



**REAL ESTATE COMMISSION**  
 STATE OF HAWAII  
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
 PROFESSIONAL AND VOCATIONAL LICENSING DIVISION  
 250 South King Street Room 702  
 Honolulu, Hawaii 96813

**CONDOMINIUM PUBLIC REPORT**  
 THE BAY CLUB AT WAIKOLOA BEACH RESORT  
 Waikoloa, Hawaii

Registration No. 2361

Issued: September 17, 1992  
 Expires: October 17, 1993

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of July 16, 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 \_\_\_\_\_
- SECOND SUPPLEMENTARY:**  
*(pink)* Updates information contained in the  
 Prelim. Public Report dated \_\_\_\_\_  
 Final Public Report dated December 18, 1990  
 Supp. Public Report dated June 21, 1991
- 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:

1. Developer has changed. Nikken and Age X Associates, a Hawaii partnership has conveyed all of the unsold units in the project to its majority partner, Nikken Corporation, a Hawaii corporation.
2. Five (5) additional uncovered parking stalls have been designated for guest parking, making a total of 226 stalls in the Project instead of 221.
3. Developer has revised the parking stall assignments.
4. Nikken Corporation is the new Managing Agent as of the Project as of April 1, 1992.
5. An updated budget of estimated maintenance fees has been filed with the Real Estate Commission, a copy of which is attached to this public report as Exhibit G. The amount of maintenance fees for each apartment has not changed. Developer will assume all actual common expenses for the entire Project, and the apartment owner shall not be obligated for the payment of his respective share of the common expenses until such time that the Developer files an amended Disclosure Abstract with the Real Estate Commission.
6. Individual, per unit electricity charges are not included in the maintenance fees. Cable television includes only the basic service and not premium channels.
7. Construction of the project was substantially complete on June 1, 1991. Construction warranties have expired.
8. Developer intends to operate the unsold apartment units in the Project for transient vacation rental purposes. There are 166 unsold units as of the date of this public report. Upon conveyance of any of the unsold units, such unit will no longer be operated by Developer as part of its transient vacation rental operations.
9. Developer advises that the Project is located in Volcanic Hazard Zone Three.

## 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	Managing Agent
Real Estate Sales Agent	Attorney for Developer
Escrow Company	
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: Apartment Areas and Description (Ref. pp. 5 and 11)	
EXHIBIT B: Boundaries of Each Apartment; Permitted Alterations to Apartments (Ref. III.C.6. p.12)	
EXHIBIT C: Common Elements (Ref. III.D.1, p.14)	
EXHIBIT D: Limited Common Elements (Ref. III.D.2, p.14)	
EXHIBIT E: Common Interest (Ref. III.D.3., p.14)	
EXHIBIT F: Encumbrances Against Title (Ref. III.E., p.15)	
EXHIBIT G: Estimate of Maintenance Fees (Ref. III.G, p. 16)	
EXHIBIT H: Warranties and Construction Defects (Ref. III.I., p. 16)	
EXHIBIT I: Sales Contract Summary (Ref. III.L., p. 17)	
EXHIBIT J: 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)  Conversion  
 Both New Building(s) and Conversion
2.  Residential  Commercial  Ohana  
 Mixed Residential and Commercial  Agricultural  
 Other transient vacation rental
3.  High Rise (5 stories or more)  Low Rise
4.  Single or  Multiple Buildings
5. Apartment Description See Exhibit A 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-1R, A-2, A-3	<u>54</u>	<u>2/2</u>	<u>1,283</u>	<u>518-648</u>
B-1R, B-2	<u>36</u>	<u>2/2</u>	<u>1,118</u>	<u>359-456</u>
C-1	<u>18</u>	<u>1/1</u>	<u>878</u>	<u>246-324</u>
D-1R, D-2	<u>36</u>	<u>1/1-1/2</u>	<u>822</u>	<u>251-337</u>
E, ER	<u>14</u>	<u>2/2-1/2</u>	<u>1,484</u>	<u>562</u>
F, FR	<u>14</u>	<u>2/2-1/2</u>	<u>1,484</u>	<u>457</u>
Total Apartments: <u>172</u>				

\*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)	<u>172</u>
Guest Stalls	<u>54</u>
Unassigned Stalls	<u>          </u>
Extra Stalls Available for Purchase	<u>          </u>
Other: <u>          </u>	<u>          </u>
Total Parking Stalls	<u>226</u>

7. Recreational amenities:

Recreation building, swimming pool, spa, two tennis courts, and barbecue area

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: NIKKEN CORPORATION Phone: 922-3590  
Name (Business)  
2255 Kuhio Avenue, Suite 1150  
Business Address  
Honolulu, Hawaii 96815

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

Tadao Takeda - President  
Yuichi Takeda - Vice President and Treasurer  
Richard H. Lachmann - Secretary

Real Estate Broker: NIKKEN CORPORATION Phone: 922-3590  
Name (Business)  
2255 Kuhio Avenue, Suite 1150  
Business Address  
Honolulu, Hawaii 96815

Escrow: LONG AND MELONE ESCROW, LTD. Phone: 532-6150  
Name (Business)  
810 Richards Street, Suite 644  
Business Address  
Honolulu, Hawaii 96813

General Contractor: TOWNE REALTY OF HAWAII, INC. Phone: \_\_\_\_\_  
Name (Business)  
Business Address

Condominium Managing Agent: NIKKEN CORPORATION Phone: 922-3590  
Name (Business)  
2255 Kuhio Avenue, Suite 1150  
Business Address  
Honolulu, Hawaii 96815

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

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners.

- 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. 90-183537  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

First Amendment to Declaration dated May 17, 1991, recorded on May 21, 1991, as Document No. 91-064814.

Second Amendment to Declaration dated June 24, 1992, recorded on July 7, 1992, as Document No. 92-108693.

- 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. 1416  
 Filed - Land Court Condo Map No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

Amendment (First Amendment to Declaration) dated May 17, 1991, recorded on May 21, 1991, Document No. 91-064814.

Amendment (Second Amendment to Declaration) dated June 24, 1992, recorded on July 7, 1992, as Document No. 92-108693.

- 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. 90-183538  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

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>65%</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 make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Project or any of the apartments or any interest therein, or by any governmental agency of any state, territory, possession or foreign country or other foreign jurisdiction as a condition precedent to the marketing or sale of apartments or any interests therein in any such jurisdiction.



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: 5525 Beach Drive, Waikoloa, Hawaii Tax Map Key: 6-9-7-31 (3)  
(TMK)

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

Land Area: 15.00       square feet       acre(s)      Zoning: RM-3

Fee Owner: NIKKEN CORPORATION  
Name  
2255 Kuhio Avenue, Suite 1150  
Address  
Honolulu, Hawaii 96815

Sublessor: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_

**C Buildings and Other Improvements:**

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

2. Buildings: 13 residential      Floors Per Building 2 and 3  
1 pool/recreation bldg.; 1 lobby/reception bldg.      1  
 Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:  
 Concrete       Hollow Tile       Wood  
 Other tile roofs; aluminum window frames; exterior plaster finish.

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>172</u>	<u>yes</u>	<input type="checkbox"/> Agricultural	_____	_____
<input checked="" type="checkbox"/> <del>Timeshare/Hotel</del> <u>Transient vacation rental/</u>	<u>166</u>	<u>yes</u>	<input type="checkbox"/> Recreational	_____	_____
<input checked="" type="checkbox"/> Other: <u>1 of the 172 units may be used as a resident manager's</u>					
<u>unit and/or a rental management office</u>					

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

Yes  No  
vacation rental

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:

- Pets: No pets allowed
- Number of Occupants: No more than 2 per bedroom; if members of immediate family of tenant, occupant or guest, no more than 4 per bedroom
- Other: \_\_\_\_\_
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators 6 <sup>(1 per 3-story building)</sup>      Stairways 26 <sup>(2 per residential building)</sup>      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>
A-1R,	<u>A-2, A-3</u>	<u>54</u>	<u>2/2</u>	<u>1,283</u>	<u>518-648</u>
	<u>B-1R, B-2</u>	<u>36</u>	<u>2/2</u>	<u>1,118</u>	<u>359-456</u>
	<u>C-1</u>	<u>18</u>	<u>1/1</u>	<u>878</u>	<u>246-324</u>
	<u>D-1R, D-2</u>	<u>36</u>	<u>1/1-1/2</u>	<u>822</u>	<u>251-337</u>
	<u>E, ER</u>	<u>14</u>	<u>2/2-1/2</u>	<u>1,484</u>	<u>562</u>
	<u>F, FR</u>	<u>14</u>	<u>2/2-1/2</u>	<u>1,484</u>	<u>457</u>

Total Apartments: 172

\*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 B.

**Permitted Alterations to Apartments:**

See Exhibit B.

**7. Parking Stalls:**

Total Parking Stalls: 226

	Regular		Compact		Tandem		TOTAL
	covered	open	covered	open	covered	open	
Assigned (for individual units)	<u>28 *</u>	<u>140</u>	<u>0</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>172</u>
Guest	<u>0</u>	<u>11</u>	<u>0</u>	<u>43</u>	<u>0</u>	<u>0</u>	<u>54</u>
Unassigned	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Extra Available for Purchase	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Other:	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total							
Covered & Open	<u>179</u>		<u>47</u>				

\* Covered stalls located in carports within Buildings 5, 6, 7, 8, 11, 12 and 13  
(2 carports per building with 2 regular-sized parking stalls per carport)  
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 \_\_\_\_\_ 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 (one on each floor,  
small storage room)

Recreation Area

Laundry Area

Tennis Court (2)

Trash Chute

Other: spa; barbecue area

9. Present Condition of Improvements NOT APPLICABLE  
 (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:

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   C   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   D   and  
  Exhibit A (revised parking assignment)  

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   E   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 F describes the encumbrances against the title contained in the title report dated July 10, 1992 and issued by Title Guaranty of Hawaii, Inc.

**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.

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>
---------------------	---

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.

present

The ~~initial~~ managing agent for this condominium is: NIKKEN CORPORATION as of April 1, 1992

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   G   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 elements only)

Television Cable (Basic Service only)

Gas

Water & Sewer

Other Management telephone; elevator maintenance; refuse collection

**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.

2. **Appliances:**

No warranties are given by Developer. Developer will pass on warranties of the Manufacturer, if any. See Exhibit H.

J. Status of Construction and Estimated Completion Date:

Project was substantially completed on June 1, 1991.

K. Project Phases:

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

Summary of Developer's Present Plans for Future Development:

L. 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 I contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated October 12, 1990

Exhibit J contains a summary of the pertinent provisions of the escrow contract.

Other \_\_\_\_\_

#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

##### RESORT DECLARATION AND CONFERENCE DECLARATION

The Project shall be bound by and subject to the provisions of that certain Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort, dated April 1, 1980 but effective as of April 23, 1980, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14670 at Page 531, as it may be amended and supplemented from time to time (the "Resort Declaration") and shall also be bound by and subject to the provisions of that certain Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort Conference, dated April 1, 1980, but effective as of April 23, 1980, recorded in said Bureau of Conveyances of the State of Hawaii in Liber 14670 at Page 631, as it may be amended and supplemented from time to time (the "Conference Declaration"). The Resort Declaration provides, among other things, that each apartment owner, by virtue of being such an owner shall be a member of the Waikoloa Resort Association, a Hawaii non-profit corporation (herein called the "Resort Association"), and shall pay assessments to the Resort Association as more fully set forth in the Resort Declaration. The Conference Declaration provides, among other things, that the Association, on January 1 of the first calendar year following the year in which a certificate of occupancy for the Project is issued, shall become a condominium member of the Waikoloa Beach Resort Conference, a Hawaii non-profit corporation (herein called the "Conference"); provided, however, that the Conference shall not commence operations until January 1 of the first calendar year following the development on the Covered Property of at least one thousand five hundred (1,500) hotel rental units (including condominiums in a hotel condominium project) which have received a final inspection or temporary certificate of occupancy, all as more fully set forth in the Conference Declaration. Upon the commencement of operations of the Conference, the Association will be required to pay assessments to the Conference, as more fully set forth in the Conference Declaration.

##### GOLF COURSE AND RESORT OPERATIONS

The Project is adjacent to an existing eighteen-hole golf course (the "Golf Course"). In addition to normal golf course operations, resort-related activities, including, without limitation, golf tournaments and other events, may be held on and in the vicinity of the Golf Course. Operation of the Golf Course and its layout may be revised or modified at any time at the discretion of the owner or operator of the Golf Course. The location of the Project with respect to the Golf Course may result in nuisances, disturbances or hazards to persons and property on or within the Project as a result of golf course operations or as the result of such other resort-related activities. The Association and each apartment owner must assume all risks of property damage or personal injury arising from the use of golf carts, golf balls and/or stray golf balls, and indemnify and hold and save harmless the Developer and the owner and operator of the Golf Course and each of them from any liability, claims or expenses, including attorneys' fees, arising from such property damage or personal injury to the property or person of the apartment owner or apartment owner's family, guests, employees, tenants, or other persons who may use the Project or any part thereof.

##### ONGOING DEVELOPMENT

The Project is located within a resort area in which there may be continuing and ongoing initial development of other projects, including condominium projects, hotels and other commercial development. Construction activity may continue in the areas surrounding the Project and such activity may result in noise, dust or other annoyances.

##### VOLCANIC HAZARD ZONE THREE

Buyers are hereby advised by Seller that to the best of Seller's knowledge based on discussion with the Civil Defense Agency of the County of Hawaii, the possible hazards of flood, airport and industrial noise exposure, Air Installation Compatible Use Zone (AICUZ) areas near military airports, and tsunami are not considered relevant hazards to the property. Buyer is advised, however, that the Island of Hawaii is divided into Volcanic Hazard Zones established by the United States Geological Survey. Such zones are ranked from one to nine based on the probability of coverage by lava flows. The Project is located in Zone Three and Seller has been advised by the Civil Defense Agency that there are no restrictions in this category.

**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 Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort; Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Conference

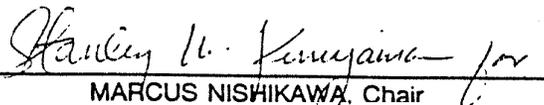
Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS, and Hawaii Administrative Rules, Chapter 16-107)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

This Public Report is part of Registration No. 2361 filed with the Real Estate Commission on  
December 5, 1990.

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.

  
\_\_\_\_\_  
MARCUS NISHIKAWA, Chair  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

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

## APARTMENT AREAS AND DESCRIPTION

The apartments in Buildings 1 through 9, inclusive, are designated on the Condominium Map by a three-digit number and the apartments in Buildings 10 through 13, inclusive, are designated on the Condominium Map by a four-digit number. The first digit (or the first and second digits as to Buildings 10 through 13, inclusive) indicates the Building in which the Apartment is located; the second digit (or the third digit as to Buildings 10 through 13, inclusive) indicates the floor on which the Apartment is located; and the third digit (or the fourth digit as to Buildings 10 through 13, inclusive) indicates the location of the Apartment in the building, the apartments being numbered from left to right and clockwise. For example, Unit 111 is located on the first story of Building 1; Unit 121 is located on the second story of Building 1; Unit 131 is located on the third story of Building 1; Unit 1013 is located on the first story of Building 10; Unit 1023 is located on the second story of Building 10; and Unit 1033 is located on the third story of Building 1. There are twelve (12) different types of floor plans for the apartments in the Project, designated as Plans A-1R, A-2, A-3, B-1R, B-2, C-1, D-1R, D-2, E, ER, F and FR.

Plans A-1R, A-2, A-3, B-1R and B-2. Each apartment with a Type A-1R, A-2, A-3, B-1R and B-2 floor plan will have two (2) bedrooms, two (2) bathrooms, a living/dining room, a kitchen and a lanai.

Plan C-1. Each apartment with a Type C-1 floor plan will have a bedroom, a bathroom, a living/dining room, a kitchen and a lanai.

Plans D-1R and D-2. Each apartment with a Type D1-R and D-2 floor plan will have a bedroom, one and one-half bathrooms, a living/dining room, a kitchen and a lanai.

Three of the apartments with a D-2 floor plan (Apartments 117, 917 and 1012) and one of the apartments with a D-1R floor plan (Apartment 211) are handicapped units.

Plans E, ER, F and FR. Each apartment with a Type E, ER, F or FR floor plan will have two (2) bedrooms, two and one-half (2-1/2) bathrooms, a living/dining room, a kitchen and a lanai.

Approximate Floor Area. Each apartment with each of the respective floor plan types will have the following number of rooms (exclusive of lanai), approximate net living floor

area in square feet (exclusive of lanai) and approximate net lanai floor area in square feet:

<u>Floor Plan Type</u>	<u>Number of Rooms</u>	<u>Approx. Net Living Floor Area In Sq. Ft.</u>	<u>Approx. Net Lanai Floor Area In Sq. Ft.</u>	<u>Approx. Total Net Area In Sq. Ft.</u>
A-1R (1st Fl)	6	1,283	644	1927
A-2 (1st Fl)	6	1,283	596	1879
A-3 (1st Fl)	6	1,283	648	1931
A-1R, A-2 and A-3 (2nd Fl)	6	1,283	518	1801
A-1R, A-2 and A-3 (3rd Fl)	6	1,283	576	1859
B-1R and B-2 (1st Fl)	6	1,118	456	1574
B-1R and B-2 (2nd Fl)	6	1,118	373	1491
B-1R and B-2 (3rd Fl)	6	1,118	359	1477
C-1 (1st Fl)	4	878	324	1,202
C-1 (2nd Fl and 3rd Fl)	4	878	246	1,124
D-1R and D-2 (1st Fl)	4.5	822	337	1159
D-1R and D-2 (2nd Fl)	4.5	822	273	1095
D-1R and D-2 (3rd Fl)	4.5	822	251	1073
E and ER	6.5	1,484	562	2,046
F and FR	6.5	1,484	457	1,941

The location of each apartment in the Project, the type of floor plan of each apartment, and the parking stall assigned to each apartment as a limited common element, is as follows:\*

\*NOTE: The letter C after a parking stall number indicates a compact parking stall and the letter H after a parking stall number indicates a handicapped parking stall.

Building Number	Floor Number	Apartment Number	Plan Type	Parking Stall(s)
1	1	111	C-1	1
1	1	112	B-1R	2
1	1	113	A-1R	3
1	1	114	A-2	4
1	1	115	A-3	5
1	1	116	B-2	6
1	1	117	D-2	8H
1	1	118	D-1R	7
1	2	121	C-1	29
1	2	122	B-1R	30
1	2	123	A-1R	25
1	2	124	A-2	12
1	2	125	A-3	13
1	2	126	B-2	14
1	2	127	D-2	15
1	2	128	D-1R	16
1	3	131	C-1	17
1	3	132	B-1R	18
1	3	133	A-1R	19
1	3	134	A-2	20
1	3	135	A-3	21
1	3	136	B-2	22
1	3	137	D-2	23
1	3	138	D-1R	24
2	1	211	D-1R	41H
2	1	212	D-2	33
2	1	213	B-2	34
2	1	214	A-3	35
2	1	215	A-2	36
2	1	216	A-1R	56
2	1	217	B-1R	57
2	1	218	C-1	58
2	2	221	D-1R	59
2	2	222	D-2	32
2	2	223	B-2	42
2	2	224	A-3	43
2	2	225	A-2	44
2	2	226	A-1R	45
2	2	227	B-1R	60
2	2	228	C-1	61
2	3	231	D-1R	62
2	3	232	D-2	63
2	3	233	B-2	64
2	3	234	A-3	51
2	3	235	A-2	52
2	3	236	A-1R	53
2	3	237	B-1R	54
2	3	238	C-1	55

Building Number	Floor Number	Apartment Number	Plan Type	Parking Stall(s)
3	1	311	C-1	67
3	1	312	B-1R	68
3	1	313	A-1R	69
3	1	314	A-2	70
3	1	315	A-3	98
3	1	316	B-2	99
3	1	317	D-2	73
3	1	318	D-1R	74
3	2	321	C-1	75
3	2	322	B-1R	76
3	2	323	A-1R	77
3	2	324	A-2	78
3	2	325	A-3	79
3	2	326	B-2	80
3	2	327	D-2	81
3	2	328	D-1R	82
3	3	331	C-1	83
3	3	332	B-1R	84
3	3	333	A-1R	109C
3	3	334	A-2	107C
3	3	335	A-3	105C
3	3	336	B-2	103C
3	3	337	D-2	89H
3	3	338	D-1R	90
4	1	411	D-1R	91
4	1	412	D-2	92
4	1	413	B-2	93
4	1	414	A-3	94
4	1	415	A-2	95
4	1	416	A-1R	96
4	1	417	B-1R	97
4	1	418	C-1	127
4	2	421	D-1R	126
4	2	422	D-2	125
4	2	423	B-2	118
4	2	424	A-3	110
4	2	425	A-2	111
4	2	426	A-1R	112
4	2	427	B-1R	113
4	2	428	C-1	114
4	3	431	D-1R	115
4	3	432	D-2	116
4	3	433	B-2	117
4	3	434	A-3	119H
4	3	435	A-2	120
4	3	436	A-1R	121
4	3	437	B-1R	122
4	3	438	C-1	123

Building Number	Floor Number	Apartment Number	Plan Type	Parking Stall(s)
5	1	511	ER	134
5	1	512	E	133
5	2	521	FR	135
5	2	522	F	132
6	1	611	ER	138
6	1	612	E	137
6	2	621	FR	139
6	2	622	F	136
7	1	711	ER	151
7	1	712	E	148
7	2	721	FR	150
7	2	722	F	149
8	1	811	ER	158
8	1	812	E	157
8	2	821	FR	159
8	2	822	F	156
9	1	911	C-1	164
9	1	912	B-1R	165
9	1	913	A-1R	166
9	1	914	A-2	167
9	1	915	A-3	168
9	1	916	B-2	169
9	1	917	D-2	172H
9	1	918	D-1R	171
9	2	921	C-1	170
9	2	922	B-1R	173
9	2	923	A-1R	174
9	2	924	A-2	175
9	2	925	A-3	176
9	2	926	B-2	160
9	2	927	D-2	161
9	2	928	D-1R	162
9	3	931	C-1	163
9	3	932	B-1R	181
9	3	933	A-1R	182
9	3	934	A-2	183
9	3	935	A-3	184
9	3	936	B-2	185
9	3	937	D-2	186
9	3	938	D-1R	187

Building Number	Floor Number	Apartment Number	Plan Type	Parking Stall(s)
10	1	1011	D-1R	188
10	1	1012	D-2	201H
10	1	1013	B-2	190
10	1	1014	A-3	191
10	1	1015	A-2	217
10	1	1016	A-1R	216
10	1	1017	B-1R	215
10	1	1018	C-1	214
10	2	1021	D-1R	196
10	2	1022	D-2	197
10	2	1023	B-2	198
10	2	1024	A-3	199
10	2	1025	A-2	200
10	2	1026	A-1R	189
10	2	1027	B-1R	202
10	2	1028	C-1	203
10	3	1031	D-1R	204
10	3	1032	D-2	205
10	3	1033	B-2	206
10	3	1034	A-3	213
10	3	1035	A-2	208
10	3	1036	A-1R	209
10	3	1037	B-1R	210
10	3	1038	C-1	211
11	1	1111	ER	152
11	1	1112	E	155
11	2	1121	FR	153
11	2	1122	F	154
12	1	1211	ER	144
12	1	1212	E	147
12	2	1221	FR	145
12	2	1222	F	146
13	1	1311	ER	140
13	1	1312	E	143
13	2	1321	FR	141
13	2	1322	F	142

BOUNDARIES OF EACH APARTMENT:

Each apartment shall not include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls or partitions, the foundations, columns, girders, beams, floor slabs, supports, roofs, skylights and ceilings located within or at the perimeter of or surrounding the apartment, any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust or air conditioning running through or otherwise located within the apartment which are utilized for or serve more than one apartment and any mechanical, electrical and air conditioning equipment originally installed and located within the apartment utilized for or serving more than one apartment. Each apartment shall include all of the walls and partitions which are not load-bearing and which are within its perimeter walls, the inner decorated or finished surfaces of all walls, floors, roofs and ceilings (other than skylights); all glass windows (other than skylights), window frames (other than skylight frames), louvres, shutters (if any), panels, doors and door frames along its perimeter; any mechanical, electrical and air conditioning equipment originally installed and located within the apartment utilized for or serving only the apartment; the lanai to the inner decorated or finished surfaces of the exterior perimeter walls of the lanai and to the exterior edge of the exterior railings of the lanai; and all of the fixtures and appliances originally installed in the apartment.

PERMITTED ALTERATIONS TO APARTMENTS

Paragraph 19 of the Declaration provides as follows:

"19. ALTERATION OF PROJECT.

(a) Except as otherwise provided herein, repair, replacement or restoration of the Project or of any building, tennis court, swimming pool, spa, pool building or other facility or construction of any additional building or structural alteration or addition to any structure, different in any material respect from said Condominium Map of the Project, shall be undertaken by the Association or any apartment owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to the affirmative vote of seventy-five percent (75%) of the apartment owners and consented to in writing by the holders of all liens affecting any of the apartments, and in accordance with complete plans and specifications therefor first approved in writing by the Board of Directors of the Association and the Architectural Committee of the Waikoloa Resort Association established pursuant to the Resort Declaration described in Section 20 hereof, and promptly upon completion of such replacement, restoration or construction, the Association shall record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER,

that notwithstanding any other provision in this Declaration to the contrary, the owner of any apartment may make any alterations or additions within any apartment and the owner of any two or more apartments separated by a common element which is a wall may alter or remove all or portions of the intervening wall, if the structural integrity of the building is not thereby affected and if the finish of the common element then remaining is then restored to a condition substantially comparable to that of the common element prior to such alterations. Such alterations or additions within any apartment or apartments shall require only the written approval thereof, including the apartment owner's plans therefor, by the holders of first mortgage liens affecting such apartments (if the lien holders require such approval), by the appropriate agencies of the State of Hawaii and the County of Hawaii if such agencies so require, by the Board of Directors of the Association (which approval shall not be unreasonably or arbitrarily withheld or delayed), and by all other apartment owners thereby directly affected (as determined in a reasonable manner by the Board of Directors of the Association), and such alterations or additions may be undertaken without an amendment to this Declaration or filing of a complete set of floor plans of the Project as so altered. Prior to the termination of the common ownership of any such adjacent apartments, if the intervening wall shall have been altered or removed pursuant to the foregoing provisions and any entry to hallways sealed, the owner of such apartments shall be obligated to restore such intervening wall and hallway entries to substantially the same condition in which the same existed prior to such alteration or removal.

(b) Notwithstanding any other provision in this Declaration or the By-Laws to the contrary, prior to (1) the time that all apartments in the Project have been sold and recorded, and (2) the filing by the Developer of the as-built verified statement (with plans, if applicable) required by Section 514A-12 of the Condominium Property Act (but in no event later than January 1, 1995), the Developer shall have the right to make alterations in the Project (and to amend this Declaration and the Condominium Map accordingly) without the approval, consent or joinder of any apartment owner, which alterations (A) change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any apartment (and any limited common elements appurtenant thereto) in the Project which is not sold and recorded; or (B) make minor changes in any apartment in the Project or in the common elements which do not affect the physical location, design or size of any apartment which has been sold and recorded; PROVIDED, HOWEVER, that any such changes shall be reflected in an amendment to the Declaration as provided in paragraph (c) of Section 21 of this Declaration. As used herein, the term 'sold and recorded' shall mean and refer to the sale of apartments in the Project, and recordation in the Bureau of Conveyances of the State of Hawaii, of apartment deeds or other conveyances transferring interests in the apartments from the Developer to parties not signatory to this Declaration."

COMMON ELEMENTS

Paragraph 4(d) of the Declaration provides as follows:

"(d) Common Elements. One freehold estate is hereby designated in all of the remaining portions of the Project, herein called the common elements, including specifically, but not limited to:

- (1) The Land in fee simple;
- (2) All foundations, columns, girders, beams, floor slabs, supports, unfinished perimeter, party and load-bearing walls and partitions, roofs, skylights, stairways, elevators, walkways, corridors, ramps, fences (if any), store rooms (which are not within any apartment), mechanical rooms, entrances, entry ways and exits of all residential buildings of the Project.
- (3) All yards, grounds, planting areas, planters, walkways, walkway railings, landscaping, pond areas, refuse facilities, gardens, the lobby/reception building, the tennis courts, the swimming pool, spa, the pool/recreation building and all other recreational facilities and appurtenances.
- (4) All roads, driveways, driveway ramps and parking areas;
- (5) All ducts, vents, shafts, sewer lines, sewage treatment equipment and facilities (if any), electrical equipment, pipes, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, water, gas (if any), cablevision (if any), air conditioning, sewer, refuse, telephone, and radio and television signal distribution;
- (6) Any and all apparatus and installations existing for common use, such as tanks, pumps, motors, fans, compressors and, in general, all other installations and apparatus existing for common use;
- (7) All mechanical, electrical and air conditioning equipment originally installed and located within any apartment or located elsewhere in the Project utilized for or serving more than one apartment;
- (8) All of the carports within Buildings 5, 6, 7, 8, 11, 12 and 13, including all foundations, columns, girders, beams, floor slabs, supports, windows, walls, ceilings and roofs of such carports which carports contain the twenty-eight (28) regular size, covered parking stalls hereinafter designated as limited common elements;

(9) One hundred forty-four (144) of the 198 uncovered parking stalls located in the uncovered parking areas of the Project, all as shown on the Condominium Map, which are hereinafter designated as limited common elements;

(10) The remaining fifty-four (54) uncovered parking stalls located in the uncovered parking areas of the Project, designated as Stalls Nos. 9C, 10C, 11C, 26, 27, 28, 31C, 37C, 38C, 39C, 40C, 46C, 47C, 48C, 49C, 50C, 65, 66, 71C, 72C, 85C, 86C, 87C, 88C, 100C, 101C, 102C, 104C, 106C, 108C, 124, 128, 129, 130, 131, 177C, 178C, 179C, 180C, 192C, 193C, 194C, 195C, 207C, 212, 218C, 219C, 220C, 221C, 222C, 223C, 224C, 225C and 226C, all as shown on the Condominium Map, for use by the tenants and guests of all apartment owners, and the resident manager, if any, Managing Agent and other employees of the Association, provided that the Association may impose reasonable rules and regulations with respect to the use of such parking stalls;

(11) Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use."

## LIMITED COMMON ELEMENTS

Paragraph 4(e) of the Declaration provides as follows:

"(e) 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 as follows:

(1) Each of the twenty-eight (28) regular size, unpartitioned covered parking stalls designated as Stalls 132 through 159, inclusive, located in the carports within Buildings 5, 6, 7, 8, 11, 12 and 13, shall be a limited common element appurtenant to and reserved for the exclusive use of the apartment located in such building to which it is assigned, as set forth in Exhibit C attached hereto and made a part hereof. The space within the perimeter walls, concrete floors and ceilings or roofs of each of the carports within Buildings 5, 6, 7, 8, 11, 12 and 13 of the Project above each of said twenty-eight (28) regular size, unpartitioned covered parking stalls shall be a limited common element appurtenant to and reserved for the exclusive use of the apartment to which each of said respective unpartitioned parking stalls is assigned as set forth above. Notwithstanding the foregoing, each unpartitioned covered parking stall and the space above such parking stalls within each of the carports in Buildings 5, 6, 7, 8, 11, 12 and 13 hereinabove designated as limited common elements, shall not be deemed to include the perimeter walls, concrete floors, windows, ceilings or roofs of the carport in which the same is located and said space shall be limited by the centerline between the two (2) unpartitioned parking stalls in each such carport as set forth on the Condominium Map.

(2) One hundred forty-four (144) of the 198 uncovered parking stalls located in the uncovered parking areas of the Project, all as shown on the Condominium Map, 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 C attached hereto and made part hereof.

(3) Any entrance, exit, gateway, entry, patio, yard, driveway or steps which would normally be used only for the purposes of ingress to and egress from a specific apartment shall be a limited common element appurtenant to and reserved for the exclusive use of such apartment.

(4) Any courtyard located within a building shall be a limited common element appurtenant to and reserved for the exclusive use of the apartments located within such building."

NOTE: The revised parking assignment for each apartment which is set forth in Exhibit C of the Declaration is set forth in Exhibit A of this Second Supplementary Public Report.

COMMON INTEREST

<u>Floor Plan Type</u>	<u>Common Interest</u>		<u>Total No.</u>		
A-1R, A-2, A-3	0.6530%	X	54	=	35.2620%
B-1R, B-2	0.5690%	X	36	=	20.4840%
C-1 (except Apt. Nos. 111, 121, 131, 218, 228, 238, 311, 321, 331 and 418 only)	0.4469%	X	8	=	3.5752%
C-1 (Apt. Nos. 111, 121, 131, 218, 228, 238, 311, 321, 331 and 418 only)	0.4468%	X	10	=	4.4680%
D-1R, D-2	0.4184%	X	36	=	15.0624%
E, ER, F, FR	0.7553%	X	28	=	21.1484%
					100.0000%

The common interest for each apartment is based upon the net living floor area in square feet (exclusive of lanai) of each apartment divided by the total net living floor area of all apartments in the project. Additionally, the interests derived from such calculations have been adjusted for Apt. Nos. 111, 121, 131, 218, 228, 238, 311, 321, 331 and 418 only) to provide that the total common interests for all apartments equal 100%.

EXHIBIT "F"

1. For real property taxes that be due and owing, reference is made to the Office of the Tax Assessor, Third Taxation Division.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Designation of Easement "6" for slope and bikeway purposes as shown on File Plan No. 1954.
4. Designation of Easement "7" (area 210 square feet) for electrical purposes as shown on File Plan No. 1954.
5. Designation of Easement "8" (area 210 square feet) for electrical purposes as shown on File Plan No. 1954.
6. Grant made by Transcontinental Development Co., a Texas general partnership, in favor of Hawaii Electric Light Company, Inc., and GTE Hawaiian Telephone Company Incorporated dated May 10, 1989, recorded in Liber 23307 at Page 1; granting a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate underground lines and transformer vaults, etc., for the transmission and distribution of electricity over said Easements "7" and "8".  
  
-Note:- No joinder by ATPAC LAND CO. and TA 27DD LIMITED PARTNERSHIP, titleholders of the land on the date of said Grant.
7. Designation of Easement "9" for roadway purposes as shown on File Plan No. 1954.

8. A 20-foot building setback lines, as shown on survey map prepared by Russell Figueiroa, Registered Professional Land Surveyor, of R. M. Towill Corporation, dated August 5, 1990.
9. A 12-foot building setback line, as shown on survey map prepared by Russell Figueiroa, Registered Professional Land Surveyor, of R. M. Towill Corporation, dated August 5, 1990.
10. A 10-foot building setback line, as shown on survey map prepared by Russell Figueiroa, Registered Professional Land Surveyor, of R. M. Towill Corporation, dated August 5, 1990.
11. Temporary utility lines which may serve other properties, as shown on surveyor's report prepared by Russell Figueiroa, Registered Land Surveyor, of R. M. Towill Corporation, dated August 5, 1990.
12. Exceptions and reservations contained in Partition Deed dated May 12, 1989, recorded in Liber 23187 at Page 773, to-wit:

"EXCEPTING AND RESERVING, HOWEVER, unto AtPac Land Co. and its successors and assigns, as the owner and/or developer of the area described as the Waikoloa Beach Resort, easements for drainage purposes, easements for electric, telephone, communication, water and other utility purposes and easements for roadway and vehicular access purposes over, under, across, along, upon and through any easement areas within the granted premises, which are so designated on File Plan 1954, recorded in the Bureau of Conveyances of the State of Hawaii, including, without limitation, Easement 6 for slope and bikeway purposes, Easements 7 and 8 for electrical purposes, and Easement 9 for roadway purposes, together with the rights of reasonable access thereto in connection with the exercise of said easement rights, and together also with the right to grant to the State of Hawaii, the County of Hawaii, any appropriate governmental agency, public utility

1947

1948

1949

1950

1951

1952

1953

1954

1955

1956

1957

1958

1959

1960

1961

1962

1963

1964

1965

1966

1967

1968

1969

1970

1971

1972

1973

1974

1975

1976

1977

1978

1979

1980

1981

1982

1983

1984

1985

1986

1987

1988

1989

1990

1991

1992

1993

1994

1995

1996

1997

1998

1999

2000

2001

2002

2003

2004

2005

2006

2007

2008

2009

2010

2011

2012

2013

2014

2015

2016

2017

2018

2019

2020

2021

2022

2023

2024

2025

or private utility, and or any other corporation, partnership or individual, easements for any such purposes within said easements over, under, across, along, upon and through said easement areas.

ALSO, EXCEPTING AND RESERVING unto AtPac Land Co. and its successors and assigns, as the owner and/or developer of the area described as Waikoloa Beach Resort, all water and water rights within or belonging or appertaining to the granted premises, including, without limitation, any water rights which may be appurtenant to the granted premises arising under Deed dated December 20, 1985, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 19166 at Page 513, together with the right to assign and transfer said rights to the State of Hawaii, County of Hawaii, any appropriate governmental agency, public utility or private utility, and or any other corporation, partnership or individual; provided, however, that in the exercise of said rights, AtPac Land Co., its successors and assigns shall not have the right to drill upon or otherwise disturb the surface of the land within the granted premises or any improvements thereon."

-Note:- By instrument dated February 6, 1991, recorded as Document No. 91-043137, ATPAC LAND CO. quitclaimed its rights in Easement 9 (for roadway purposes) in favor of NIKKEN AND AGE X ASSOCIATES.

13. Covenants contained in PARTITION DEED dated May 12, 1989, recorded in Liber 23187 at Page 773.
14. Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort dated as of April 1, 1980, effective on April 23, 1980, recorded in Liber 14670 at Page 531, as amended and/or supplemented by the following instruments, namely, (a) dated as of April 1, 1980, effective as of April 23, 1980, recorded in Liber 14670 at Page 607, (b) dated December 30, 1980, effective December 30, 1980, recorded in Liber 15297 at Page 147, (c) dated June 10, 1981, effective as of July 1, 1981, recorded in Liber 15676 at Page 497, (d) dated October 29, 1985, recorded in Liber 19071 at Page 562, (e) dated December 20,

1985, recorded in Liber 19166 at Page 388, (f) dated December 9, 1985, recorded in Liber 19166 at Page 392, (g) dated December 20, 1985, recorded in Liber 19166 at Page 412, (h) dated as of June 1, 1986, recorded in Liber 19792 at Page 339, (i) dated May 1, 1989, recorded in Liber 23179 at Page 433, (j) dated as of May 1, 1989, recorded in Liber 23187 at Page 750, (k) dated as of August 24, 1989, recorded in Liber 23588 at Page 784, (l) dated October 25, 1989, recorded in Liber 23806 at Page 164, (m) dated as of September 8, 1989, recorded in Liber 24007 at Page 530, Joinder and Consent (WBR) dated February 26, 1990, recorded as Document No. 90-057829, (n) dated as of May 21, 1990, recorded as Document No. 90-074294, (o) dated as of May 24, 1990, recorded as Document No. 90-077240, (p) dated as of August 7, 1990, recorded as Document No. 90-120680, and (q) dated as of September 27, 1990, recorded as Document No. 90-150228, Joinder and Consent dated September 26, 1990, recorded as Document No. 90-150229.

Consent and Subordination to Supplemental Declaration (Releasing Covered Property); Second Amendment to Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort; and Supplemental Declaration (Annexing Real Property) dated December 4, 1985, recorded in Liber 19166 at Page 420, by Aetna Life Insurance Company, as Mortgagee under Mortgage recorded in Liber 14671 at Page 150.

15. Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort Conference dated as of April 1, 1980, effective on April 23, 1980, recorded in Liber 14670 at Page 631, as amended and/or supplemented by the following instruments, namely, (a) dated as of April 1, 1980, effective as of April 23, 1980, recorded in Liber 14670 at Page 674, (b) dated December 20, 1985, recorded in Liber 19166 at Page 426, (c) dated December 20, 1985, recorded in Liber 19166 at Page 434, (d) dated December 20, 1985, recorded in Liber 19166 at Page 438, (e) dated December 20, 1985, recorded in Liber 19166 at Page 448, (f) dated as of June 1, 1986, recorded in Liber 19792 at Page 344, (g) dated as of May 1, 1989, recorded in Liber 23187 at Page 757, (h) dated as of August 24, 1989, recorded in Liber 23588 at Page 788, (i) dated October 25, 1989, recorded in Liber 23806 at Page 168, (j) dated as of September 8, 1989, recorded in Liber 24007 at Page 521, Joinder and Consent (WBRC) dated February 26, 1990, recorded as Document No. 90-057830, (k) dated as of May 21, 1990, recorded as Document No. 90-074295, (l) dated as of May 24, 1990, recorded as Document No. 90-077241, (m) dated

as of August 7, 1990, recorded as Document No. 90-120681, and (n) dated as of September 27, 1990, recorded as Document No. 90-150230.

Consent and Subordination to First Amendment to Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort Conference; Supplemental Declaration (Releasing Covered Property); Second Amendment to Declaration; and Supplemental Declaration (Annexing Real Property) dated December 4, 1985, recorded in Liber 19166 at Page 456, by Aetna Life Insurance Company, as Mortgagee under Mortgage recorded in Liber 14671 at Page 150.

16. The restrictions on use and other restrictions and all other of the covenants, agreements, obligations, conditions, reservations, easements and other provisions set forth in Declaration of Condominium Property Regime dated November 28, 1990, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-183537, as the same may hereafter be amended in accordance with law or with said Declaration. (Project covered by Condominium Map No. 1416.) Said Declaration was amended by instruments dated May 17, 1991, recorded as Document No. 91-064814, and dated June 24, 1992, recorded as Document No. 92-108693.
17. By-Laws of the Association of Apartment Owners of the Condominium Project known as "THE BAY CLUB AT WAIKOLOA BEACH RESORT" dated November 28, 1990, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-183538, as the same may hereafter be amended.
18. Cable Television Easement and Maintenance Agreement dated June 4, 1991, recorded as Document No. 91-116682, entered into by and between American Cable TV Investors 4, Ltd., a Colorado Limited Partnership, and AOA Bay Club at Waikoloa Beach Resort, an Association.
19. Terms, easements, restrictions, agreements, reservations, covenants, conditions and provisions contained in Apartment Deed dated December 9, 1991, effective as of October 31, 1991, recorded as Document No. 91-168155.

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>
A-1R, A-2, A-3	585.48	7,025.76
B-1R, B-2	510.17	6,122.04
C-1 (except Apt. Nos. 111, 121, 131, 218, 228, 238, 311, 321, 331 and 418 only)	400.69	4,808.28
C-1 (Apt. Nos. 111, 121, 131, 218, 228, 238, 311, 321, 331 and 418 only)	400.60	4,807.20
D-1R, D-2	375.14	4,501.68
E, ER, F, FR	677.20	8,126.40

THE DEVELOPER WILL ASSUME ALL ACTUAL COMMON EXPENSES FOR THE PROJECT, AND THE APARTMENT OWNER SHALL NOT BE OBLIGATED FOR THE PAYMENT OF HIS OR HER RESPECTIVE SHARE OF THE COMMON EXPENSES, UNTIL SUCH TIME THAT THE DEVELOPER FILES AN AMENDED ABSTRACT WITH THE REAL ESTATE COMMISSION, STATE OF HAWAII, WHICH SHALL PROVIDE THAT AFTER A DATE CERTAIN, EACH RESPECTIVE APARTMENT OWNER SHALL THEREAFTER BE OBLIGATED TO PAY FOR HIS OR HER RESPECTIVE SHARE OF COMMON EXPENSES THAT IS ALLOCATED TO HIS OR HER APARTMENT.

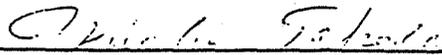
The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

BREAKDOWN OF FEES

	<u>Monthly</u>	<u>Annual</u>
Electricity	\$ 8,000	\$ 96,000
Sewer	7,000	84,000
Water	7,000	84,000
Telephone	500	6,000
TV Cable	2,200	26,400
Elevators	1,450	17,400
Security	3,080	36,960
* Waikoloa Resort Dues	7,270	87,240
* Waikoloa Beach Conference	690	8,280
Manager's Apartment Rent	1,550	18,600
Property Insurance	3,200	38,400
General Liability Insurance	500	6,000
Commercial Umbrella Insurance	220	2,640
Management Fees		
Electric Bulbs	\$ 400	\$ 4,800
Grounds & Grounds Supplies	2,000	24,000
Pest Control	775	9,300
Ponds	1,200	14,400
Pool/Hydro Spa	525	6,300
Refuse	450	5,400
Repair/Purchase	1,315	15,780
Data Processing	400	4,800
Salaries - Grounds	10,276	123,312
Salaries - Maintenance	11,284	135,408
Salaries - Manager	2,500	30,000
Payroll Taxes	2,710	32,520
Group Insurance	3,161	37,932
Worker's Compensation	1,853	22,236
Automobile	125	1,500
Insurance - Directors & Officers	150	1,800
Legal & Audit	500	6,000
Office Supplies & Expense	350	4,200
Travel	100	1,200
Air Conditioning	1,117	13,404
Cleaning Service	1,500	18,000
Cleaning Supplies	800	9,600
Major Improvements	467	5,604
Painting	250	3,000
Miscellaneous	<u>2,792</u>	<u>33,504</u>
TOTAL MAINTENANCE FEES	\$ 89,660	\$1,075,920

\* These fees are not within the control of the Association, the Waikoloa Beach Resort Association and the Waikoloa Beach Conference have not advised us of the rates for 1991, therefore these are estimates.

We, Nikken Corporation, as Managing Agents for the condominium certify that the above estimates of initial maintenance fees assessed and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
Date: June 4, 1992

WARRANTIES AND CONSTRUCTION DEFECTS

Paragraph G.13. of the Sales Contract provides as follows:

"13. WARRANTIES AND CONSTRUCTION DEFECTS. The execution, delivery and recordation of the Buyer's Apartment Deed shall constitute the assignment by Seller to Buyer of any and all warranties given the Seller by TOWNE REALTY OF HAWAII, INC. (the building contractor for the Project), and by any subcontractors or materialmen, including but not limited to said contractor's guarantee of materials and workmanship against faulty or deficient materials and installation for a period of one (1) year after 'substantial completion' of the Apartment, as that term is defined in the construction contract for the Project, and the benefit of such warranties shall accrue to Buyer on the Date of Closing without further instruments or documents. Seller agrees to cooperate with Buyer during the effective period of any such warranties in asserting any claims based on such warranties. Buyer shall also have the direct benefit of any manufacturer's or dealer's warranties covering the appliances and 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. Buyer expressly acknowledges and agrees that Seller does not adopt the contractor's or 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. At Seller's option, an inspection program may be instituted and, if so, Buyer agrees to inspect Buyer's Apartment on a date and at a time to be specified by Seller and upon completion of such inspection, to sign an inspection sheet to be furnished by Seller which shall list all defects or damages to the property, if any. Buyer agrees to accept possession of the property despite the existence of such defects or damages to the property regardless of extent, including but not limited to any defects in appliances and fixtures, which may be listed in said inspection sheet, but which do not render the property uninhabitable. Seller will cooperate with and assist Buyer in having legitimate listed defects or damages corrected or repaired within a reasonable time thereafter by the building contractor or other warrantor. This guarantee 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 make such inspection, to sign such inspection sheet or 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 Seller's 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 with the building contractor or other warrantors 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 Payments B and C and performance of Buyer's closing obligations."

NOTE: THE PROJECT WAS SUBSTANTIALLY COMPLETED ON JUNE 1, 1991.  
CONSTRUCTION WARRANTIES HAVE EXPIRED.

EXHIBIT H

### 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 10 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 the Buyer acknowledges that Seller's broker owns an interest in Seller; (v) that all interest on deposits in Escrow belong to Seller; and (vi) that paragraph G.6. pertaining to closing costs and expenses of sale, provides as follows:

"6. 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:

"10. Refunds to Purchasers; Return of Documents. Subject to such deductions as may be provided in said sales agreements and the escrow cancellation fee or processing fee hereinafter set forth, a purchaser shall be entitled to a return of his funds, and Escrow shall pay such funds to such purchaser, promptly after request for return by the purchaser if one of the following has occurred:

(a) Seller requests Escrow in writing to return to the purchaser the funds of such purchaser then being held hereunder by Escrow; or

(b) Seller notifies Escrow in writing of the Seller's exercise of its option to rescind or cancel the sales agreement pursuant to any right of rescission or cancellation stated therein or otherwise available to the Seller; or

(c) The conditions provided for a refund under Sections 514A-63, 514A-64, or 514A-66 of the Condominium Property Act (as amended on the date upon which the sales agreement becomes binding and effective) have been met; and written notice thereof has been provided to the Seller; or

(d) Seller notifies Escrow in writing of purchaser's cancellation of a reservation for the purchase of an apartment or of purchaser's exercise of the right to rescind or cancel the sales agreement pursuant to any right of rescission or cancellation stated therein.

Upon the return of said funds to a purchaser as aforesaid, Escrow shall return to Seller such purchaser's sales agreement and any conveyancing documents theretofore delivered to Escrow pursuant to such sales agreement; and thereupon Seller and purchaser shall no longer be obligated under the sales agreement. Other documents delivered to Escrow relating to the sale of the apartment identified in such sales agreement will be returned to the person from whom or entity from which they were received.

Upon the cancellation of any sales agreement as specified above, Escrow shall be entitled to a cancellation fee to compensate it for services rendered prior to such cancellation, which fee shall be proportionate to the work and services rendered by Escrow, but in any event not less than \$25.00 nor more than the full escrow fee as provided in paragraph 17. Except as otherwise provided in the sales agreement, said cancellation fee of Escrow shall be the sole expense of the individual purchaser and shall not in any way be the obligation of Seller.

Notwithstanding anything herein contained to the contrary, upon the cancellation of a reservation for the purchase of an apartment, Escrow shall refund all sums received by it under the particular reservation agreement cancelled, without deducting any escrow cancellation fee, and without any other deductions, and Escrow shall receive no fee or compensation in connection therewith other than a processing fee of \$15.00 per reservation cancelled. The provisions of this paragraph shall not apply to any reservation agreement which has become a binding contract as provided by the terms of such reservation agreement."