



REAL ESTATE COMMISSION
 STATE OF HAWAII
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
 PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
 P. O. Box 3469
 Honolulu, Hawaii 96801

CONDOMINIUM PUBLIC REPORT

2040 NUUANU
 (formerly known as Foster Garden Hill
 and KingsPlace)
 2040 Nuuanu Avenue
 Honolulu, Hawaii

Registration No. 1509

Issued: February 3, 1992
 Expires: March 3, 1993

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of February 3, 1992, and is issued by the Commission for informational purposes only. It represents neither approval nor disapproval of the project. Buyers are encouraged to read this report carefully.

Type of Report:

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

FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.

- No prior reports have been issued
- Supersedes all prior public reports
- Must be read together with _____

SUPPLEMENTARY: (pink) Second Updates information contained in the

- Prelim. Public Report dated August 23, 1982
- Final Public Report dated May 10, 1985
- Supp. Public Report dated December 22, 1988

And Supersedes all prior public reports
 Must be read together with _____

This report reactivates the _____
 public report(s) which expired on _____

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required 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 Commission.

[x] Changes made are as follows:

The people connected with the Project have changed. The Project was originally registered with the Real Estate Commission in 1982 as a leasehold Project called KINGSPLACE. A Certificate of Occupancy was issued for the Project on September 3, 1985. In 1988, the Declaration was amended and the name of the project changed to FOSTER GARDEN HILL.

Tosei Hawaii, Inc. is the present fee simple owner of all apartments in the Project. 2040 Nuuanu Venture (Developer herein) has contracted to purchase the entire Project from Tosei Hawaii, Inc., subject, however, to a right of withdrawal until March 15, 1992 (see page 18). Developer wishes to sell the fee simple interest in the apartments to individual purchasers. For that purpose, primarily, Developer wishes to reactivate the registration of the project.

The Developer has filed with the Real Estate Commission an Amended and Restated Declaration of Condominium Property Regime and an Amended and Restated By-Laws of Association of Apartment Owners, primarily for the purposes of updating such documents in accordance with the provisions of Chapter 514A, Hawaii Revised Statutes, and to change the name of the project to "2040 NUUANU". No alterations have been made to the Project and the original Condominium Map has not been amended. No warranties apply (see Exhibit I).

TABLE OF CONTENTS

	page
Report Purpose	1
Type of Report	1
Summary of Changes from Earlier Public Reports	2
Table of Contents	3
General Information on Condominiums	4
Summary of the Condominium Project	5
I. PEOPLE CONNECTED WITH THE PROJECT	6
Developer	
Real Estate Sales Agent	
Escrow Company	
Managing Agent	
Attorney for Developer	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	7
B. Condominium Map (File Plan)	7
C. Bylaws	7
D. House Rules	8
E. Changes to Condominium Documents	8
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	9
B. Underlying Land	10
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	14
E. Encumbrances Against Title	15
F. Management of the Common Elements	15
G. Maintenance Fees	16
H. Utility Charges	16
I. Construction Warranties	16
J. Status of Construction	17
K. Project Phases	17
L. Sales Documents Filed with the Real Estate Commission	17
IV. ADDITIONAL INFORMATION NOT COVERED ABOVE	18
Buyer's Right to Cancel Sales Contract	19
Signature of Real Estate Commission Chairman	20
EXHIBIT A: Building Description (Ref. III.C.2, p. 10)	
EXHIBIT B: Apartment Areas and Description (Ref. pp. 5 and 11)	
EXHIBIT C: Boundaries of Each Apartment; Permitted Alterations to Apartments (Ref. III.C.6, p.12)	
EXHIBIT D: Common Elements (Ref. III.D.1, p.14)	
EXHIBIT E: Limited Common Elements (Ref. III.D.2, p.14)	
EXHIBIT F: Common Interest (Ref. III.D.3., p.14)	
EXHIBIT G: Encumbrances Against Title (Ref. III.E., p.15)	
EXHIBIT H: Estimate of Maintenance Fees (Ref. III.G, p. 16)	
EXHIBIT I: Warranties and Construction Defects (Ref. III.I., p. 16)	
EXHIBIT J: Sales Contract Summary (Ref. III.L., p. 17)	
EXHIBIT K: Escrow Agreement Summary (Ref. III.L., p. 17)	

GENERAL INFORMATION ON CONDOMINIUMS

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of Hawaii's "Condominium Property Act" (Chapter 514A, Hawaii Revised Statutes) must be followed.

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 owner/tenant) 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. The 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 they 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 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 a vote of the owners. Some of these actions may significantly impact the quality of life for all 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 vitally important to all apartment owners that the transition from developer to owner control be accomplished in an orderly manner and in a spirit of cooperation.

SUMMARY OF THE CONDOMINIUM PROJECT

Interest to be Conveyed to Buyer:

- Fee simple interest in an apartment and an undivided feehold interest in the common elements.
- Leasehold interest in an apartment and an undivided leasehold interest in the common elements.
- Fee simple interest in an apartment and an undivided leasehold interest in the common elements.

Types of Project:

1. New Building(s) (constructed in 1985) Conversion
 Both New Building(s) and Conversion
2. Residential Commercial Ohana
 Mixed Residential and Commercial Agricultural
 Other _____
3. High Rise (5 stories or more) Low Rise
4. Single or Multiple Buildings
5. Apartment Description (See Exhibit B attached hereto for details. Summary below.)

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
A	28	1 BR/1 Bath	581.52	_____
B	28	1 BR/1 Bath	550.87	_____
C	26	Studio/1 Bath	394.65	_____
C-1	1	1 BR/1 Bath	800.16	_____
D	2	2 BR/2 Bath	1562.01	_____
E	1	3 BR/3-1/2 Baths	3086.67	83.94 (2 lanais)

Total Apartments: 86

**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.

6. Parking:

	<u>Number of Stalls</u>
Assigned Stalls (Individual Units)	91
Guest Stalls	_____
Unassigned Stalls	14
Extra Stalls Available for Purchase	_____
Other: _____	_____
Total Parking Stalls	105

7. Recreational amenities:

Swimming pool, whirlpool, barbecue pits, picnic tables and benches, two saunas, meeting/party room.

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: 2040 NUUANU VENTURE Phone: 521-1045
Name (Business)
Suite 701, 1001 Bishop Street
Business Address
Honolulu, Hawaii 96813

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

Condor, One Inc., a Hawaii corporation, partner
Environmental Developers, Inc., a Hawaii corporation, partner

Real Estate
Broker: SAVIO REALTY, LTD. (Lead Broker) Phone: 942-7701
Name (Business)
931 University Ave., Suite 701
Business Address
Honolulu, Hawaii 96813

Escrow: TITLE GUARANTY ESCROW SERVICES, INC. Phone: 521-0211
Name (Business)
235 Queen Street
Business Address
Honolulu, Hawaii 96813

General
Contractor: _____ Phone: _____
Name (Business)

Business Address

Condominium
Managing
Agent: METROPOLITAN MANAGEMENT, INC. Phone: 536-3511
Name (Business)
745 Fort Street, Suite 2100
Business Address
Honolulu, Hawaii 96813

Attorney for
Developer: ALFRED M. K. WONG Phone: 543-9800
TAKUSHI FUNAKI WONG & STONE (Business)
Name
Suite 1400, 733 Bishop Street
Business Address
Honolulu, Hawaii 96813

ADDITIONAL REAL ESTATE BROKERS:

HASEKO REALTY
2233 Kalakaua Avenue, Suite B-105
Honolulu, Hawaii 96815

Ph. 926-5677

IDG REALTY (HAWAII) LTD.
dba Intercontinental Realty
Pacific Tower, Suite 1510
1001 Bishop Street
Honolulu, Hawaii 96813

Ph. 599-4938

SANDRA SAKUMA & COMPANY, INC.
737 Bishop Street, Suite 1655
Honolulu, Hawaii 96813

Ph. 531-1175

**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.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

- Proposed
 Recorded - Bureau of Conveyances - Document No. _____
Book 18591 Page 258
 Filed - Land Court - Document No. _____

Amendment date(s) and recording/filing information:

First Amendment dated October 24, 1988, recorded in Book 22575, Page 17.
Amended and Restated Declaration dated January 17, 1992, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-009090.

- 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 Conveyance Condo Map No. 953
 Filed - Land Court Condo Map No. _____

Amendment date(s) 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 way in which meetings will be conducted, 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. _____
Book 18591 Page 291
 Filed - Land Court - Document No. _____

Amendment date(s) and recording/filing information:

Amended and Restated By-Laws dated January 17, 1992, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-009091.

The Condominium Statute (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to 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.

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

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt house rules.

E. **Changes to Condominium Documents**

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	<u>75%</u>
Bylaws	65%	<u>67%</u>
House Rules	---	<u>Board majority</u>

The percentages for individual condominium projects may be more than the minimum set by law.

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

To redesignate any or all of the parking stalls as limited common elements appurtenant to certain apartments other than the apartment to which it is assigned as set forth in the Declaration, or as may be required by law, the Real Estate Commission of the State of Hawaii, any title insurance company issuing a title insurance policy on the project, or any institutional lender lending funds on the security of the project or any of the apartments thereof. Developer further reserves the right to amend the Declaration and the Condominium Map as may be necessary to change the layout, location and dimensions of Apartment No. PH1 into two or three apartments.

For Subleaseholds:

- Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is
 Cancelled 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 cancelled or foreclosed.

B. Underlying Land:

Address: 2040 Nuuanu Avenue Tax Map Key: (1) 1-7-12-13
Honolulu, Hawaii (TMK)

Address TMK is expected to change because _____

Land Area: 26,017 square feet acre(s) Zoning: A-2

Fee Owner: Tosei Hawaii, Inc.
Name
1440 Kapiolani Blvd., Suite 1000
Address
Honolulu, Hawaii 96814

Vendee: W. Lawrence Clapp per Purchase & Sale Agreement of 1/13/92 (see page 18)
Name
91 Coelho Way
Address
Honolulu, Hawaii 96817

C Buildings and Other Improvements:

1. New Building(s) (constructed in 1985) Conversion of Existing Building(s)
 Both New Building(s) and Conversion

2. Buildings: 1 Floors Per Building 19

Exhibit A contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other _____

4. Permitted Uses by Zoning:

	<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>		<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>
<input type="checkbox"/> Commercial	_____	_____	<input type="checkbox"/> Industrial	_____	_____
<input checked="" type="checkbox"/> Residential	<u>86</u>	<u>yes</u>	<input type="checkbox"/> Agricultural	_____	_____
<input type="checkbox"/> Timeshare/Hotel	_____	_____	<input type="checkbox"/> Recreational	_____	_____
<input type="checkbox"/> Other: _____	_____	_____		_____	_____

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

Yes No

5. Special Use Restrictions:

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

No livestock, poultry, rabbits, bees, pigs, pigeons or other animals

Pets: except dogs, cats or other household pets not to exceed 2 in number.

Number of Occupants: _____

No water beds allowed without prior written approval of the Board and

Other: written evidence of adequate liability insurance coverage.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

2 fire stairways
1 to garage

Elevators 2

Stairways 1 to basement

Trash Chutes 1

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>A</u>	<u>28</u>	<u>1 BR/1 Bath</u>	<u>581.52</u>	_____
<u>B</u>	<u>28</u>	<u>1 BR/1 Bath</u>	<u>550.87</u>	_____
<u>C</u>	<u>26</u>	<u>Studio/1 Bath</u>	<u>394.65</u>	_____
<u>C-1</u>	<u>1</u>	<u>1 BR/1 Bath</u>	<u>800.16</u>	_____
<u>D</u>	<u>2</u>	<u>2 BR/2 Baths</u>	<u>1562.01</u>	_____
<u>E</u>	<u>1</u>	<u>3 BR/3-1/2 Baths</u>	<u>3086.67</u>	<u>83.94 (2 lanais)</u>

Total Apartments: 86

*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 C.

Permitted Alterations to Apartments:

See Exhibit C.

7. Parking Stalls:

Total Parking Stalls: 105

	Regular		Compact		Tandem		TOTAL
	covered	open	covered	open	covered	open	
Assigned (for individual units)	<u>75</u>	<u> </u>	<u>8</u>	<u> </u>	<u>8</u>	<u> </u>	<u>91</u>
Guest Unassigned	<u>10</u>	<u> </u>	<u> </u>	<u> </u>	<u>4</u>	<u> </u>	<u>14</u>
Extra Available for Purchase	<u> </u>						
Other:	<u> </u>	<u>105</u>					
Total Covered & Open	<u>85</u>	<u> </u>	<u>8</u>	<u> </u>	<u>12</u>	<u> </u>	<u> </u>

Each apartment will have the exclusive use of at least 1 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 E 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: whirlpool, barbecue pits, picnic tables and benches,
2 saunas, meeting/party room.

9. Present Condition of Improvements

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

a. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

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

10. Conformance to Present Zoning Code

a. No variances to zoning code have been granted.

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

Zoning variance no. 85/ZBA-162 was granted to allow the construction of a 4 feet 6 inches high chain link fence along portions of the northwestern and northeastern boundaries of the site to provide safety and security for the swimming pool/recreation area.

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 intended to be used by all apartment owners. They are owned jointly by all apartment owners.

Exhibit D describes the common elements.

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 may use them are:

described in Exhibit E

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 often used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium. It may also be used for other purposes, including voting on matters requiring action by apartment owners.

Exhibit F describes the common interests for each apartment.

As follows:

E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property.

Exhibit G describes the encumbrances against the title contained in the title report dated December 23, 1991 and issued by Security Title Corp. .

Blanket Liens:

A blanket lien is a mortgage on a condominium project that secures a construction loan. It 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. Buyer's interest will be affected only if the developer defaults prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest If Developer Defaults</u>
mortgage(s)	To be released prior to conveyance of apartment. No effect upon Buyer's interest after conveyance if Developer defaults.
Purchase and Sale Agreement	Prior to conveyance to Buyer, fee owner or Developer's default will result in cancellation of Purchase Agreement and refund to Buyer of all monies held in escrow, less cancellation fee.

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

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

The initial managing agent for this condominium is:

[X] not affiliated with the Developer.

[] the Developer or the Developer's affiliate.

[] self-managed by the Association of Apartment Owners.

[] other _____

G. Estimate of Initial Maintenance Fees:

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

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

Exhibit H contains a schedule of maintenance fees and maintenance fee disbursements.

H. Utility Charges for Apartments:

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

Not applicable

Electricity (common areas only)

Television Cable

Gas

Water & Sewer

Other Telephone (manager's office), Enterphone

I. 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. See Exhibit I.

2. Appliances:

None. See Exhibit I.

IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

Developer is not obligated to purchase the Project from Tosei Hawaii, Inc. until March 15, 1992, at which time Developer may either reject the purchase or agree to proceed with the purchase. If Developer does terminate the agreement to purchase the Project, Buyer's Sales Contract shall automatically terminate and Developer shall give written notice to Buyer of such termination and shall refund all of Buyer's funds and neither party shall have any further obligations to the other. Buyer should be aware that Tosei Hawaii, Inc. is not a partner or co-venturer of Developer; that Buyer is dealing solely with Developer under Buyer's Sales Contract; and that Tosei Hawaii, Inc. has no rights or obligations under Buyer's Sales Contract and that as such, Buyer will not name Tosei Hawaii, Inc. as a party to any lawsuit that may be brought by Buyer in connection with Buyer's Sales Contract.

Buyer's Right to Cancel Sales Contract:

A. Rights Under the Condominium Statute:

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, Supplementary Report to a Final Report: Sales made by the Developer are binding if:

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

1. There is a material change in the condominium which directly, substantially, and adversely affects (a) the use or value of the buyer's apartment or its limited common elements; or (b) the amenities available for buyer's use; and
2. 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.

B. Rights Under the Sales Contract:

Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the condominium. These include but are not limited to the:

1. Condominium Public Reports issued by the Hawaii Real Estate Commission.
2. Declaration of Condominium Property Regime and Condominium Map.
3. Bylaws of the Association of Apartment Owners.
4. House Rules.
5. Escrow Agreement.
6. Hawaii's Condominium Law (Chapter 514A, HRS, as amended; Hawaii Administrative Rules, Chapter 16-107, adopted by the Real Estate Commission).
7. Other Declaration of Restrictive Covenants (Private Park)

If these documents are not in final form, the buyer should ask to see the most recent draft.

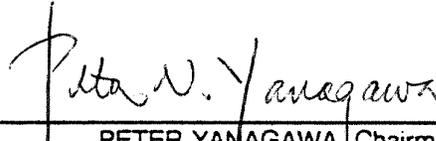
Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS, and Hawaii Administrative Rules, Chapter 16-107) are available at the Department of Commerce and Consumer Affairs, 1010 Richards Street, P. O. Box 541, Honolulu, HI 96809.

This Public Report is a part of Registration No. 1509 filed with the Real Estate Commission on January 22, 1992.

Reproduction of Report. When reproduced, this report must be on:

yellow paper stock white paper stock pink paper stock

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



PETER YANAGAWA, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

Bureau of Conveyances
Department of Finance, City and County of Honolulu
Planning Department, City and County of Honolulu
Federal Housing Administration

LIMITED COMMON ELEMENTS

Paragraph 6 of the Declaration provides as follows:

"6. Limited Common Elements. Certain parts of the common elements, herein called and designated 'limited common elements', are hereby set aside and reserved for the exclusive use of certain apartments and such apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are the parking stalls and storage cabinets. Each of the one-hundred five (105) parking stalls in the project shall be a limited common element appurtenant to and reserved for the exclusive use of the apartment to which it is assigned as set forth in Exhibit 'D' attached hereto and incorporated herein by reference; PROVIDED, HOWEVER, that any or all of such parking stalls may be transferred and assigned as limited common elements appurtenant to other apartments by way of amendment to this Declaration as hereinafter provided; and PROVIDED, FURTHER, that Developer hereby reserves the right to sell to owners of other apartments any or all of such parking stalls as limited common elements appurtenant to such other apartments and, by way of amendment to this Declaration as hereinafter provided, to redesignate such parking stalls to be appurtenant to other apartments. Each of the storage cabinets shall be a limited common element appurtenant to and reserved for the exclusive use of the apartment to which it is assigned as set forth in Exhibit 'E' attached hereto and incorporated herein by reference."

NOTE: The current parking assignment and storage cabinet assignment, which are set forth in Exhibits D and E of the Declaration, are as follows:

INITIAL PARKING STALL ASSIGNMENT

<u>APARTMENT NO.</u>	<u>PARKING STALL(S) NO(S).</u>	<u>LOCATION</u>
401	326	Level 3A
402	317C	Level 3A
403	316C	Level 3A
404	318C	Level 3A
405	315C	Level 3A
406	327	Level 3A
501	323	Level 3A
502	313	Level 3A
503	312	Level 3A
504	319C	Level 3A
505	320	Level 3A
506	325	Level 3A

EXHIBIT E

<u>APARTMENT NO.</u>	<u>PARKING STALL(S) NO(S).</u>	<u>LOCATION</u>
601	221	Level 2A
602	314	Level 3A
603	321	Level 3A
604	324	Level 3A
605	322	Level 3A
606	222	Level 2A
701	210	Level 2A
702	212	Level 2A
703	213	Level 2A
704	214C	Level 2A
705	219	Level 2A
706	220	Level 2A
801	215	Level 2A
802	216	Level 2A
803	217	Level 2A
804	211	Level 2A
805	218	Level 2A
806	121	Level 1C
901	118	Level 1C
902	119	Level 1C
903	120	Level 1C
904	113C	Level 1C
905	109	Level 1C
906	112	Level 1C
1001	114	Level 1C
1002	115	Level 1C
1003	116	Level 1C
1004	117	Level 1C
1005	110	Level 1C
1006	111	Level 1C
1101	B34	Level 1A
1102	B33	Level 1A
1103	B35	Level 1A
1104	B27C	Level 1A
1105	B23	Level 1A
1106	B26	Level 1A
1201	B29	Level 1A
1202	B30	Level 1A
1203	B24	Level 1A
1204	B25	Level 1A
1205	B31	Level 1A
1206	B34	Level 1A
1401	305	Level 3
1402	308	Level 3
1403	311	Level 3
1404	B28	Level 1A
1405	310	Level 3
1406	309	Level 3

<u>APARTMENT NO.</u>	<u>PARKING STALL(S) NO(S).</u>	<u>LOCATION</u>
1501	301	Level 3
1502	302	Level 3
1503	303	Level 3
1504	304	Level 3
1505	306	Level 3
1506	307	Level 3
1601	206	Level 2
1602	203	Level 2
1603	205	Level 2
1604	209	Level 2
1605	208	Level 2
1606	207	Level 2
1701	201	Level 2
1702	202	Level 2
1703	B17	Basement
1704	204	Level 2
1705	B22	Basement
1706	B21	Basement
1801	B7	Basement
1802	B8	Basement
1803	B20	Basement
1804	B18	Basement
1805	B19	Basement
1901 (PH A)	B15 & B16 (tandem)	Basement
1902 (PH B)	B13 & B14 (tandem)	Basement
PH1*	B3 & B4 (tandem)	Basement
	B5 & B6 (tandem)	Basement

*NOTE: In addition to the parking stalls noted above, Parking Stalls Nos. B1, B2, B9C and B10C (tandem), and B11C and B12C (tandem) located on the Basement Level, and Parking Stalls Nos. 101, 102, 103, 104, 105, 106, 107 and 108 located on Level 1B are hereby assigned to Apartment No. PH1. Developer hereby reserves the right to sell to owners of other apartments any or all of such parking stalls, as well as any or all of the above parking stalls, as limited common elements appurtenant to such other apartments and, by way of amendment to the Declaration as therein provided, to redesignate such parking stalls to be appurtenant to other apartments.

C - denotes compact parking stall

STORAGE CABINET ASSIGNMENT

There are a total of four (4) storage cabinets located in the corridors of each apartment floor. The cabinets are identified as Nos. 1, 2, 3 and 4, starting with No. 1 on the Diamond Head end of the building and No. 4 on the Ewa end. These cabinets shall be limited common elements for the exclusive use of the following apartments:

Apartment Floors 4 through 17:

- a. Cabinet No. 1 shall be assigned to the "01" apartment of the same floor.
- b. Cabinet No. 2 shall be assigned to the "02" apartment of the same floor.
- c. Cabinet No. 3 shall be assigned to the "05" apartment of the same floor.
- d. Cabinet No. 4 shall be assigned to the "06" apartment of the same floor.

Apartment Floor 18:

- a. Cabinet No. 1 shall be assigned to Apartment 1801.
- b. Cabinet No. 2 shall be assigned to Apartment 1802.
- c. Cabinet No. 3 shall be assigned to Apartment 1804.
- d. Cabinet No. 4 shall be assigned to Apartment 1805.

Apartment Floor 19:

- a. Cabinet Nos. 1 and 2 shall be assigned to Apartment 1901 (also known as PH A).
- b. Cabinet Nos. 3 and 4 shall be assigned to Apartment 1902 (also known as PH B).

Penthouse Floor

- a. Cabinet Nos. 1, 2, 3 and 4 shall be assigned to Apartment PH1.

COMMON INTEREST

<u>Apt. Type</u>	<u>Common Interest</u>	<u>Total No.</u>	<u>Total Interests</u>
A	1.190%	x 28 =	33.320%
B	1.110%	x 28 =	31.080%
C	0.826%	x 26 =	21.476%
C-1	1.654%	x 1 =	1.654%
D	3.112%	x 2 =	6.224%
E	6.246%	x 1 =	6.246%
		<u>86</u>	<u>100.000%</u>

The common interest is based upon the total area in square feet of each apartment divided by the total area of all apartments.

ENCUMBRANCES AGAINST TITLE (NOTE: Parcel references in title report have been changed to lot references below.)

1. TAXES: Tax Map Key: OAHU 1-7-12-013 (CPRS #1 THRU 86)

For any taxes that may be due and owing and a lien on the parcel of land herein described, reference is hereby made to the Office of the Tax Assessor of the First Division.

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

3. AS TO LOTS 4 AND 2:

- a. Terms and provisions of:

LEASE

Lessor: Harry Shotaro Uyehara and Helen M. Uyehara, husband and wife
Lessee: Jim Anderson, Inc., a Hawaii corporation
Dated: November 30, 1981
Book: 16096
Page: 1
Term: commencing December 1, 1981 and ending November 30, 2053

Through mesne assignment(s), the foregoing Lease, besides other lands, was assigned by the following:

ASSIGNMENT OF LEASES

Assignee: Tosei Hawaii, Inc., a Hawaii corporation
Dated: June 6, 1988
Book: 22013
Page: 342

Lessor's Consent to Assignment of Lease and Estoppel Certificate by Harry Shotaro Uyehara and Helen M. Uyehara, husband and wife, as Lessor, dated June 23, 1988, recorded in the Bureau of Conveyances of the State of Hawaii in Book 22013 Page 352, to which reference is hereby made.

EXHIBIT G

THE FOREGOING LEASE IS SUBJECT TO THE FOLLOWING:

1. MORTGAGE

Mortgagor: Tosei Hawaii, Inc., a Hawaii corporation
Mortgagee: Liberty Bank, a Hawaii corporation
Dated: January 6, 1989
Book: 22754
Page: 565
To Secure: \$300,000.00
and any additional advances and other
amounts secured thereby, all according
to the terms of that certain promissory
note of said mortgagor(s) therein
referred to
(Also affects other property)

2. MORTGAGE

Mortgagor: Tosei Hawaii, Inc., a Hawaii corporation
Mortgagee: The Sanwa Bank, Limited, a Japan
corporation
Dated: January 6, 1989
Book: 22754
Page: 593
To Secure: \$9,090,000.00
and any additional advances and other
amounts secured thereby, all according
to the terms of that certain promissory
note of said mortgagor(s) therein
referred to
(Also affects other property)

4. AS TO LOT 2:

- a. Future road widening setback line along Nuuanu Avenue, as shown on survey map prepared by Park Engineering, Inc. dated August 6, 1982.
- b. Easement 2 for waterline purposes over, under, across and through a portion of the land herein described, as per survey of Roy T. Yama, Registered Professional Surveyor dated January 2, 1985, containing an area of 365 square feet, more or less; reserving unto Harry Shotaro Uyehara and Helen M. Uyehara, husband and wife their heirs, personal representatives and assigns, the right to grant to the Board of Water Supply, City and County of Honolulu, State of Hawaii, the right to use said Easement 2, which grant shall be on such terms and conditions as the said Board of Water Supply shall require; as set forth in that certain instrument dated April 18, 1985, recorded in said Bureau of Conveyances in Book 18591 Page 258.

EXHIBIT G

5. AS TO LOT 1:

- a. Future road widening setback line along Nuuanu Avenue, as shown on survey map prepared by Park Engineering, Inc. dated August 6, 1982.
- b. Easement 1 for waterline purposes over, under, across and through a portion of the land herein described, as per survey of Roy T. Yama, Registered Professional Surveyor dated January 2, 1985, containing an area of 70 square feet, more or less; reserving unto Nosredna Properties, its successors and assigns, the right to grant to the Board of Water Supply, City and County of Honolulu, State of Hawaii, the right to use said Easement 1, which grant shall be on such terms and conditions as the said Board of Water Supply shall require; as set forth in that certain instrument dated April 18, 1985, recorded in said Bureau of Conveyances in Book 18591 Page 258.

6. AS TO LOTS 3 AND 1:

a. MORTGAGE

Mortgagor: Tosei Hawaii, Inc., a Hawaii corporation
Mortgagee: Liberty Bank, a Hawaii corporation
Dated: January 6, 1989
Book: 22754
Page: 565
To Secure: \$300,000.00
and any additional advances and other amounts
secured thereby, all according to the terms
of that certain promissory note of said
mortgagor(s) therein referred to
(Also affects other property)

b. MORTGAGE

Mortgagor: Tosei Hawaii, Inc., a Hawaii corporation
Mortgagee: The Sanwa Bank, Limited, a Japan corporation
Dated: January 6, 1989
Book: 22754
Page: 593
To Secure: \$9,090,000.00
and any additional advances and other amounts
secured thereby, all according to the terms
of that certain promissory note of said
mortgagor(s) therein referred to
(Also affects other property)

7. Restrictions, covenants and conditions as contained in:

DECLARATION OF RESTRICTIVE COVENANTS (PRIVATE PARK)

Dated: July 14, 1982
Book: 16566
Page: 69
to which reference is hereby made

8. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

DECLARATION OF HORIZONTAL PROPERTY REGIME OF "KINGSPLACE"

Dated: April 18, 1985
Book: 18591
Page: 258

Condominium Map No. 953, to which reference is hereby made.

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

<u>Dated</u>	<u>Book</u>	<u>Page</u>
October 24, 1988	22575	17

9. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF "KINGSPLACE"

Dated: April 18, 1985
Book: 18591
Page: 291
to which reference is hereby made

10. Any and all unrecorded Leases, Subleases and/or Tenancy Agreements demising a portion of portions of the premises herein described, and any encumbrances appurtenant thereto.

EXHIBIT H

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>
Type A	\$192.42	\$2,309.04
Type B	179.49	2,153.88
Type C	133.56	1,602.72
Type C-1	267.45	3,209.40
Type D	503.21	6,038.52
Type E	1,009.98	12,119.76

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

2040 NUUANU AVENUE
OPERATING BUDGET

Prepared by: Metropolitan Management

	MONTHLY	ANNUAL
OPERATING RECEIPTS		
Maintenance Fees	16,170	194,040
TOTAL RECEIPTS	16,170	194,040
OPERATING EXPENSES		
Water	700	8,400
Sewer	1,190	14,280
Electricity	1,825	21,900
Telephone/Enterphone	240	2,880
Professional Management	1,200	14,400
Legal	100	1,200
Audit and Tax Preparation	100	1,200
Office Supplies	150	1,800
Dues & Subscriptions	25	300
Elevator	750	9,000
Landscape/Tree Maintenance	100	1,200
Refuse Removal	700	8,400
Pest Control	30	360
Building	400	4,800
Electrical	50	600
Plumbing Repairs	50	600
Heat Pump	100	1,200
Fire System	50	600
Janitorial Supplies	50	600
Building Supplies	150	1,800
Pool Supplies	100	1,200
Grounds Supplies	25	300
Resident Manager	1,200	14,400
Janitorial	1,985	23,820
Lodging	1,200	14,400
Payroll Tax and Service	440	5,280
Insurance-Workers' Comp	270	3,240
Insurance-TDI	25	300
Insurance-Medical	390	4,680
Insurance-Life	25	300
Insurance-Fire/Multi-peril	825	9,900
D & O Insurance	75	900
Fidelity Bond	75	900
General Excise	30	360
Annual/Board Meetings	75	900
TOTAL OPERATING EXPENSES	14,700	176,400
Reserves (10% of expenses)	1,470	17,640
TOTAL EXPENSES	16,170	194,040

EXHIBIT H

METROPOLITAN  MANAGEMENT

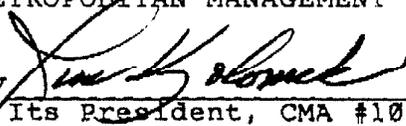
Property Management Specialists

January 31, 1992

To Whom It May Concern:

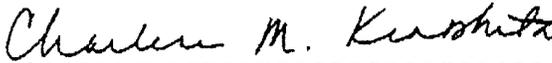
The undersigned does hereby certify that the foregoing is projected as of January 24, 1992, as the estimated revenues, monthly and annual disbursements and the breakdown of monthly maintenance fees for each apartment at 2040 Nuuanu Avenue and these figures are based upon generally accepted accounting principles.

METROPOLITAN MANAGEMENT

By 

Its President, CMA #102

Subscribed and sworn to before me
this 31st day of January, 1992.


NOTARY PUBLIC, STATE OF HAWAII

My commission expires: 5/15/93

L.S.



WARRANTIES AND CONSTRUCTION DEFECTS

Paragraph G.15. of the Sales Contract provides as follows:

"15. ACCEPTANCE OF APARTMENT; BUILDING NOT NEW; NO WARRANTIES. Buyer acknowledges that the Project was completed in July, 1985 and accepts said Apartment, the common elements, appliances and furnishings in an 'AS IS' condition. Buyer further acknowledges that Buyer has had an opportunity to inspect the Apartment, the common elements, appliances and furnishings and that the purchase price takes into consideration the fact that the buildings and fixtures and appliances are over 6 years old. Buyer acknowledges the fact that there are no manufacturer's or dealer's warranties covering any appliances or furnishings in the Apartment. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE APARTMENT, COMMON ELEMENTS, APPLIANCES, FURNISHINGS OR OTHER PRODUCTS, OR ANYTHING INSTALLED IN OR UPON THE PREMISES OR USED IN CONNECTION WITH THE PROJECT IN ANY MANNER, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR PURPOSE OR USE. American Home Shield will give a limited warranty to Buyer on the appliances. Buyer expressly acknowledges and agrees that Seller does not adopt the manufacturer's warranties, if any, and Seller is not acting as co-warrantor, but merely attempting to pass to Buyer the benefit of such warranties, if any. This Agreement shall survive the closing. Buyer agrees to indemnify Seller for any damages or losses, including interest and attorney's fee, resulting from any refusal to accept possession of the property upon request by Seller and if Buyer shall make any such refusal, Buyer shall be deemed to be in default under this Agreement and Seller at its option shall be entitled to cancel this Agreement and keep all payments made hereunder as liquidated damages. Buyer hereby waives all rights of inspection and rights to Seller's cooperation and assistance if Buyer fails to inspect Buyer's Apartment on the date and time specified by Seller and Buyer acknowledges that such waiver shall not in any way affect Buyer's obligations hereunder, including without limitation the making of all payments due hereunder and performance of Buyer's closing obligations. Seller has employed a structural engineer to inspect the Project. A copy of the engineer's report is on file with the Real Estate Commission. Seller does not warrant the contents of the report, and the opinions and conclusions contained therein should not be relied upon as the opinions and conclusions of Seller."

SUMMARY OF SALES CONTRACT PROVISIONS

The Deposit Receipt and Sales Contract (the "Sales Contract") used in connection with the project contains, among other things, acknowledgments by each Buyer: (i) that time is of the essence in the Sales Contract, and if Buyer fails to perform any obligations required in the Sales Contract, the Seller may, upon written notice of 3 days, terminate the Sales Contract and keep all sums previously paid by Buyer as liquidated damages; (ii) that the Seller has authorized no agents, salesmen or brokers to make any representations as to rental or other income from any apartment or any other economic benefit, including possible advantages from the ownership of an apartment under federal or state tax laws, to be derived from the purchase of an apartment in the Project; (iii) that the Buyer acknowledges that no such representations or warranties have been made and that the Seller expressly disclaims and repudiates any representation from any source as to any possible economic benefit arising from ownership of an apartment in the Project; (iv) that all interest on deposits in Escrow belong to Seller; and (v) that paragraph G.7. pertaining to closing costs and expenses of sale, provides as follows:

"7. CLOSING COSTS; EXPENSES OF SALE. Buyer further agrees to pay all notary and recording fees, cost of credit report, cost of preparing the Apartment Deed, note(s) and mortgage(s), loan finance fees, conveyance taxes, the cost of any required title insurance, the entire Escrow Agent's fees, and Buyer's share of maintenance fees payable to the Association of Apartment Owners (the 'Association') including the first month's fee and start-up fee. The start-up fee shall be a single assessment to each apartment owner and shall be in addition to the normal monthly assessment as determined to be necessary by the Managing Agent. The start-up fee shall be equal to a minimum of two months' maintenance fees. All of the payments referred to herein shall be paid to Escrow Agent at the time of preclosing. 'Preclosing' shall be the date specified by Escrow Agent when all closing documents are ready for signature by Buyer prior to actual closing."

Buyer is cautioned that this is a brief summary of the Sales Contract and Buyer should carefully read the Sales Contract for Buyer's rights and obligations therein.

SUMMARY OF ESCROW AGREEMENT PROVISIONS

Among other provisions, the Escrow Agreement provides as follows:

"4. Return of Funds and Documents. A purchaser shall be entitled to a return of funds and Escrow shall pay such funds to such purchaser, without interest, if any one of the following has occurred:

(a) Owner and the purchaser shall have requested Escrow in writing to return to the purchaser the funds of the purchaser held hereunder by Escrow; or

(b) Owner shall have notified Escrow of Owner's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Owner; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Second Supplemental Report, the purchaser has exercised the purchaser's right to cancel the contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or

(d) The purchaser has exercised the purchaser's right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

In any of the foregoing events, Escrow shall, upon the occurrence of the event described in (a) or (b) above or upon receipt of a written request for a refund from the purchaser upon the occurrence of an event described in (c) or (d) above, unless the purchaser has waived or has been deemed to have waived the right to a refund, pay said funds to said purchaser (less a cancellation fee of Escrow of not less than \$25.00 per unit or a cancellation fee commensurate with the work done by Escrow prior to such cancellation, whichever fee is greater, up to a maximum of \$250.00) and thereupon said sales contract and any conveyance document theretofore delivered to Escrow shall be returned to Owner and shall be deemed no longer held hereunder; provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to receipt by Owner of written notice from Escrow of Escrow's intent to make such refund.

(e) Notwithstanding any other provision in this Agreement to the contrary, Escrow further agrees to make refunds to purchasers, in accordance with Part VI, Chapter 514A, Hawaii Revised Statutes, out of the funds then on deposit with Escrow, if Owner and the purchaser shall so request in writing and any one of the following events has occurred:

(i) No sales contract has been offered to the purchaser who has been placed on Owner's reservation list of owner-occupant applicants; or

(ii) The purchaser has been unable to obtain adequate financing, or a commitment for adequate financing, for the purchaser's reserved unit within thirty (30) calendar days following the end of the ten (10) calendar day period during which Owner is limited to selling to owner-occupants; or

(iii) The purchaser desires to cancel the contract on account of hardship circumstances such as those set forth in Section 514A-104(1), Hawaii Revised Statutes; or

(iv) The purchaser indicates an intent not to become an owner-occupant of such unit.

Except for cancellations under subparagraph (i) above, Escrow may deduct from any such refund made to a purchaser a cancellation fee as set forth above.