

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Robert B. White, Alida Toulon White, Alfred J. Toulon, Jr., Trustee & Elizabeth K. Toulon, Trustee
Address: 2371 E Niimalu Road, Lihue, Hawaii 96766

Project Name(\*): KUA NALU CONDOMINIUM
Address: 1934 Hoone Road, Koloa, Hawaii 96756

Registration No. 4420 (Conversion) Effective date: June 20, 2000 Expiration date: July 20, 2001

Preparation of this Report:

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

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

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

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

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

Type of Report:

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

(\* Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

Disclosure Abstract Separate Disclosure Abstract on this condominium project:

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

Summary of Changes from Earlier Public Reports:

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

No prior reports have been issued by the developer.

Changes made are as follows:



## General Information On Condominiums

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

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

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

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

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

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

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

## Operation of the Condominium Project

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

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

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Robert B. White, Alida Toulon White,  
Alfred J. Toulon, Jr., Trustee  
& Elizabeth K. Toulon, Trustee Name Phone: (808) 245-7575  
2371 E Niimalu Road Business Address (Business)  
Lihue, Hawaii 96766

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

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

Real Estate Broker: None selected yet (see pg. 20a) Name Phone: \_\_\_\_\_  
Business Address (Business)

Escrow: Security Title Corporation Name Phone: \_\_\_\_\_  
4370 Kukui Grove Street, Suite 207 Business Address (Business)  
Lihue, Hawaii 96766

General Contractor: Richard Costello Name Phone: (808) 639-6665  
2283 Nalo Road Business Address (Business)  
Koloa, Hawaii 96756

Condominium Managing Agent: None, self managed by Name Phone: \_\_\_\_\_  
Association of Apartment Owners Business Address (Business)

Attorney for Developer: Curtis H. Shiramizu Name Phone: (808) 823-8686  
P.O. Box 188 Business Address (Business)  
Kapaa, Hawaii 96746

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

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

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

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2000-003295  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The Condominium Map for this condominium project is:

Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 3018  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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

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

The Bylaws for this condominium are:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2000-003296  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The House Rules for this condominium are:

Proposed                     Adopted                     Developer does not plan to adopt House Rules

E. Changes to Condominium Documents

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

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

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>None</u>

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

2. Developer:

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:  
Developer had reserved the right to alter the apartments in the Project and amend the Declaration and Condominium Map in accordance therewith under Paragraph 14.0 of the Declaration and to amend the Declaration and Condominium Map in connection with the filing of the "as-built" verified statement under Paragraph 20.0 of the Declaration.

Prior to the first conveyance of an apartment in the Project to a purchaser unrelated to the Developer, Developer may unilaterally amend the Declaration, Bylaws and Condominium Map. There are additional reservations in favor of the Developer and covenants which a purchaser should be aware of which deal with the acquisition of building permits and making improvements to the common elements and/or limited common elements of the Project in paragraph 22.0 of the Declaration and granting/realignment of easements in Paragraph 21.0 of the Declaration.



[ ] Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

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

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

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

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

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

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

B. Underlying Land:

Address: 1934 Hoone Road Tax Map Key (TMK): 2-8-19-17(4)  
Koloa, Hawaii 96756

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

Land Area: 25,114 [ X ] square feet [ ] acre(s) Zoning: Open/ST-P

Fee Owner: Robert B. White, Alida Toulon White,  
Alfred J. Toulon, Jr., Trustee &  
Elizabeth K. Toulon, Trustee  
 Name  
2371 E Niimalu Road  
 Address  
Lihue, Hawaii 96766

Lessor: N/A  
 Name  
 Address

C. Buildings and Other Improvements:

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

2. Number of Buildings: 2 Floors Per Building 1

Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other Plastic

4. Uses Permitted by Zoning:

	No. of Apts.	Use Permitted By Zoning		No. of Apts.	Use Permitted By Zoning
<input checked="" type="checkbox"/> Residential	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Agricultural	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Other: <u>Shed</u>	<u>1</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?  
 Yes  No

5. Special Use Restrictions:

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

- Pets: \_\_\_\_\_
- Number of Occupants: \_\_\_\_\_
- Other: Unit 1 is restricted only to recreational and aesthetic purposes, as well as parking, driveway and yard purposes.
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: \_\_\_\_\_ Stairways: \_\_\_\_\_ Trash Chutes: \_\_\_\_\_

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
1	1	N/A	N/A	10.7	storage
2	1	2/2	972	587	open deck
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 2

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

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

Boundaries of Each Apartment: Each apartment shall include all buildings (exterior and interior) comprising the apartment, including but not limited to, the exterior finished surfaces of its perimeter walls, roofs, foundations, floor, doors and structural walls. The respective apartments shall not be deemed to include any pipes, shafts, ducts, pumps, wires, conduits, other utility or service lines which are located in the common elements or utilized for or serve more than one apartment, all of which shall be common elements as hereinafter provided.

Permitted Alterations to Apartments:  
 Apartments may be altered in accordance with the Declaration, the Building Code, Zoning and Subdivision Ordinances, and Building and House Rules, if any.

7. Parking Stalls:

Total Parking Stalls: 2 \*

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	_____	_____	_____	_____	_____	_____	_____
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
*Apartments 1 and 2 have ample area within their limited common elements for parking purposes.							
Total Covered & Open:	<u>2</u>		<u>0</u>		<u>0</u>		<u>2</u>
/residential							

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       Recreation Area
- Laundry Area       Tennis Court       Trash Chute/Enclosure(s)
- Other: \_\_\_\_\_

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

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

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

11. Conformance to Present Zoning Code

- a.  No variances to zoning code have been granted.  
 Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	X		
Structures	X		
Lot	X		

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit   A  .

as follows:

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

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

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

[ X ] described in Exhibit  A .

[ ] as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

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

[ X ] as follows:

Unit 1 - 50%

Unit 2 - 50%

The common interest of an apartment was determined roughly by dividing the area of the apartment's appurtenant limited common element land area by the total of all the apartments' appurtenant limited common element land areas.

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

Exhibit  "B"  describes the encumbrances against the title contained in the title report dated  4/20/00

and issued by  Security Title Corporation

Blanket Liens:

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

[ ] There are no blanket liens affecting title to the individual apartments.

[X] There are blanket liens which may affect title to the individual apartments.

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	Buyer's interest may be terminated by Mortgagee but Buyer shall be entitled to return of deposit less escrow cancellation fee.

F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

None

2. Appliances:

None

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

Unit 1 was completed in December, 1999.

Unit 2 was completed in December, 1996.

H. Project Phases:

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

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

Pursuant to Paragraph 14.0 of the Declaration of Condominium Property Regime, the Developer has reserved the right to create one or more additional apartments from existing apartments it owns, as long as, among other things, the total common interests appurtenant to the new apartments shall equal the common interest appurtenant to the original apartment as set forth in Exhibit "B" to the Declaration.

A similar right is also reserved for the owner (other than the Developer) of an apartment, subject to compliance with Paragraph 14.0 of the Declaration and all federal, state and county laws.

ALTHOUGH THE DECLARATION PROVIDES FOR THE MECHANISM TO DO THIS, THERE IS NO GUARANTY OR ASSURANCE AND THE PURCHASER ASSUMES THE FULL RISK IF, FOR ANY REASON, LEGAL OR OTHERWISE, ADDITIONAL APARTMENTS CANNOT BE SO CREATED. PURCHASER IS STRONGLY ADVISED TO CONSULT WITH ALL THE APPROPRIATE FEDERAL, STATE AND COUNTY GOVERNMENTAL AGENCIES WITH JURISDICTION OF THE FOREGOING AND OTHER MATTERS OF CONCERN PRIOR TO PURCHASE OF AN APARTMENT, AND BEFORE CONSTRUCTION. SEE ALSO PARAGRAPH C, PAGE 20 OF THIS FINAL PUBLIC REPORT FOR ADDITIONAL INFORMATION.

IV. CONDOMINIUM MANAGEMENT

- A. **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 condominium managing agent to assist the Association in managing the condominium project.

**Initial Condominium Managing Agent:** When the developer or the developer's affiliate is the initial condominium 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 condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer  the Developer or the Developer's affiliate.  
 self-managed by the Association of Apartment Owners  Other: \_\_\_\_\_

- B. **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, a lien may be placed on your apartment and the apartment may be 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.

Exhibit C contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

- C. **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:

- None  Electricity ( \_\_\_\_\_ Common Elements only \_\_\_\_\_ Common Elements & Apartments)  
 Gas ( \_\_\_\_\_ Common Elements only \_\_\_\_\_ Common Elements & Apartments)  
 Water  Sewer  Television Cable  
 Other \_\_\_\_\_

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit D contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated March 21, 2000  
Exhibit E contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

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

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND
- B) The buyer has not waived the right to rescind.

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

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

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

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

This Public Report is a part of Registration No. 4420 filed with the Real Estate Commission on May 11, 2000.

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

[ ] YELLOW paper stock      [x] WHITE paper stock      [ ] PINK paper stock

C. Additional Information Not Covered Above

Pursuant to Paragraph 21.0 of the Declaration, up until December 31, 2007, Developer has reserved certain rights to grant and realign easements and rights of way over the common elements of the Project to facilitate the optimum use of the property.

SUBJECT TO ALL EXISTING LAWS, OWNERS MAY CONSTRUCT ADDITIONAL STRUCTURES AND/OR IMPROVEMENTS WITHIN AN APARTMENT'S LIMITED COMMON ELEMENT LAND AREA OR ALTER EXISTING STRUCTURES AND/OR IMPROVEMENTS WITHIN THE LIMITED COMMON ELEMENT LAND AREA. EACH OWNER IS SOLELY RESPONSIBLE FOR OBTAINING ALL REQUIRED GOVERNMENTAL APPROVALS AND PERMITS PRIOR TO SUCH ALTERATION OR CONSTRUCTION. OWNERS SHALL ASSUME THE RISK OF CHANGES IN THE REQUIREMENTS FOR THE ISSUANCE OF THE GOVERNMENTAL APPROVALS AND TO CONSTRUCT IN ADDITION TO WHAT ALREADY EXISTS IN THE APARTMENT. PROSPECTIVE PURCHASERS ARE ADVISED TO CONSULT WITH THE APPROPRIATE KAUAI COUNTY AGENCY WITH JURISDICTION OF THE FOREGOING AND OTHER MATTERS OF CONCERN PRIOR TO PURCHASE OF AN APARTMENT, AND BEFORE CONSTRUCTION.

THERE IS NO ASSURANCE THAT A PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL BUILDING TO A RESIDENTIAL USE. THE PURCHASER SHOULD CONSULT WITH THE APPROPRIATE COUNTY AGENCY TO DETERMINE WHETHER THE PURCHASER MAY BUILD A RESIDENTIAL DWELLING OR ANY OTHER TYPE OF STRUCTURE ON THE PROPERTY.

1. This Public Report does not constitute an approval of the project nor that all County Codes, Ordinance and subdivision requirements have been complied with. Subsequent development and use shall comply with all applicable County Code and Ordinances.
2. This project does not involve the sale of individual subdivided lots. The dotted lines on the Condominium Map are for illustration purposes only.
3. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emerging traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.
4. Purchaser should investigate the availability of water for future development and use prior to purchase of an apartment.

Disclosure re: Selection of Real Estate Broker

This public report shall not bind a purchaser to the sale of any apartment until (1) the Developers first submit to the Real Estate Commission a duly executed disclosure abstract identifying the designated sales agent, and a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, and (2) gives a copy of said disclosure abstract to the purchaser together with a copy of the Public Report.

As to Alfred J. Toulon, Jr., Trustee and Elizabeth K. Toulon, Trustee, they have not selected a real estate broker for the sale of apartments in the project.

If the Developer(s) Robert B. White and Alida Toulon White, as the owners, choose to represent themselves in the sale of an apartment, said abstract need not be given to the purchaser, as all necessary disclosure are covered in this report.

Special Permits Required

The project is located in a Special Management Area (SMA) and shall require SMA permits for authorizing development at this site. (See Exhibit F attached hereto).

D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

Robert B. White 3/21/00  
ROBERT B. WHITE Date

Alida Toulon White 3/21/00  
ALIDA TOULON WHITE Date

Alfred J. Toulon, Jr. 3/16/2000  
ALFRED J. TOULON, JR., Trustee Date

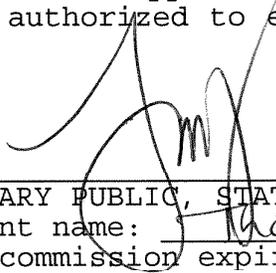
Elizabeth K. Toulon, Trustee Mar. 16, 2000  
ELIZABETH K. TOULON, Trustee Date

Distribution:

Department of Finance, County of Kauai  
Planning Department, County of Kauai

STATE OF HAWAII )  
 ) ss.  
COUNTY OF KAUAI )

On this 16<sup>th</sup> day of March, 2000,  
before me personally appeared ALFRED J. TOULON, JR., Trustee  
under Trust Agreement dated March 1, 1981, and ELIZABETH K.  
TOULON, Trustee under Trust Agreement dated July 1, 1984,  
who, being by me duly sworn or affirmed, did say that such  
person(s) executed the foregoing instrument as the free act  
and deed of such person(s), and if applicable, in the  
capacity shown, having been duly authorized to execute such  
instrument in such capacity.



NOTARY PUBLIC, STATE OF HAWAII  
Print name: Thomas T. Canate  
My commission expires: 2/1/2002

STATE OF HAWAII )  
 ) ss.  
COUNTY OF KAUAI )

On this \_\_\_\_\_ day of MAR 21 2000, \_\_\_\_\_,  
before me personally appeared ROBERT B. WHITE, who, being by  
me duly sworn or affirmed, did say that such person(s)  
executed the foregoing instrument as the free act and deed  
of such person(s), and, if applicable, in the capacity  
shown, having been duly authorized to execute such  
instrument in such capacity.



NOTARY PUBLIC, STATE OF HAWAII  
Print name: Susan J. Oyedra  
My commission expires: December 19, 2001

STATE OF HAWAII     )  
                                  )    ss.  
COUNTY OF KAUAI    )

On this \_\_\_\_\_ day of MAR 21 2000, \_\_\_\_\_,  
before me personally appeared ALIDA TOULON WHITE, who, being  
by me duly sworn or affirmed, did say that such person(s)  
executed the foregoing instrument as the free act and deed  
of such person(s), and, if applicable, in the capacity  
shown, having been duly authorized to execute such  
instrument in such capacity.

*es*

  
NOTARY PUBLIC, STATE OF HAWAII  
Print name: Susan U. Uyeda  
My commission expires: December 19, 2001

EXHIBIT "A"

Common Elements and Limited Common Elements

The common elements of the Project consist of the following:

- a. The land of the Project in fee simple.
- b. The central and appurtenant facilities for services such as power, light, gas, telephone, sewer, hot and cold water and like utilities when and only when those items are on shared installations.
- c. All other parts of the Project existing for the common use or necessary to the existence, maintenance and safety of the Project, or normally in common use.

The land area surrounding and under each apartment is a limited common element of each respective apartment and is for the exclusive use of said apartment, for the support of the building(s) and other improvements comprising said apartment and for driveway, parking and yard purposes. The limited common element area appurtenant to each apartment, as shown on the Condominium Map, is set forth as follows:

Apartment 1 - 12,557 sq. ft.  
Apartment 2 - 12,557 sq. ft.

EXHIBIT "B"

Encumbrances Against Title

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

2. GRANT

In Favor of: Hawaiian Telephone Company, a Hawaii corporation, and Citizens Utilities Company, a Delaware corporation  
Dated: January 3, 1984  
Book: 17808  
Page: 383  
Purpose: Easement for utility purposes over, under, across and through the premises described herein.

3. MORTGAGE

MORTGAGOR: Robert B. White and Alida Toulon White, husband and wife, Alfred J. Toulon, Jr., as Trustee under Trust Agreement dated March 1, 1981, and Elizabeth K. Toulon, as Trustee under Trust Agreement dated July 1, 1984

Mortgagee: Mellon Mortgage Company, a Colorado corporation  
Dated: May 18, 1995  
Recorded: May 23, 1995  
Document No. 95-067905  
To Secure: \$135,000.00  
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

The foregoing mortgage was assigned by the following:

ASSIGNMENT OF MORTGAGE

Assignor: Mellon Mortgage Company  
Assignee: Fleet Real Estate Funding Corp., a South Carolina corporation  
Dated: October 29, 1996  
Filed: April 18, 1997  
Document No. 97-050068

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

DECLARATION OF PROPERTY REGIME OF "KUA NALU CONDOMINIUM":

Dated: March 29, 1999  
Document No. 2000-003295  
Condominium Map No. 3018, as amended, to which reference is hereby made.

5. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF "KUA NALU CONDOMINIUM"

DATED: March 29, 1999  
Document No. 2000-003296

6. The terms and provisions of that certain Trust Agreement dated March 1, 1981, to which reference is hereby made.
7. The terms and provisions of that certain Trust Agreement dated July 1, 1984, to which reference is hereby made.

EXHIBIT "C"

Estimated Initial Maintenance Fees and Maintenance Fee  
Disbursements (Subject to Change)

Due to the character of the project, where there are really no common elements requiring any maintenance, and where a substantial portion of the common elements constitute limited common elements appurtenant to a particular apartment with the requirement that each apartment owner maintain at the apartment owner's expense the limited common elements appurtenant to the apartment owner's apartment, it is anticipated that funds for the operation and maintenance of the common areas will be collected by special assessments rather than regular monthly assessments. Accordingly, no initial maintenance fees are anticipated.

EXHIBIT "D"

Summary of Sales Contract

The Sales Contract contains the price and other terms and conditions under which a buyer will agree to buy an apartment in the Project. Among other things, the Sales Contract says that:

(a) A buyer must obtain his own financing and the Sales Contract may provide for deadlines, which, if not met, will allow the Seller to terminate the contract. The contract may also be contingent upon any financing after issuance of the final public report.

(b) A buyer's money will be held in escrow, under the terms of the Escrow Agreement.

(c) The interest on deposits shall not belong to buyer.

(d) The apartment will be subject to various legal documents, including the Declaration, Bylaws, Final Public Report, Escrow Agreement, Apartment Deed, Certificate of Architect and Condominium Map, and any other documents which the buyer is given a copy of and for which he has received.

(e) the buyer must close the purchase on a date certain and pay closing costs, in addition to the purchase price.

(f) If the buyer defaults, and Seller is not in default, Seller may terminate the Sales Contract and retain the buyer's deposits as liquidated damages. Seller may, in addition, pursue any other remedy and all costs by reason of such default shall be borne by the buyer.

(g) If Buyer has made all payments required under the Sales Contract, Buyer shall be entitled to seek specific performance, or any other remedy and all costs by reason of such default shall be borne by Seller.

The Sales Contract contains various other provisions with which the buyer should become acquainted.

EXHIBIT "E"

Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral third party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let purchasers know when payments are due.
- (b) Escrow will arrange for purchasers to sign all necessary documents.
- (c) No disbursements of funds held in escrow will be made unless the following has occurred:
  - 1. An effective date for a Final Public Report is issued and the purchaser shall have acknowledged or be deemed to have acknowledged receipt of same and Seller's attorney delivers a written opinion to Escrow that the Sales Contract has become effective;
  - 2. Seller delivers a written opinion to Escrow that that the requirement of Sections 514A-62 or 63 of the Condominium Act have been met, and if this is a conversion project, that Section 521-38 of the Residential Landlord-Tenant Code has been complied with;
  - 3. Escrow receives a written waiver of any option to cancel the Sales Contract; and
  - 4. Escrow receives a statement from Seller's architect that the project complies with the Federal Fair Housing Amendments Act of 1988, as applicable.
- (d) A refund of purchaser's funds will be made upon written request by purchaser under the following conditions:
  - 1. Escrow receives a written request from Seller to return purchaser's funds held by Escrow; or
  - 2. Escrow receives written notification of Seller's exercise of any option to rescind the Sales Contract; or
  - 3. The conditions providing for a refund under Sections 514A-62 or 63 of the Condominium Act have been met.

(d) Upon a purchaser's default under the Sales Contract, the purchaser's funds will be retained by the Seller as liquidated damages.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

Note: Section 514A-63 of the Condominium Act provides for rescission rights to a purchaser under a binding contract if there is a material change in the project which directly, substantially and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use.

EXHIBIT "F"

PLANNING DEPARTMENT  
COUNTY OF KAUAI  
4444 Rice Street, Suite 473, Bldg. A,  
Lihue, Hawaii 96766

COPY

DATE: May 2, 2000

To: Senior Condominium Specialist  
Real Estate Commission  
P&VLD/DCCA  
250 South King Street, Suite 702  
Honolulu, Hawaii 96813

 From: Dee M. Crowell, Planning Director 

Subject: Certification of Inspection of Existing Buildings

**PROJECT NAME:** KUA NALU CONDOMINIUM PROJECT  
**TAX MAY KEY:** (4) 2-8-19:17

The developer of the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, (Section 515A-40 (b), (1), Hawaii Revised statutes. Subject to the disclosures and waiver (item "g" below) specified herein, we certify the following:

- a. The developer has contracted architect Hedda Schmutz to certify that the existing buildings on the proposed project referred to as Kua Nalu Condominium project Units 1 and 2, are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its constructions, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by the department.
- b. There were no variances approved for the subject property.
- c. The parcel does not contain any outstanding nonconforming uses or structures as a result of the adoption or amendments of any ordinances or codes.
- d. There are no notices of violation of County Building or zoning codes outstanding according to our records.

Senior Condominium specialist

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- e. The subject parcel is situated in the Open District with an underlining zoning of /Special Treatment Public. All generally permitted uses and structures shall require a use permit.
- f. The parcel is also located in the Special Management Area (SMA) and shall require SMA permits for authorizing development at this site.
- g. **WAIVER**  
The foregoing certification is not a warranty as to any compliance with all-applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under Subsection 515A-40, (b), (1), Hawaii Revised Statutes.

If you have any questions, please contact Alvin Fukushima of my staff at 241-6697.

cc: Curtis H. Shiramizu