

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer 21st Century Homes, Inc., a Hawaii corporation
Address 1001 Bishop Street, Suite 1400, Honolulu, Hawaii 96813

Project Name(\*): HALE ALII AT HAWAII KAI
Address: 6930 Hawaii Kai Drive, Honolulu, Hawaii 96825

Registration No. 4780
Effective date: December 18, 2001
Expiration date: January 18, 2003

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:

- X 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:
And [ ] Supersedes all prior public reports.

(\* ) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.
FORM: RECO-30 286/986/189/1190/892/0197/1098/0800

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

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

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

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

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL ATTENTION**

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

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

2. 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 emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

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

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## **General Information On Condominiums**

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

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owner/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 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: 21<sup>st</sup> Century Homes, Inc. Phone: (808) 394-8444  
Name\* (Business)  
1001 Bishop Street, Suite 1400  
Business Address  
Honolulu Hawaii 96813

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

Joseph C. Brown, President/Vice-President/Secretary/Treasurer  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker\* East Oahu Realty, Inc. Phone: (808) 396-2000  
Name (Business)  
600 Kalaniana'ole Highway, Suite 114  
Business Address  
Honolulu, Hawaii 96825

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211  
Name (Business)  
235 Queen Street, 1st Floor  
Business Address  
Honolulu, Hawaii 96813

General Contractor\*: To be determined Phone: \_\_\_\_\_  
Name (Business)  
\_\_\_\_\_  
Business Address  
\_\_\_\_\_

Condominium Managing Agent\*: Touchstone Properties, Ltd. \*\* Phone: (808) 832-3232  
Name (Business)  
197 Sand Island Access Road, Suite 200  
Business Address  
Honolulu, Hawaii 96819

Attorney for Developer: Chun, Kerr, Dodd, Beaman & Wong, a Limited Liability Law Company Phone: (808) 528-8200  
Name (Business)  
745 Fort Street, 9<sup>th</sup> Flr., Hawaii Building  
Business Address  
Honolulu, Hawaii 96813  
Attn: Andrew R. Bunn

\* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

\*\* Contract pending.

**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. \_\_\_\_\_

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. \_\_\_\_\_

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. \_\_\_\_\_

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>Majority of Board of Directors</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:

See Exhibit A.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold: Individual apartments and the common elements, which includes the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit \_\_\_\_ contains a schedule of the lease rent for each apartment per:  Month  Year

For Sub-leaseholds:

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

- Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per:  Month  Year

- 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: 6930 Hawaii Kai Drive Tax Map Key (TMK): (1) 3-9-008: 45  
Honolulu, Hawaii 96825

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

Land Area: 30,998  square feet  acre(s) Zoning: A-2 (Medium Density Apartment District)

Fee Owner: 21<sup>st</sup> Century Homes, Inc.  
 Name  
1001 Bishop Street, Suite 1400  
 Address  
Honolulu, Hawaii 96813

Lessor: None  
 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: 1 Floors Per Building: 4

Exhibit B contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other Masonry, Glass, Steel, Aluminum and appropriate trim

4. Uses Permitted by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>35</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other	_____	<input 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 Permitted with limitations (see House Rules).

Number of Occupants: See Exhibit C.

Other: See Exhibit C and House Rules.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 1                      Stairways: 1<sup>st</sup> flr - 3  
2<sup>nd</sup> flr - 4  
3<sup>rd</sup> flr - 2                      Trash Chutes: 1

<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>
<u>A</u>	<u>4</u>	<u>1/1</u>	<u>552</u>	<u>58</u>	<u>Lanai</u>
<u>B</u>	<u>4</u>	<u>2/2</u>	<u>797</u>	<u>95</u>	<u>Lanai</u>
<u>C</u>	<u>9</u>	<u>2/2</u>	<u>900</u>	<u>58</u>	<u>Lanai</u>
<u>D</u>	<u>6</u>	<u>2/2</u>	<u>900</u>	<u>57</u>	<u>Lanai</u>
<u>Am</u>	<u>6</u>	<u>1/1</u>	<u>546</u>	<u>47</u>	<u>Lanai</u>
<u>Cm</u>	<u>6</u>	<u>2/2</u>	<u>890</u>	<u>58</u>	<u>Lanai</u>

Total Number of Apartments 35

\* **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 D.

Permitted Alterations to Apartments:                      See Exhibit E.

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-

102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has (yes) elected to provide the information in a published announcement or advertisement.

Developer has designated 100% of the residential apartments as reserved for sale to owner-occupants only. Attachment 11a is omitted.

7. Parking Stalls:

Total Parking Stalls: 64

	<u>Regular*</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>15</u>	<u>31</u>	<u>7</u>	<u>7</u>	<u>      </u>	<u>      </u>	<u>60</u>
Guest	<u>2</u>	<u>2</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>4</u>
Unassigned	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Other: <u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Total Covered & Open:	<u>50</u>	<u>      </u>	<u>14</u>	<u>      </u>	<u>0</u>	<u>      </u>	<u>64</u>

Each apartment will have the exclusive use of at least 1 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

Exhibit D 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: A recreational facility will be constructed on the Alii Park Area. See Exhibit F for more information

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):

N/A

\* Stalls designated as handicapped stalls are counted as regular stalls herein.

\*\* Located in the Alii Park Area adjoining the Project.

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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

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

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>  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 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   G  

as follows:

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

There are no limited common elements in this project.

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

described in Exhibit D, G\*.

as follows:

\*Note: Land areas referenced herein are not legally subdivided lots.

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 D.

as follows:

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

Exhibit H describes the encumbrances against the title contained in the title report dated September 26, 2001 and issued by Title Guaranty of Hawaii, Incorporated.

**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 Foreclosed Prior to Conveyance</u>
Mortgage lien(s) of Developer's Lender(s)	Buyer's interest under a contract for the sale of an apartment is specifically made subject and subordinate to such liens and will be lost if such liens are foreclosed prior to conveyance. At the time of the first conveyance of each apartment, each of Developer's Lender(s)' lien(s) will be paid and satisfied of record, or the apartment being conveyed and its common interest shall be released therefrom.

**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: See Exhibit I.
  
2. Appliances: See Exhibit I.

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

Construction has not yet commenced but is estimated to be completed by March 31, 2003.

**H. Project Phases:**

The developer  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 Section 29 of the Declaration of Condominium Property Regime of Hale Alii at Hawaii Kai, 21<sup>st</sup> Century Homes has reserved the right to expand the Project by adding a Future Development Area to the Land and by developing an additional structure or structures on said area which contain additional apartments and associated improvements in a separate increment or increments. For a period of five (5) years from the date the Declaration is recorded, 21<sup>st</sup> Century Homes has reserved the right to: (a) enter upon and use the common elements of the Project and do all things reasonably necessary to design, develop, construct or complete a subsequent increment or increments; (b) consolidate or merge the initial increment and any subsequent increment or any portion thereof as though they had been developed as a single condominium project; (c) modify any plan of incremental development by varying the mix and/or number of apartments in any succeeding increment or by modifying, deleting and/or adding apartment types and/or types of common elements and limited common elements; and (d) amend the Declaration and Condominium Map. All future improvements, if any, will be reasonably consistent with the improvements described by the Declaration and the Condominium Map in structure type and quality of construction.

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 J 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 refuse collection service

## 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  K  contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated  November 14, 2001

Exhibit  L  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 after 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 a. Alii Park Use and Access Agreement and Mutual Grant of Easement  
b. Declaration of Restrictive Covenants (Senior Living Community)

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, Hawaii 96809, at a nominal cost.

This Public Report is a part of Registration No. 4780 filed with the Real Estate Commission on November 19, 2001.

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**C. Additional Information Not Covered Above**

The Developer has reserved the following rights, set forth in Section 8 of the Declaration:

1. **Sales Activities.** Developer shall have the right to conduct extensive sales activities on the Project, including, without limitation, the use of model apartments, sales and management offices, and extensive sales displays and activities until the earlier of five (5) years from the date of recordation of the Declaration or the closing of the sale of the last unsold apartment in the Project.
2. **Construction Defects.** Developer shall have an easement over, under and upon the Project as may be reasonably necessary for the completion of improvements to and correction of defects in the Project for a period of five (5) years from the date of recordation of this Declaration, which easement is granted for the convenience of the Developer and is not and shall not be construed as a construction warranty of any type or nature.
3. **Construction Nuisance.** For a period of five (5) years from the date of recordation of the Declaration, Developer shall have an easement over, under and upon the Project or any portion thereof, to create and cause noise, dust and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of any apartment or other improvements in the Project, and in connection with the development, construction, and sale of any improvement on the Future Development Area (as described in the Declaration).
4. **Future Utility Easements.** For a period of five (5) years from the date of recordation of this Declaration, Developer shall have, incidental to the development and construction of the Project, including, without limitation, the development of the Future Development Area as herein provided, the right to designate and grant easements, exclusive or nonexclusive, for electrical, gas, telephone, cable television, communications and other utility purposes, and easements for sanitary sewer, drainage and drainline, waterline, and flowage purposes over, under, across, along, upon and through the Project, together with the right to realign such easements, and together also with the rights of reasonable access thereto in connection with the exercise of said easement rights; provided, however, that such easement rights must be exercised in such manner as to not unreasonably interfere with the use of the Project by the apartment owners and those claiming by, through or under the apartment owners; and, provided further, that, in connection with the installation, maintenance or repair of any facilities pursuant to any of said easements, such facilities shall be promptly restored by and at the expense of the person owning and exercising such easement rights to substantially the same condition as was the Project immediately prior to the exercise thereof.
5. **Future Development Area.** Developer shall have the right and option to construct additional apartments, to consolidate or merge increments of the Project and to grant easements and rights of way associated therewith for a period of five (5) years from the date of this Declaration, all as more particularly set forth on Section 29 of the Declaration.

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

21<sup>st</sup> Century Homes, Inc., a Hawaii corporation  
Printed Name of Developer

By:  November 14, 2001  
Duly Authorized Signatory\* Date

JOSEPH C. BROWN, PRESIDENT  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

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

## **DEVELOPER'S RIGHTS TO AMEND THE CONDOMINIUM DOCUMENTS**

1. At any time prior to the conveyance of all of the apartments in the Project to persons other than the Developer or any mortgagee of the Developer, the Developer reserves the right to modify the Project Documents as may be required by law, the Real Estate Commission, a title insurance company, an institutional mortgagee or any governmental agency and for such other purposes as are set forth in paragraph E.17 of the Sales Contract, provided, however, that any such modification shall be subject to a buyer's right to rescind pursuant to Section 514A-63 of the Condominium Act.

2. Section 21 of the Declaration states in part:

"[A]t any time prior to the issuance of an effective date for the Final Public Report by the Real Estate Commission of the State of Hawaii, Declarant may amend this Declaration and the Bylaws in any manner and, provided further that no amendment of the Declaration, the Bylaws, the House Rules, or Condominium Map shall, without Declarant's prior written consent, limit, affect or impair the reserved rights of Declarant under this Declaration. . . . Notwithstanding the foregoing and notwithstanding the sale and conveyance of any of the apartments, this Declaration (including the Bylaws and, when applicable, the Condominium Map) may be amended by Declarant (a) by filing the verified statement of a registered architect or professional engineer (with plans, if applicable) required by Section 514A-12 of the Act, certifying that the final plans theretofore recorded, or being recorded simultaneously with such statement, fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built; or (b) to effect any change or amendment required by an administrative agency of any county, state, or federal government or by any territory, possession, or foreign country or other foreign jurisdiction or a mortgagee of the fee or leasehold interests in the Land as a condition to governmental approvals, marketing the Project or making a loan to finance the construction and/or the sales of the Project."

3. Section 29 of the Declaration states in part:

"Declarant expressly reserves the right to amend the Declaration and Condominium Map as provided in this Section 29 at any time for a period of five (5) years from the date this Declaration is recorded, notwithstanding the lease, sale or conveyance of any or all of the apartments in any of the increments being consolidated/merged, and

Declarant may, without being required to obtain the consent or joinder of any apartment owner, lien holder or other persons, execute and file amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Declarant. . . . Each and every party acquiring an interest in the Project, by such acquisition, consents to all such consolidations and/or mergers of increments, and to the recording of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints Declarant and its assigns as such party's attorney-in-fact with full power of substitution to execute such documents and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and shall not be affected by disability of any such party. Each and every person acquiring an interest in the Project also acknowledges, accepts and agrees that construction and sales activity for succeeding increments may continue on the property submitted to this Declaration, as well as adjacent property, after such person has taken occupancy in the Project, that such activity or activities may temporarily or permanently result in noise, dust, dirt, vibration or other annoyances to such party, as well as the diminution or elimination of views, light, air or access, and waives any rights, claims or action such party may have or acquire against Declarant, its contractors, subcontractors and their respective agents and employees as a result of such activity or activities and its resultant effects."

58753.2

## DESCRIPTION OF BUILDINGS

a. **Generally.** The Project consists of one residential building ("the Residential Building") containing four (4) stories and thirty-five (35) residential apartments. There are also sixty four (64) ground level parking stalls located on or about the Project. The Residential Building will be constructed primarily of reinforced concrete, masonry, glass, steel, aluminum and appropriate trim.

b. **Residential Building.** The Residential Building shall contain four (4) stories and a total of thirty-five (35) apartments of which twenty-five (25) apartments shall have two bedrooms and two bathrooms and ten (10) apartments shall have one bedroom and one bathroom.

The first floor of the Residential Building, designated as the Ground Floor on the Condominium Map, shall have a total of four (4) apartments (two (2) one-bedroom/one-bathroom residential apartments and two (2) two-bedroom/two-bathroom apartments), a mechanical room, a machinery room, an electrical room, a water heater closet, a lobby, one elevator stop, three (3) stairways, a trash collection room, and a telephone utilities closet. The Second Floor shall have a total of thirteen (13) residential apartments (nine (9) two-bedroom/two-bathroom apartments, four (4) one-bedroom /one-bathroom apartments), an exposed exterior walkway, an electrical room, a telephone utilities closet, an elevator lobby, one elevator stop, a trash chute room, and four (4) stairways. The Third and Fourth Floors shall each have a total of nine (9) residential apartments (seven (7) two-bedroom/two-bathroom apartments, two (2) one-bedroom/one-bathroom apartments), an exposed exterior walkway, an electrical room, a telephone utilities closet, an elevator lobby, one elevator stop, a trash chute room, and two (2) stairways. The roof level includes solar panels and an elevator machinery room. The Residential Building will not have a basement.

c. **Parking Stalls.** There shall be a total of sixty four (64) parking stalls located upon the Land and the adjoining Alii Park Area dedicated to the exclusive use of the apartment owners of the Project (such stalls are numbered 1 through 64 on the Condominium Map).

Thirteen (13) of the sixty four parking stalls (Nos. 52 through 64) are located upon or partially upon the Alii Park Area. The right to use, access and the obligation to maintain the parking stalls located upon the Alii Park Area shall be governed by the Alii Park Use Agreement.

All stalls located upon the Land are covered except for stalls numbered 1 through 29, and 52 through 64, as shown on the Condominium Map, which shall be uncovered or partially uncovered stalls.

## SPECIAL USE RESTRICTIONS

1. **Owner-Occupancy Requirement.** Pursuant to the Unilateral Agreement (as more particularly described in **Exhibit A** to the Declaration), as modified by Ord. No. 01-33 (2001), each apartment in the Project must be occupied by the owner of such apartment for a period of one (1) year from the date of recordation of the purchase.

2. **Alii Park Use Agreement.** The property upon which the Project is located ("the Land") and the neighboring property, on which a second residential building will be developed, and upon which a park and recreational facility will be located, described as "the Future Development Area" in the Declaration, will be subject to an access and use agreement ("the Alii Park Use Agreement") that governs aspects of the development, use and maintenance of the grounds, landscaping, drives, loading areas, walks, paths, the parking areas, and all the facilities located within said area, located on and for the benefit of the Land, the Project and the Future Development Area. The Alii Park Use Agreement shall impose obligations which shall be paramount to the rights and obligations set forth in the Declaration, Bylaws and House Rules.

3. **Senior Living Community Restrictions.**

a. **Use.** The use of the Project is and shall be restricted for senior living community purposes. A "senior living community" shall mean a community which shall contain residential dwelling units in which the intended occupancy of such dwelling units shall be either:

1) Solely for persons who are sixty-two (62) years of age or older;

or

2) For persons fifty-five (55) years of age or older and not less than eighty percent (80%) of the residential dwelling units of the senior living community shall have at least one (1) occupant who is not less than fifty-five (55) years of age.

b. **Rules and Regulations.** In furtherance of the restrictions set forth above, the House Rules provide for the following:

1) **Age Verification.** Upon the commencement of occupancy by any apartment owner or lessee, and thereafter not less than once every two (2) years, the Managing Agent shall obtain and each apartment owner shall provide the following information for each and every occupant in the Project: (i) driver's license, birth certificate, passport, immigration card, military identification, or any other state, local, national, or international official documents containing a birth date of comparable reliability; and (ii) a certification in writing in a form provided by the Managing Agent and signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older. The Board or the Managing agent may request such verification from an owner or occupant if it has reasonable cause to believe that the unit is being occupied and no occupant is 55 years of age or older.

2) Penalty for Age Restriction Violations. Failure to comply with the foregoing age verification procedures within thirty (30) days of written request from the Board or Managing Agent shall be a violation of these house rules and shall subject the owner to a fine of not less than \$50 a day for each day that an apartment is occupied and no occupant is 55 years of age or older. Notwithstanding an owners failure to comply, the Board may waive such fine if it has the evidence that the apartment is occupied by a person 55 years of age or older if it has in its possession documentary evidence of the same, which evidence may include: (a) government records or documents, such as a local household census; (b) prior forms or applications; or (c) a sworn statement, signed under the penalty of perjury, from an individual who has personal knowledge of the age of the occupants.

3) Summaries Available. A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

4) Definitions. For purposes of the foregoing restrictions:

i. An "occupied" apartment means: (a) an apartment that is actually occupied by one or more persons on the date inquiry or certification is made; or (2) a temporarily vacant apartment if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

ii. "Occupied by at least one person 55 years of age or older" means that on the date on the date inquiry or certification is made: (i) at least one occupant of the dwelling unit is 55 years of age or older; or (ii) if the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

iii. Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

5) Exceptions. The occupancy requirements shall not apply if:

i. The Project is wholly unoccupied for at least 90 days due to renovation or rehabilitation and until at least 25 percent of the apartments are then re-occupied.

ii. To any unoccupied apartment, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

iii. To apartments occupied by employees of the Project (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the Project.

iv. Apartments occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by 42 U.S.C. § 100.204 and who are under the age of 55.

## APARTMENT DESCRIPTION

Description of Apartments. There are a total of thirty five (35) residential apartments as shown on the Condominium Map. Each apartment is designated as a separate freehold estate. Each residential apartment consists of the spaces within the perimeter walls, floors and ceilings of the respective residential apartments as shown on the Condominium Map.

Each residential apartment is designated on the Condominium Map by an apartment number consisting of a three digit number. Each residential apartment as so designated and identified by an apartment number is located in the Project as shown on the Condominium Map.

Each type A apartment shall have one bedroom, one bathroom, a living room, a kitchen and a lanai.

Each type B, C and D apartment shall have two bedrooms, two bathrooms, a living room, a kitchen and a lanai.

Each type Am apartment shall have one bedroom, one bathroom, a living room, a kitchen and a lanai.

Each type Cm apartment shall have two bedrooms, two bathrooms, a living room, a kitchen and a lanai.

Each apartment type shall have a reverse configuration and is designated by an "(R)" following the unit type as shown on the Condominium Map. Each apartment will have the number of rooms (exclusive of lanais), approximate net living floor area in square feet (exclusive of lanais), and approximate net lanai floor area in square feet, as set forth below.

All approximate net living floor areas set forth below are based on measurements taken from the undercoated or unfinished interior surface of all perimeter walls, except that no reduction has been made to account for interior walls, ducts, vents, shafts and the like located within the perimeter walls. All approximate net lanai floor areas set forth below are based on measurements taken from the inner surfaces of all perimeter walls and boundaries of the lanai areas. All floor areas set forth below are not exact but are approximations based on the floor plans of each type of apartment. All floor areas set forth below have also been rounded to the lowest full square foot where the approximation of such floor areas exceed a square foot by any fraction of a square foot. For these reasons, the measurements of the floor areas set forth below do not follow the designation of the limits of the apartments (the legally designated areas of the apartments), and the floor areas set forth below may be different from the floor areas of the apartments as constructed.

Each apartment will have immediate access to the walkways, corridors, stairways and/or elevators of the Residential Building which lead to the lobby areas and other common areas of the Project.

Notwithstanding the floor areas set forth below and the manner in which such floor areas have been measured, the respective apartments shall not be deemed to 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, and ceilings located within or at the perimeter of or surrounding such apartment, any pipes, 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 within such apartment which are utilized for or serve more than one apartment, all of which are deemed common elements as hereinafter provided. Each apartment shall be deemed to 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, all glass windows, window frames, louvers (if any), shutters (if any), panels, doors and door frames along its perimeter, the lanais shown on the Condominium Map to the inner decorated or finished surfaces of the exterior perimeter walls of such lanais and to the exterior edge of the exterior railings or other boundaries of such lanais, and all of the fixtures and appliances (if any) originally installed therein.

Each apartment is more particularly described as follows:

Apt. No.	Unit Type	No. of Rooms	Approx. Net Floor Area in Sq. Ft.	Approx. Net Lanai Floor Area in Sq. Ft.	Approx. Net Total Floor Area in Sq. Ft.	Common Interest	Assigned Parking Stall(s)
<b>Floor 1</b>							
101	B	2BR, 2BA	797	95	892	3.0117%	58, 59
102	A	1BR, 1BA	552	58	610	2.0596%	61
103	A (Reverse)	1BR, 1BA	552	58	610	2.0596%	23H
104	B (Reverse)	2BR, 2BA	797	95	892	3.0117%	22H, 60

**Floor 2**

201	Am	1BR, 1BA	546	47	593	2.0021%	10
202	D	2BR, 2BA	900	57	957	3.2311%	54, 55
203	D(Reverse)	2BR, 2BA	900	57	957	3.2311%	56, 57
204	Am(Reverse)	1BR, 1BA	546	47	593	2.0022%	15
205	Cm	2BR, 2BA	890	58	948	3.2008%	14, 29
206	C(Reverse)	2BR, 2BA	900	58	958	3.2345%	16.c, 17
207	C	2BR, 2BA	900	58	958	3.2345%	18, 19.c
208	C (Reverse)	2BR, 2BA	900	58	958	3.2345%	27, 28
209	Cm(Reverse)	2BR, 2BA	890	58	948	3.2008%	25, 26.c
210	B	2BR, 2BA	797	95	892	3.0117%	20, 21
211	A	1BR, 1BA	552	58	610	2.0596%	24
212	A (Reverse)	1BR, 1BA	552	58	610	2.0596%	62
213	B (Reverse)	2BR, 2BA	797	95	892	3.0117%	63, 64

**EXHIBIT D**  
Page 2 of 3



## PERMITTED ALTERATIONS TO APARTMENTS

Paragraph 19 of the Declaration sets forth the following with respect to alteration of the apartments:

"a. **General.** Except as otherwise provided in this Declaration or the Act or as otherwise required by law, neither the Association nor any apartment owner shall perform any of the following acts except pursuant to plans and specifications therefor approved in writing by the Board or Declarant:

- (1) repairing, replacing or rebuilding any apartment or any of the common and limited common elements in a manner different in any material respect from the Condominium Map;
- (2) engaging in any alterations which will affect the structural integrity of any apartment or the common and limited common elements;
- (3) constructing on the common and limited common elements any new building or structure; or
- (4) enclosing any lanai, balcony, patio or parking stall.

Upon the completion of any such work, there shall be filed with the Board a final "as built" set of the plans and specifications for such work, and if any such work should constitute a material alteration to the Project as shown on the Condominium Map (as determined by the Board), the Association or apartment owner, as the case may be, shall file an amendment to this Declaration describing such alteration and amending the Condominium Map to show such alteration, together with a certificate signed by a registered architect or professional engineer, certifying that the plans showing such alterations accurately reflect such alterations, as built. Such amendment shall be signed by the Association or the apartment owner, as the case may be, and approved by the Board or Declarant, and no consent or joinder of any other apartment owner or person shall be required. Except as otherwise provided in this Declaration, the Bylaws and the House Rules, each apartment owner shall be free, with the consent of all mortgagees of record of any interest in such apartment owner's apartment, to make such alterations and improvements within such apartment owner's apartment or within or on the limited common elements appurtenant thereto, without the consent or joinder of the Board, the Association, any apartment owner, Declarant or any other person.

"b. **Certain Work Prohibited.** Notwithstanding anything to the contrary in this Declaration, no apartment owner (a) shall do any work which could jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament; (b) shall add any material structure or excavate any basement or cellar, (c) shall enclose any lanai, balcony or patio, or (d) shall rebuild, repair or restore the Project in the event of substantial or total destruction of the Project, without in every such case obtaining the prior consent of seventy-five percent (75%)

of the apartment owners, together with the prior written consent of all mortgagees of record and apartment owners whose apartments or limited common elements appurtenant thereto are directly affected; provided that nonmaterial structural additions to the common elements, including "solar energy devices" as defined in Section 514A-89 of the Act, or additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of the apartment, shall require approval only by the Board and such percentage, number, or group of apartment owners or other parties as may be required by this Declaration or the Bylaws. As used in this subparagraph, "nonmaterial structural additions to the common elements" means a structural addition to the common elements which does not jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the Project, interfere with or deprive any nonconsenting apartment owner of the use or enjoyment of any part of the Project or directly affect any nonconsenting apartment owner. Notwithstanding anything in this Declaration to the contrary, no alterations or changes of any nature under any circumstances shall be made to the structural elements of the Residential Building or Parking Structure, including, without limitation, roofs, floors, supporting walls, foundations, columns, girders, floor slabs, supports, perimeter, party or load bearing walls and partitions without first obtaining the certification from a licensed structural engineer reasonably acceptable to the Association that the plans for such alterations or changes will not in any way diminish the present structural integrity of the Residential Building, the Parking Structure and the elements therein.

**"c. Connection between Apartments.**

(1) The owner of any two or more adjacent apartments separated by a common element which is a wall may, with the consent of all mortgagees of record of any interest in such owner's apartments, alter or remove all or any portion of the intervening wall (and, if the owner so desires, install a door within the opening created by such removal), if the structural integrity of the common elements or any other apartment in the Project will not thereby be adversely affected and if the finish of the common element then remaining is placed in a condition substantially comparable to that of the common element prior to such alterations. As used above, "adjacent apartments" also includes apartments which are located above and beneath one another on different floors, and in such event all references to "intervening wall" shall mean the intervening floor, ceiling or slab separating such floors.

(2) Prior to commencing any such alteration or removal, the apartment owner shall provide to the Board (A) a certification in form and content reasonably satisfactory to the Board signed by an architect or engineer duly registered in the State of Hawaii, that such alteration or removal will not adversely affect the structural integrity of the common elements or any other apartment in the Project, (B) satisfactory evidence that all governmental approvals required for such alteration or removal have been duly obtained, and (C) if the cost of such alteration or removal, as reasonably determined by the Board, shall exceed the sum of \$25,000.00, the Board may require that the owner provide evidence satisfactory to the Board of sufficient financing to complete such alteration or removal or, in lieu thereof, require that the owner obtain a performance and lien payment bond, naming as obligees the Declarant and the Board and the

Association and collectively all apartment owners and their respective mortgagees of record, as their interests may appear, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such alteration or removal. Such alteration or removal may be undertaken without the necessity of an amendment to this Declaration or the Condominium Map and, except as otherwise provided in this paragraph 19, without the consent or joinder of the Association, the Board, Declarant or any other person.

(3) If any intervening wall between adjacent apartments shall have been altered or removed pursuant to the foregoing provisions, then prior to the termination of the common ownership of such adjacent apartments, the owner of such apartments shall restore such intervening wall to substantially the same condition in which the same existed prior to such alteration or removal unless the purchaser of such apartments shall agree in writing to forego such restoration.

(4) Notwithstanding any alteration or additions permitted under this subparagraph 19.c, such shall not affect the common interest or limited common interest allocable to any apartment."

## **PARKING, RECREATIONAL AND OTHER COMMON FACILITIES**

The Project, including the land upon which the project is located ("the Land"), the neighboring property, described as "the Future Development Area," and the adjoining park area, described as "the Alii Park Area" in the Declaration, is subject to that certain Alii Park Use and Access Agreement and Mutual Grant of Easements (Hale Alii at Hawaii Kai) to be recorded in the Bureau of Conveyances of the State of Hawaii ("the Alii Park Use Agreement"), a copy of which has been submitted to the Commission and is available for review at the office of the Developer.

There are a total of sixty four (64) parking stalls located upon the Land and the adjoining Alii Park Area dedicated to the exclusive use of the apartment owners of the Project (such stalls are numbered 1 through 64 on the Condominium Map).

Thirteen (13) of the sixty four parking stalls (Nos. 52 through 64) are located upon or partially upon the Alii Park Area. The Alii Park Use Agreement permits the owners of the Project the exclusive right to use these thirteen (13) parking stalls together with an non-exclusive right to of ingress and egress over the roadways of the Alii Park Area. The expense of maintaining said stalls shall be a common expense of the Association.

The Alii Park Use Agreement also permits the owners of the Project, together with the owner of lands adjacent to the Project, to use a portion of the Alii Park Area for park and recreation purposes. The Association shall have the obligation to pay for the maintenance of the landscaping improvements located in the Alii Park Area, together with the other parties to the Alii Park Use Agreement, and shall charge each owner in the Project for its pro rata share of such costs and expenses.

The owner of the Alii Park Area is obligated to keep the Alii Park Area maintained as a park and recreational facility and may transfer to the Association and the other parties to the Alii Park Use Agreement ownership of the Alii Park Area at some future date. The Association's share of ownership, and its share of maintenance and upkeep of the Alii Park Area, shall be thirty-four (34%) percent. Upon merger of the Future Development Area into the Project, the Association's share shall be sixty-seven (67%) percent.

Prior to completion of the Project, the Developer intends to enter into a service agreement with Holistica Hawaii, LLC, to provide health maintenance services and activities to the owners of the Project, both on-site and at the offices of Holistica Hawaii, LLC located at the Holistica Hawaii Health Center at the Hilton Hawaiian Village hotel. The cost of rendering such services shall be a common expense of the Association. A copy of the service agreement will be provided to each prospective purchaser and is available for inspection at the offices of the Real Estate Commission and the offices of the Developer. The service agreement will be assigned to the Association upon completion of the Project.

**COMMON ELEMENTS, LIMITED COMMON ELEMENTS, COMMON INTEREST**

1. Paragraphs 5, 6 and 7 of the Declaration state as follows:

"5. **Common Elements**. One freehold estate is hereby designated in all common elements of the Project, which include all portions of the Project other than the apartments (except as herein specifically included), and all other common elements mentioned in the Act which are actually included in the Project, including specifically, without limitation:

- a. The Land in fee simple.
- b. All structured components such as foundations, columns, girders, beams, floor slabs, supports, perimeter, party and load-bearing walls and partitions (excluding the finishes thereon within an apartment), and roofs of the Project.
- c. All lobby areas, stairways, walkways, corridors, ramps, loading areas and platforms, entrances, entryways and exits, maintenance rooms, elevator machine rooms, mechanical rooms, electrical rooms, telephone rooms, trash rooms, recreation rooms, mail rooms, management rooms, security rooms and common toilet facilities unless located within a single apartment and serving only that apartment.
- d. All yards, grounds, paths, walkways, walkway railings, fences, landscaping, refuse facilities and gardens of the Project.
- e. All driveways and driveway ramps, loading and service areas, parking stalls and parking areas of the Project (both in the Parking Structure and on the surrounding grounds), and that portion of the Parking Structure located on the Land and in the Project.
- f. 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), cable television (if any), air conditioning (if any), sewer, refuse, telephone, and radio and television signal distribution.
- g. Any and all apparatus and installations existing for common use, such as elevators, tanks, pumps, motors, fans, compressors and, in general, all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.
- h. All mechanical, electrical and air conditioning equipment originally installed and located within any mechanical room, telephone closet or electrical room

**EXHIBIT G**

or located elsewhere in the Project (whether or not utilized for or serving only one apartment).

- i. The limited common elements described below.

"6. **Limited Common Elements.** Certain parts of the common elements, herein called and designated "limited common elements," are hereby set aside and reserved for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

- a. The common elements of the Project which are rationally related to less than all of said apartments shall be limited to the use of such apartments.

- b. Each one bedroom apartment shall have appurtenant to it and have the exclusive use of one (1) parking stall, as designated on **Exhibit D** attached hereto and made a part hereof.

- c. Each two bedroom apartment shall have appurtenant to it and have the exclusive use of two (2) parking stalls, as designated on **Exhibit D** attached hereto and made a part hereof.

"7. **Percentage of Undivided Interest.** Each apartment shall have appurtenant thereto an undivided interest in the common elements of the Project as shown in **Exhibit D** hereto (hereinafter referred to as the "common interest") and the same percentage share in all common profits and expenses of the common elements of the Project and, except as herein expressly provided for, the same percentage interest for all other purposes, including, without limitation, voting."

ENCUMBRANCES AGAINST TITLE

The encumbrances against title appearing in the Title Report dated September 26, 2001 are as follows:

1. GRANT

TO : CITY AND COUNTY OF HONOLULU

DATED : May 28, 1974

RECORDED : Liber 10448 Page 200

GRANTING : an easement for flowage purposes as shown on the map attached thereto

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

INSTRUMENT : UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

DATED : July 3, 1986

RECORDED : Liber 19645 Page 696

PARTIES : HAWAII KAI DEVELOPMENT COMPANY and the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP

Said Agreement was amended by instruments dated June 23, 2000, recorded as Document No. 2000-112963, and dated November 28, 2000, recorded as Document No. 2000-167451.

3. Flowage Easement (to be cancelled upon construction of adequate drainage facilities) in favor of the City and County of Honolulu, as stated in instrument dated May 1, 1994, recorded as Document No. 97-070019.

Matters as shown on survey map prepared by Alden S. Kajioka, Land Surveyor, with ControlPoint Surveying, Inc., dated October 24, 2000.

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

INSTRUMENT : LIMITED WARRANTY DEED  
DATED : December 19, 2000  
RECORDED : Document No. 2000-177612

Said Deed was supplemented by instrument dated December 19, 2000, recorded as Document No. 2000-177616.

Said Supplemental Declaration was amended by instrument dated August 14, 2001, recorded as Document No. 2001-126995.

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

INSTRUMENT : AGREEMENT FOR ISSUANCE OF CONDITIONAL USE PERMIT UNDER SECTION 21-5.380 OF THE LAND USE ORDINANCE (LUO)  
DATED : December 19, 2000  
RECORDED : Document No. 2000-177617  
PARTIES : HAWAII KAI ELDERCARE, LLC

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

INSTRUMENT : AMENDED AND RESTATED COST SHARING AGREEMENT  
DATED : December 19, 2000  
RECORDED : Document No. 2000-177622  
PARTIES : HAWAII KAI ELDERCARE, LLC, and KEAKU, LLC

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

INSTRUMENT : LIMITED WARRANTY DEED  
DATED : December 19, 2000  
RECORDED : Document No. 2000-177625

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

INSTRUMENT : COST SHARING AGREEMENT (LOTS 1-B TO 1-E)  
DATED : September 12, 2000  
RECORDED : Document No. 2000-177627  
PARTIES : HAWAII KAI ELDERCARE, LLC, HAWAII  
INTERGENERATIONAL COMMUNITY DEVELOPMENT  
ASSOCIATION, and INVESTMENT PARTNERS, INC.

Said Cost Sharing Agreement was amended by instrument dated December 19, 2000, recorded as Document No. 2000-177628.

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

INSTRUMENT : MAINTENANCE DECLARATION  
DATED : December 19, 2000  
RECORDED : Document No. 2000-177629  
PARTIES : HAWAII KAI ELDERCARE, LLC, KEAKU, LLC,  
HAWAII INTERGENERATIONAL COMMUNITY  
DEVELOPMENT ASSOCIATION, 21<sup>ST</sup> CENTURY HOMES,  
INC., and INVESTMENT PARTNERS, INC.

10. MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

MORTGAGOR : 21<sup>ST</sup> CENTURY HOMES, INC., a Hawaii corporation  
MORTGAGEE : INVESTOR'S FUNDING CORPORATION, a Hawaii  
corporation, as Trustee under an unrecorded  
Loan Participation Agreement dated December  
14, 2000  
DATED : December 19, 2000  
RECORDED : Document No. 2000-177642  
AMOUNT : \$225,000.00

11. SECOND MORTGAGE

MORTGAGOR : 21<sup>ST</sup> CENTURY HOMES, INC., a Hawaii corporation  
MORTGAGEE : MORGAN INVESTMENT PARTNERS, LLC, a Delaware  
limited liability company  
DATED : December 19, 2000  
RECORDED : Document No. 2000-177645  
AMOUNT : \$685,000.00

12. ACCOMMODATION SECOND MORTGAGE

MORTGAGOR : 21<sup>ST</sup> CENTURY HOMES, INC., a Hawaii corporation  
MORTGAGEE : ROYAL SYSTEMS HAWAII, INC., a Hawaii  
corporation  
DATED : May 3, 2001  
RECORDED : Document No. 2001-070164  
AMOUNT : \$236,000.00

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

INSTRUMENT : AFFORDABLE HOUSING PLAN AGREEMENT  
DATED : July 25, 2001  
RECORDED : Document No. 2001-118969  
PARTIES : CITY AND COUNTY OF HONOLULU, a municipal  
corporation of the State of Hawaii by its  
Department of Planning and Permitting,  
HAWAII INTERGENERATIONAL COMMUNITY  
DEVELOPMENT ASSOCIATION, and 21<sup>ST</sup> CENTURY  
HOMES INC.

14. Real Property Taxes as may be due and owing. Check with the  
County tax assessor for more information.

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

## CONSTRUCTION WARRANTIES

Paragraph 22 of Section E of the Sale Contract and Deposit Receipt states as follows:

**Warranties of Seller.** The execution, delivery and recordation of Buyer's Apartment Deed shall constitute the assignment by Seller to Buyer of any and all applicable warranties, if any, given Seller by the general contractor for the Project and the benefit of such warranties shall accrue to Buyer on 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, if any, covering the appliances in the Apartment. BUYER ACKNOWLEDGES THAT SELLER HAS MADE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY OR WORKMANLIKE CONSTRUCTION WITH RESPECT TO THE APARTMENT, THE PROPERTY, ANY COMMON ELEMENT, LIMITED COMMON ELEMENT, OR ANYTHING INSTALLED THEREIN. An inspection program will 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 Apartment, if any. Buyer agrees to accept possession of the Apartment despite the existence of such defects or damages to the Apartment regardless of extent, including without limitation any defects in appliances and fixtures, which may be listed in said inspection sheet, but which do not render the Apartment unusable. Seller will cooperate with and assist Buyer in having legitimate listed defects or damages corrected or repaired within a reasonable time thereafter by the general contractor or other warrantor. This guarantee shall survive the final closing. Buyer agrees to indemnify Seller for any damages or losses, including interest and attorney's fees, resulting from any refusal to make such inspection, to sign such inspection sheet or to accept possession of the Apartment upon request by Seller (unless the Apartment is uninhabitable) and if Buyer shall make any such refusal Buyer shall be deemed to be in default under this Agreement and Seller at its option shall be entitled to cancel this Agreement and keep all payments made hereunder as liquidated damages. Buyer hereby waives all rights of inspection and rights to Seller's cooperation and assistance with the general 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 and performance of Buyer's pre-closing and final closing obligations."

58764.1

**EXHIBIT I**

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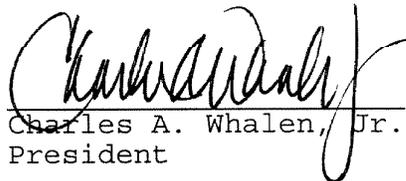
**CERTIFICATE**

I, the undersigned, duly sworn on oath, depose and affirm as follows:

1. That I am the President of Touchstone Properties, Ltd., a Hawaii corporation, designated by the developer of HALE ALII AT HAWAII KAI Condominium (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the *Preliminary Estimate of Annual Common Expenses* and the *Preliminary Estimate of Monthly Maintenance Fees* for each apartment in the Project, as set forth in Exhibit "A" attached hereto and hereby incorporated herein by reference, are reasonable preliminary estimates of operating expenses for the one-year period commencing January 1, 2002, based on generally accepted accounting principles, which includes reserve contributions based on apartment averages for new projects from reserve studies conducted in accordance with Section 514A-83.6 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules.

DATED: Honolulu, Hawaii, this fifteenth day of November 2001.

  
Charles A. Whalen, Jr.  
President

Subscribed and sworn to  
before me this fifteenth  
day of November, 2001.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

DIANE L. REECE

My commission expires: 7/7/2002

L.S.

EXHIBIT "A"  
 (Page 1 of 2)

HALE ALII AT HAWAII KAI

Preliminary Estimate of Annual Common Expenses

	<u>MONTHLY</u>	<u>ANNUAL</u>
<u>Utilities and Services</u>		
Electricity*	\$1,000	\$12,000
Water and Sewer	1,300	15,600
Cable	700	8,400
<u>Maintenance, Repair and Supplies</u>		
Elevator	450	5,400
Building, Grounds & Custodial	800	9,600
Refuse Removal**	500	6,000
<u>Management</u>		
Management fee	750	9,000
Office expenses	125	1,500
<u>Insurance***</u>	600	7,200
<u>Reserves****</u>	875	10,500
<u>Taxes and Government Assessments</u>	10	120
<u>Professional Services - Legal/Other</u>	50	600
<u>Audit and Tax Preparation</u>	75	900
<u>Wages and Benefits</u>	0	0
<u>Other</u> (Holistic service)	1,750	21,000
	-----	-----
TOTAL DISBURSEMENTS	\$ 8,985	\$107,820
	=====	=====

\* Reflects estimate without mechanical and electrical plans finalized to more accurately determine utility cost for common area lighting, elevator, hot water heat pump system with solar panels, pumps and ventilator motors.

\*\* Reflects estimate for private refuse service; however, Developer is negotiating with City & County to arrange for public refuse service.

\*\*\* Reflects estimate of insurance premiums based on industry construction averages for replacement costs at \$125 per sq. ft.

\*\*\*\* Reserve component list not itemized to complete a Reserve Analysis; however, reflects estimate of \$25 per apartment average for new Projects.

**HALE ALII AT HAWAII KAI**

Preliminary Estimate of Monthly Maintenance Fees

- (1) The estimated monthly maintenance fee for each Type "Am" apartment is \$179.70 per month.
- (2) The estimated monthly maintenance fee for each Type "A" and "A (Reverse)" apartments is \$185.09 per month.
- (3) The estimated monthly maintenance fee for each Type "B" and "B (Reverse)" apartments is \$270.45 per month.
- (4) The estimated monthly maintenance fee for each Type "Cm" and "Cm (Reverse)" apartments is \$287.52 per month.
- (5) The estimated monthly maintenance fee for each Type "C" and "C (Reverse)" apartments is \$290.21 per month.
- (6) The estimated monthly maintenance fee for each Type "D" and "D (Reverse)" apartments is \$290.21 per month.

Additionally, each owner will contribute a start-up fee in an amount equal to the monthly maintenance fee for the apartment type purchased which will be collected at escrow closing.

**NOTE TO EXHIBIT J**

The calculation of reserves in this Estimate of Maintenance Fee Disbursement is not based on a reserve study conducted by the Developer or Managing Agent. Instead, the reserve contribution has been estimated based upon contributions made for similar situated new construction. A reserve study to determine the necessary funding of reserves pursuant to Section 514A-83.6, H.R.S., and Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended, shall be conducted after the completion of construction of the Project and during the first year of occupancy.

58765.2

**NOTE TO EXHIBIT J**

**SUMMARY OF THE PERTINENT PROVISIONS**  
**OF THE SALES CONTRACT**

A specimen Sales Contract and Deposit Receipt ("the Contract") has been submitted to the Real Estate Commission. ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ THE CONTRACT IN FULL, since this summary is NOT A COMPLETE DESCRIPTION of its provisions. The Contract, among other things, covers in more detail the following items:

1. If at the time of execution of the Contract by Buyer and Seller, an effective date for a Final Public Report for the Project has not been issued by the Real Estate Commission, the Contract shall not be legally binding upon either Buyer or Seller. In such event, the Contract shall constitute only a "reservation," and not a binding contract and Seller shall have no obligation to sell and Buyer shall have no obligation to buy the Apartment described above. UNTIL THE EFFECTIVE DATE FOR THE FINAL PUBLIC REPORT, THE CONTRACT CONSTITUTES A RESERVATION AND IT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT CAUSE, AT THE OPTION OF EITHER PARTY, BY WRITTEN NOTICE OF SUCH TERMINATION TO THE OTHER PARTY.

2. Buyer agrees to deliver to Seller or to Buyer's lender within five (5) days of acceptance of the contract (a) a financial statement certified by Buyer to be true and accurate as of the date of such delivery, in form and content sufficient to fully disclose Buyer's financial circumstances as of the date of delivery, including, without limitation, the identification and the reasonably accurate valuation of any assets as of the date of delivery, (b) a completed loan application to one or more lending institutions, if Buyer requires financing, and (c) any other information required by Seller.

3. Seller, in its sole discretion, may elect to cancel the Contract if (a) Buyer's application or eligibility for a mortgage loan is rejected or Buyer does not obtain loan approval within fifty (50) calendar days of acceptance of the Contract; (b) Buyer fails to provide full and complete financial information; (c) Seller, in its sole discretion, after reviewing Buyer's financial information determines that Buyer is unable to finance the purchase; or (d) Buyer does not intend to be an Owner-Occupant of the Apartment.

4. The estimated project completion date and the closing dates are as described in the Contract.

5. Buyer may be required to prepay maintenance fees, real property taxes, and a non-refundable Project start-up fee as more particularly described in the Contract.

6. Buyer shall have thirty (30) calendar days to inspect the project documents, other than the Final Public Report, and cancel the Contract if such documents are not satisfactory to buyer. Buyer's right to inspect the Apartment is limited and is more particularly described in the Contract.

7. Buyer specifically acknowledges and accepts certain enumerated conditions regarding on-going development and marketing of the project stated in the Contract as well as any inconvenience or annoyance which Buyer may experience as a result of such conditions, and expressly waives any rights, claims or action which Buyer might otherwise have against Seller or third parties as a result of such circumstances.

8. After the later of the issuance of the Effective Date of the Final Public Report or the expiration of Buyer's thirty (30) day document review period, Buyer shall have the right to rescind the Contract only if there is a material change in the Project which directly, substantially and adversely affects the use or value of (a) Buyer's Apartment or appurtenant limited common elements, or (b) the amenities of the Project available for Buyer's use. Waiver of such right is governed more specifically by the terms of the Contract and by law.

9. Seller shall have certain rights and remedies against Buyer in the event Buyer fails to perform any of the terms and conditions of the contract, including failure to comply with the pre-closing and closing requirements, as more particularly described in the contract, including the right to retain Buyer's deposit and the right to other actual and liquidated damages, the right to specifically enforce the Contract, and the right to charge late fees on amounts past due.

10. The execution, delivery and recordation of Buyer's condominium conveyance document shall constitute the assignment by Seller to Buyer of any and all warranties given to Seller by the contractors for the Project, if any, including, without limitation, any warranty of materials and workmanship against faulty or deficient materials and installation. The benefit of such warranties, if any, shall accrue to Buyer on closing without further instruments or documents. BUYER ACKNOWLEDGES THAT SELLER HAS MADE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY OR WORKMANLIKE CONSTRUCTION WITH RESPECT TO THE APARTMENT, THE PROPERTY, ANY COMMON ELEMENT, LIMITED COMMON ELEMENT, OR ANYTHING INSTALLED THEREIN.

11. Buyer may not assign Buyer's rights hereunder without Seller's prior written consent, which consent may be withheld by any reason whatsoever in its sole discretion.

ALL BUYERS SHOULD READ THE SALES CONTRACT IN FULL AS THIS SUMMARY IS NOT ALL-INCLUSIVE AND DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS OF THE SALES CONTRACT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE SALES CONTRACT, AND DOES NOT ALTER OR AMEND THE SALES CONTRACT IN ANY MANNER. IF ANY PROVISIONS OF THIS SUMMARY CONTRADICT THE PROVISIONS CONTAINED IN THE SALES CONTRACT IN ANY WAY, THE PROVISION OF THE SALES CONTRACT SHALL OVERRIDE THE PROVISIONS OF THIS SUMMARY.

## **SUMMARY OF THE PERTINENT PROVISIONS OF THE ESCROW AGREEMENT**

A copy of the Escrow Agreement between the Seller and Title Guaranty Escrow Services, Inc. ("Escrow") has been submitted to the Real Estate Commission. The Escrow Agreement, among other things, covers in more detail the following items:

1. Seller shall deliver an executed copy of such Sales Contract to Escrow. Each Sales Contract shall be accompanied by the initial deposit required thereunder and the Owner-Occupant affidavit in the form approved by the Real Estate Commission.

2. Seller shall pay Escrow monies received from Purchasers under Sales Contracts covering apartments in the Project. Escrow shall receive and hold in escrow and disburse funds as set forth in detail in the Escrow Agreement. Escrow shall deposit all funds so received in an account at a federally insured bank, savings and loan association or other financial institution that pays interest on deposits. Except for specific circumstances stated in the Escrow Agreement, any interest earned on funds deposited in escrow under this Agreement shall accrue to the credit of Seller.

3. No disbursements of funds held in escrow shall be made unless and until, among other conditions, (a) an effective date for such Final Public Report has been issued; (b) the Purchaser has been given a copy of said Final Report and shall have acknowledged receipt of same or shall have been deemed to have acknowledged receipt of same and Seller's attorney shall have delivered a written opinion to Escrow that the Purchaser's Sales Contract has become effective; and (c) Seller shall have complied with the owner-occupant pre-sale law.

4. A Purchaser shall be entitled to a return of funds and Escrow shall pay such funds to such Purchaser, without interest, if any one of the following has occurred: (a) Seller and the Purchaser shall have together requested Escrow in writing to return to the Purchaser the funds of the Purchaser held hereunder by Escrow; or (b) Seller shall have notified Escrow of Seller's exercise of the option to cancel or rescind the Sales Contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Seller where such option or request of cancellation or rescission is not based upon a default by the Purchaser under the Sales Contract; or (c) the Purchaser has exercised such Purchaser's right to cancel or rescind the contract pursuant to the Condominium Act.

A Purchaser shall also be entitled to a return of funds and Escrow shall pay such funds to such Purchaser, with all interest accrued thereon if Purchaser (a) has entered into a Sales Contract pursuant to a contingent final report, (b) the Real Estate Commission does not issue an effective date for a final public report by the date on which the contingent public report expires, and (c) the Seller or the Purchaser elects to rescind the Sales Contract by giving written notice thereof to the other, with a copy to Escrow.

### **EXHIBIT L**

A Purchaser is further entitled to a return of funds without interest, if Seller and the Purchaser have requested the return of funds of the Purchaser held by Escrow, or either the Purchaser or the Seller has notified Escrow of its election to exercise its right to cancel or rescind the Sales Contract, or the Purchaser has not obtained adequate financing, or a commitment for adequate financing, within fifty (50) calendar days after Seller's execution and acceptance of the Sales Contract.

In the event of a default by Purchaser under the Purchase and Sale Agreement, Escrow shall disburse Purchaser's deposit to Seller.

6. Except for the Sales Contracts and any note and mortgage that is to be closed by the mortgagee thereof, Escrow shall promptly and diligently arrange for and supervise the execution of all documents related to the Project and shall promptly, and diligently close the transactions and perform such services as are necessary or proper therefor, in the manner established in the Escrow Agreement.

NOTE: ALL BUYERS AND PROSPECTIVE BUYERS SHOULD READ THE ESCROW AGREEMENT AND ALL AMENDMENTS IN FULL AS THIS SUMMARY IS NOT ALL-INCLUSIVE AND DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS OF THE ESCROW AGREEMENT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE ESCROW AGREEMENT, AND DOES NOT ALTER OR AMEND THE ESCROW AGREEMENT IN ANY MANNER.