is appurtenant to and for the exclusive use of such unit, as follows:

<u>Unit No.</u>	<u>(approx. land area)</u>
A	0.344 Acre (14,984.64 sq. ft.)
B	2.217 Acres (96,572.52 sq. ft.)
C	0.344 Acre (14,984.64 sq. ft.)

## EXHIBIT "E"

### COMMON INTEREST

Unit A shall have an appurtenant undivided twelve percent (12%) interest; Unit B shall have an appurtenant undivided seventy-six percent (76%) interest; and Unit C shall have an appurtenant undivided twelve percent (12%) interest (referred to as the "common interest") in all common elements of the project and the same proportionate share in all common profits and expenses of the project (except as may be otherwise provided in the bylaws) and for all other purposes, including voting. The percentage common interest for each unit was determined by dividing the approximate total yard area of each yard by the total area of all yards in the project.

**EXHIBIT "F"**

**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. Easement as shown on Tax Map.
4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Agreement, dated September 23, 1980, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15057, Page 214, by Wilbert Tai Hook and Lily L. Tai Hook, husband and wife, with the County of Kauai, Building Division, re: building permit.
5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Agreement, dated October 30, 1981, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15980, Page 670, by Wilbert Tai Hook and Lily L. Tai Hook, husband and wife, with the County of Kauai, Planning Department, re: special management area rules and regulations.
6. Mortgage in favor of the Administrator of the Small Business Administration, an agency of the Government of the United States of America, dated November 20, 1992, and recorded in said Bureau as Document No. 93-001315.

Subordination Agreement dated November 21, 1994, and recorded in said Bureau as Document No. 94-200354, which subordinates said above Mortgage to the lien of that certain Mortgage set forth in paragraph 9 below.

7. Additional Charge Mortgage in favor of the Small Business Administration, an agency of the Government of the United States of America, dated September 13, 1993, and recorded in said Bureau as Document No. 93-154758, being an additional charge to that certain Mortgage set forth in paragraph 6 above.

8. Additional Charge Mortgage in favor of the Small Business Administration, an agency of the Government of the United States of America, dated December 6, 1993, and recorded in said Bureau as Document No. 94-010693, being an additional charge to that certain Mortgage set forth in paragraph 6 above.
9. Mortgage, Security Agreement and Financing Statement in favor of First Federal Savings and Loan Association of America, a federally chartered savings and loan association, dated November 29, 1994, and recorded in said Bureau as Document No. 94-200353.
10. Declaration of Condominium Property Regime of "Hanalei Gardens Condominium" recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-154489.
11. Bylaws of the Association of Unit Owners of "Hanalei Gardens Condominium" recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-154490,
12. Condominium Map recorded as Map No. 2478.

EXHIBIT "F"  
(Page 2 of 2)

**EXHIBIT "G"**

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

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months = <u>Yearly Total</u>
Unit A	\$75.45 x 12 = \$905.43
Unit B	\$477.87 x 12 = \$5,734.42
Unit C	\$75.45 x 12 = \$905.43

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



**EXHIBIT "H"**

**SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT**

The Deposit Receipt and Sales Contract, including the terms and conditions attached thereto as Article IV (hereinafter collectively called the "Sales Contract") contain the price and other terms and conditions under which a purchaser 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 purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Sales Contract.
- (c) That the Developer 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 purchaser's money will be held in escrow, under the terms of the Escrow Agreement.
- (e) Requirements relating to the purchaser's financing of the purchase of a unit.
- (f) That the unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.
- (g) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.
- (h) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
- (i) That the purchaser will not receive interest on deposits made under the Sales Contract.

(j) 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 sums paid by the buyer shall belong to the seller as liquidated damages (up to a maximum of 20% of the total purchase price); 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.

Further, if the buyer shall default in making any payment when due, a late charge of one percent (1%) per month shall accrue from the due date until such payment, together with such late charge, is paid, or at any time prior to the time that such payment and late charge is paid in full, the seller may, at its option, terminate this contract as provided in paragraphs (1) through (3) above.

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

## EXHIBIT "I"

### 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 is entitled to a refund if the purchaser or seller cancels the Sales Contract in accordance with its cancellation provisions, or if the purchaser terminates its reservation before the Sales Contract is binding. However, Escrow may deduct from the refund cancellation fees in accordance with the Sales Contract.

In the event of a default by the purchaser, the funds paid by the purchaser shall belong to the seller as liquidated damages (up to a maximum of twenty percent (20%) of the total purchase price).

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) The purchaser's funds that are placed in trust prior to closing may be used by the seller after (1) the purchaser has (i) been provided with a final public report; (ii) executed a receipt and notice and has waived his right to cancel or thirty (30) days have elapsed since the purchaser has been provided with the final public report and receipt and notice of right to cancel; and (2) the seller notifies escrow in writing that since (i) and (ii) have happened, the Sales Contract is binding; and (3) the seller's attorney advises escrow that the Sales Contract is binding and the requirements of Hawaii Revised Statutes, Section 514A-39, -63 and -65 have been met.

(e) Escrow may not disburse any buyer'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.

## EXHIBIT "J"

### NON-CONFORMING USES AND STRUCTURES

1. This project involves the conversion of structures described in the Declaration to condominium status. Except as described therein, the project and said structures are in compliance with all applicable zoning and building laws, codes and ordinances of any governmental agency, including the County of Kauai and the State of Hawaii. No variances have been granted to the project to achieve such compliance. The project contains the following legal non-conforming uses and structures:

(a) Units B and C are structures that were constructed prior to the adoption of the Comprehensive Zoning Ordinance of the County of Kauai ("CZO") and thus are non-conforming as to certain CZO standards. In addition, Units B and C are non-conforming with regard to the County of Kauai's Flood Ordinance, insofar as the lowest floor members of these units are not at or above the height specified on current Federal Insurance Rate Maps. Because Units B and C were constructed prior to the adoption of the CZO, they may continue to be utilized as legal, non-conforming structures.

(b) The property upon which the Project is located has density only for one (1) single-family dwelling and one (1) additional dwelling unit. Because the Property had three (3) residences on it prior to the adoption of the CZO, three (3) residences may continue to be utilized on the Property as legal non-conforming uses.

(c) If Unit A or C is damaged or destroyed and as a result no longer qualifies as a non-conforming use or structure under the CZO, then the owner of Unit B agrees to transform Unit B, at his or her expense, into a non-residential unit and/or do all things necessary to allow Unit A or C to be reconstructed or rebuilt as a residential unit.

2. A portion of Unit C has been constructed on, and is encroaching upon, the adjacent lot, described as Lot 287 of the Wainiha Hui Lands and identified by Kauai Tax Map Key No. (4) 5-8-06:18. The owner of Unit C shall be solely responsible for resolving this encroachment with the owner of Lot 287.