



**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 Notes

Prospective purchasers should be aware of the following facts about the Kailua Bay Resort condominium project:

1. **POOL SAFETY.** Purchaser is aware that there is no lifeguard on duty at the pool within the Project. Accordingly, Purchaser acknowledges that Purchaser's safety as well as the safety of Purchaser's children, tenants and guests are Purchaser's own responsibility while using the pool. Children must be accompanied by an adult while using the pool and there is no diving permitted. Purchaser is directed to the House Rules for more information regarding the use of the pool. All residents and guests swim at their own risk.

2. **SECURITY.** Purchaser acknowledges that there is no on-site security provided for the Project.

3. **INTER-UNIT NOISE.** Purchaser acknowledges that being in a residential apartment complex, there will at times be some degree of inter-unit noise. Any excessive noise should be reported to the Project's management company.

4. **EXTERNAL SOURCES OF NOISE.** A shopping center, gas station and other apartment complexes neighbor the Project. Accordingly, there may be noise emanating from these properties over which the Developer has no control. Specifically, noise from equipment, vehicles such as refuse trucks and other sources may emanate from such properties such that they are audible within the Project.

5. **APPLIANCES.** Purchaser acknowledges that all appliance warranty registration and claims are to be handled by Purchaser directly with the manufacturer. The Developer has no liability for such warranties nor the servicing or replacement of any appliance in the Apartments of the Project.

6. **WIRING AND ELECTRICITY.** Purchaser acknowledges that all wiring and electrical work on the Apartments and the Project performed during renovations are being done with appropriate permits and under the supervision of a licensed electrical engineer and contractor. Any future electrical work to Apartments or the Project should be performed by a licensed electrician.

7. **PLUMBING.** Purchaser acknowledges that all plumbing repairs and renovation work to the Project were done with appropriate permits and under the supervision of a licensed plumber. Due to the age of the building, copper has replaced galvanized piping where necessary in the Project. The Developer can offer no assurances as to the expected life of any of the existing galvanized piping that was not replaced. Water pressure may vary per Unit.

8. **DUST.** Purchaser acknowledges that dust from lots adjacent to the Project may become airborne due to future construction activities or other activities on such lots or due to the wind, and may at times, enter the Project and Apartments within the Project.

9. **PARKING.** Purchaser acknowledges that the Developer has repaired the parking and driveway areas within the Project. Purchaser should be aware that the parking areas may in the future, be damaged by the root systems of vegetation in the parking areas as well as ordinary wear and tear due to vehicle and pedestrian traffic. Expenses associated with repairing such damages, if they occur, will be a common expense of the Project.

10. **HAZARDOUS WASTE AND TOXIC SUBSTANCES DISCLOSURE.** Purchaser is aware that federal and state laws place strict liability on property owners for dangers caused by hazardous waste management and may require that such owner pay for the cost of the cleanup of hazardous substances and other toxic substances. Purchaser is aware that Purchaser should make appropriate

inquiries into the past use of the property and should seek an environmental assessment to ascertain the possible existence of such hazardous substances or materials on or under the property. Purchaser is aware Purchaser may have liability for hazardous substances located on or under the property even if Purchaser did not cause such substances to be on or under the property.

11. **EXTERIOR PAINT.** The Developer has done extensive exterior siding and paint work on all buildings in the Project and has also installed new rain gutters and has caulked the exterior ceiling areas as needed in the common areas of the Project. These are areas that will require repair or refurbishment in the future and the expenses associated with such repairs, when they occur, will be a common expense of the Project.

12. **LANAIS.** Lanai areas should be maintained in a manner consistent with the House Rules.

13. **AIR CONDITIONERS.** A few Apartments in the Project currently have air-conditioning units installed. In accordance with the House Rules, if any owner desires to install an air-conditioning unit in his or her Apartment and such air-conditioning unit will be visible from the exterior of an Apartment, the prior approval of the Board of Directors must be obtained.

14. **TERMITES.** The Purchaser is aware that the State approved Termite Inspection Report ("TIR") addresses only visible evidence of active termite infestation and visible damage in accessible areas. It does not address infestation or damage occurring in inaccessible areas of the Project or apartments. The Developer will disclose any prior or current termite infestation of which Developer is aware, but Purchaser should obtain its own TIR in accordance with Purchaser's Purchase Agreement.

15. **ROOFS.** The roof tiles were replaced in 1989. It will become necessary to replace the roof in the future and, the expense for such re-roofing or any roofing repairs will be a common expense of the Project.

16. **ACCESS TO NEARBY SHOPPING CENTER.** There is currently a gate located on the northeastern boundary of the Project providing physical access to a neighboring shopping center. Purchasers are hereby notified that there is no formal easement right of access granted in favor of the Project or the Association to the Shopping Center through the gate. Accordingly, Owners or their occupants who use such access do so at their own risk, and the Developer can make no assurances whatsoever that such access will continue to exist in the future.

17. **MOLD.** Buyers are responsible for inspecting and maintaining their Apartments, including, without limitation, treating or removing any mold within the Apartments.

18. **CONCRETE WALKWAYS.** Due to the existing landscaping, tree roots may cause future damage to concrete walkways of the Project. The Developer has repaired present damage to such areas, however, the expense incurred for any future repair of damages to the concrete walkways, if they occur, will be a common expense of the Project.

19. **AS-IS PURCHASE.** Purchaser acknowledges that the Apartments are being sold in "as-is" condition. Seller makes no express warranties with respect to the Apartment. SELLER DISCLAIMS ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY IMPLIED WARRANTY OF WORKMANSHIP AND ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE APARTMENT, THE PROPERTY, THE COMMON ELEMENTS OR THE PROJECT. Purchaser acknowledges that Seller has made no warranties, express or implied, with respect to the Property, its quality or grade, or any common element or anything installed therein, its quality or grade. In particular Seller disclaims any and all responsibility or liability for any malfunctions, construction or design defects, including, without limitation, any latent or hidden defects which time may reveal or any other problems which Purchaser may encounter with respect to the Apartment or the Project. Purchaser acknowledges Seller's disclaimers and expressly waives any rights, claims or actions against Seller arising out of or connected with any defects with respect to the Property.

## TABLE OF CONTENTS

	Page
Preparation of this Report	1
Expiration Date of Reports	1
Type of Report	1
Disclosure of Abstract	2
Summary of Changes from Earlier Public Reports	2
Special Notes	2a
Table of Contents	3
General Information on Condominiums	4
Operation of the Condominium Project	4
I. PERSONS CONNECTED WITH PROJECT	5
Developer                      Attorney for Developer                      General Contractor	
Real Estate Broker              Escrow Company                      Condominium Managing Agent	
II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS	
A. Declaration	6
B. Condominium Map (File Plan)	6
C. Bylaws	6
D. House Rules	7
E. Changes to Condominium Documents	7
III. THE CONDOMINIUM PROJECT	
A. Interest to be Conveyed to Buyer	8
B. Underlying Land	9
C. Buildings and Other Improvements	10
D. Common Elements, Limited Common Elements, Common Interest	13
E. Encumbrances Against Title	14
F. Construction Warranties	15
G. Status of Construction	16
H. Project Phases	16
IV. CONDOMINIUM MANAGEMENT	
A. Management of the Common Elements	17
B. Estimate of Initial Maintenance Fees	17
C. Utility Charges for Apartments	17
V. MISCELLANEOUS	
A. Sales Documents Filed with the Real Estate Commission	18
B. Buyer's Right to Cancel Sales Contract	18
C. Additional Information Not Covered Above	20
D. Signature of Developer	21
EXHIBIT A: Rights Reserved by Developer	
EXHIBIT B: Description of Buildings	
EXHIBIT C: Boundaries of Each Apartment	
EXHIBIT D: Permitted Alterations to Apartments	
EXHIBIT E: Apartment Descriptions	
EXHIBIT F: Common Elements	
EXHIBIT G: Limited Common Elements	
EXHIBIT H: Encumbrances Against Title	
EXHIBIT I: Maintenance Fee Schedule	
EXHIBIT J: Summary of Purchase Agreement	
EXHIBIT K: Summary of Escrow Agreement	
EXHIBIT L: Summary of Deed Form	
EXHIBIT M: Mechanical, Electrical & Structural Consultant Reports	
EXHIBIT N: Letter from the County of Hawaii	

## **General Information On Condominiums**

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

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

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

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

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

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

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

## **Operation of the Condominium Project**

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

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

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

**I. PERSONS CONNECTED WITH THE PROJECT**

Developer: Hale 'O Mahi, LLC Phone (415) 512-1400  
Name\* (Business)  
2419 Polk Street  
Business Address  
San Francisco, CA 94109

Names of officers or general partners of developer 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):

See Section V, Paragraph C hereof.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Broker\*: Clark Realty Corporation Phone: (808) 329-5255  
Name (Business)  
75-5722 Kuakini Hwy Suite 103  
Business Address  
Kailua-Kona, Hawaii 96740

Escrow: Old Republic Title & Escrow of Hawaii, Ltd. Phone: (808) 566-0100  
Name (Business)  
Pacific Guardian Center, 733 Bishop Street, Suite 2700  
Business Address  
Honolulu, Hawaii 96813

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

Condominium Managing Agent\*: Certified Management, Inc. Phone: (808) 836-0911  
Name (Business)  
3179 Koapaka  
Business Address  
Honolulu, Hawaii 96819

Attorney for Developer: Imanaka Kudo & Fujimoto, LLLC Phone: (808) 521-9500  
Name (Business)  
745 Fort Street Mall, 17<sup>th</sup> Floor  
Business Address  
Honolulu, Hawaii 96813  
Attn: Mitchell A. Imanaka, Esq.

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

**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 16448 Page 248  
 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]:

Amended and Restated Declaration of Condominium Property Regime of Kailua Bay Resort dated October 7, 1991, recorded at said Bureau as Document No. 91-138206; First Amendment to Amended and Restated Declaration of Condominium Property Regime of Kailua Bay Resort dated June 28, 2002, recorded at said Bureau as Document No. 2002-131714.

- 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. 849  
 Filed - \_\_\_\_\_

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

First Amendment to Amended and Restated Declaration of Condominium Property Regime Kailua Bay Resort dated June 28, 2002, recorded at said Bureau as Document No. 2002-131714.

- 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 16448 Page 277  
 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].

Amended and Restated By-Laws of the Association of Apartment Owners of Kailua Bay Resort dated October 7, 1991, recorded at said Bureau as Document No. 91-138207; First Amendment to Amended and Restated By-Laws of the Association of Apartment Owners of Kailua Bay Resort dated June 28, 2002, recorded at said Bureau as Document No. 2002-131715.

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 requirement 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>by 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:

- [X] 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 include the underlying land will be leasehold.

Leases for 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 Subleasehold:

Leases for 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): \_\_\_\_\_

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: \_\_\_\_\_ Tax Map Key (TMK) : (3) 7-5-4-21

[ ] Address [ ] TMK is expected to change because Not Applicable

Land Area: 2.742 [ ] square feet [X] acre(s) Zoning: V1-25

Fee Owner: Hale 'O Mahi, LLC  
 Name  
2416 Polk Street  
 Address  
San Francisco, CA 94109

Lessor: \_\_\_\_\_  
 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: See Exhibit "B" Floors Per Building Varies, See Exhibit "B"

Exhibit B contains further explanations.

3. **Principal Construction Material:**

Concrete  Hollow Tile  Wood

Other Steel and Glass

4. **Uses Permitted by Zoning:**

	No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>	No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>
<input checked="" type="checkbox"/> Residential	<u>95</u>	<input checked="" type="checkbox"/> Yes [ ]No [ ] Ohana	___	[ ]Yes [ ]No
<input type="checkbox"/> Commercial	___	[ ]Yes [ ]No [ ] Industrial	___	[ ]Yes [ ]No
<input type="checkbox"/> Mix Res/Comm	___	[ ]Yes [ ]No [ ] Agricultural	___	[ ]Yes [ ]No
<input type="checkbox"/> Hotel	___	[ ]Yes [ ]No [ ] Recreational	___	[ ]Yes [ ]No
<input type="checkbox"/> Timeshare	___	[ ]Yes [ ]No [ ] Other: _____	___	[ ]Yes [ ]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: Pets are permitted as set forth in the House Rules. Certified seeing eye dogs, signal dogs and service dogs for physically impaired persons are permitted.

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

Other: (1) No outdoor umbrellas are permitted on lanais for safety reasons. (2) No air conditioning unit or system that is visible from the exterior of an Apartment may be installed without the Owner first obtaining the approval of the Board.

There are no special restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0      Stairways: 16      Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Living Area (sf)*</u>	<u>Other Area (sf)</u>	<u>(Identify)</u>
<u>See Exhibit "E"</u>	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 95

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

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

Boundaries of Each Apartment:

see Exhibit "C"

Permitted Alterations to Apartments:

see Exhibit "D"

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 will provide the information in a published announcement.

7. Parking Stalls:

Total Parking Stalls: 119

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	Covered	Open	Covered	Open	Covered	Open	
Assigned (for each unit)	<u>39</u>	<u>57</u>	—	—	—	—	<u>96</u>
Guest	—	<u>13</u>	—	<u>10</u>	—	—	<u>23</u>
Unassigned	—	—	—	—	—	—	—
Extra Purchase	—	—	—	—	—	—	—
Other:	—	—	—	—	—	—	—
Total Covered & Open:	<u>109</u>		<u>10</u>		<u>0</u>		<u>119*</u>

\*Each apartment will have the non-exclusive use of at least one 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.

[X] Exhibit E contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

[ ] There are no recreational or common facilities.

[X] Swimming Pools                      [ ] Storage Area                      [X] Recreation Area

[ ] Laundry Areas                      [ ] Tennis Court                      [X] Trash Chute/Enclosure(s) (4)

[X] Other: Jacuzzi adjacent to swimming pool and structure of mailboxes.

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

[X] 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):

According to that certain report dated May 24, 2002 prepared by Kai Hawaii Structural and Forensic Engineers ("Structural Report"), that certain report dated May 8, 2002 prepared by Albert Chong Associates, Inc. ("Electrical Report"), and that certain report dated May 2002 prepared by Mechanical Enterprises, Inc. ("Mechanical Report"), the structural components, and mechanical and electrical installations of the Project appear to be functioning properly and are in satisfactory to good condition, consistent with their age. Neither the architect nor the Developer makes any representations as to the expected useful life of such structural components, and mechanical and electrical installations. The Structural Report, Electrical Report and Mechanical Report are attached hereto as Exhibit "M" hereto.

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   F  .

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 G\*. Note: The limited common elements shall be the sole responsibility of the owner(s) of the apartments to which such limited common element are appurtenant.

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 E.

as follows:

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

Exhibit H describes the encumbrances against the title contained in the title report dated July 30, 2002, and issued by Old Republic Title & Escrow of Hawaii, Ltd.

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.

Type of Lien

Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed **Prior to Conveyance**

The Developer's interest is subject to that certain Mortgage dated January 3, 2002 in favor of Bank of Hawaii, a Hawaii corporation, recorded at the Bureau of Conveyances for the State of Hawaii as Document No. 2002-004677, and related collateral assignment instruments and UCC-1 financing statements, as assured by Developer pursuant to Assumption Agreement, Consent and Release by Lender dated July 9, 2002, recorded at said Bureau as Document No. 2002-124798. Said Mortgage shall be partially released (as well as any other mortgage liens that may be placed on the property by the Developer), as to the particular apartment being conveyed, prior to the transfer of title to apartment buyers. In the event of Developer's default, buyer's interests may be terminated by the lender; however, buyers will receive a refund of deposits.

F. Construction Warranties:

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

1. Building and Other Improvements:

None

2. Appliances:

Developer will attempt to assign any manufacturer's warranties covering appliances and furnishings to buyers at closing. There are no Developer's warranties with regard to appliances and furnishings.

Note (as to 1 and 2 above): Except as provided above, Developer disclaims any implied warranty of habitability, any implied warranty of merchantability, any implied warranty of fitness for a particular purpose or use, any implied warranty of workmanship and any other express or implied warranties, with respect to the apartments, the project, the common elements thereof, or as to any appliances and furnishings contained within the apartments or the project.

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

This is a conversion project and therefore, the structures to be converted to condominium status are already in existence. The buildings in the Project were completed in 1982.

H. **Project Phases:**

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

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



## V. MISCELLANEOUS

### A. Sales Documents Filed With the Real Estate Commission:

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

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit J contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement June 28, 2002.  
Exhibit K contains a summary of the pertinent provisions of the escrow agreement.
- Other Apartment Deed. Exhibit L contains a summary of the pertinent provisions of the apartment deed.

### 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:

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) House Rules, if any.
  - E) Condominium Map, as amended.
  - F) Escrow Agreement.
  - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
  - H) Other: \_\_\_\_\_

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

This Public Report is a part of Registration No. 4901 filed with the Real Estate Commission on July 15, 2002.

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- 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.

HALE 'O MAHI, LLC, a Virginia limited liability company

By BAY WEST KONA, LLC, a Virginia limited liability company  
Jonathan McManus  
Its Manager

By Craig J. Vallely  
Craig J. Vallely  
Its Manager

6-28-07  
Date

Craig J. Vallely, Manager  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii  
Planning Department, County of Hawaii

*\* 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.*

**EXHIBIT "A"**

**RIGHTS RESERVED BY DEVELOPER**

Among other rights, the Developer will have the following reserved rights with respect to the Project which are more particularly set forth in the Declaration.

A. **RESERVED RIGHT TO GRANT EASEMENTS.** This right is set forth at Paragraph 20. of the Condominium Declaration, as amended. The Developer will have, among other things, the right until December 31, 2022, to grant easements over the common elements of the Condominium.

B. **RESERVED RIGHT TO SUBDIVIDE AND CONSOLIDATE APARTMENTS.** This right is set forth at Paragraph 21. of the Condominium Declaration, as amended. The Developer will have, among other things, the right until December 31, 2022, to change the floor plan of any Apartment which it owns so long as the common interest appurtenant to the Apartment does not change; subdivide any Apartment which it owns at any time to create two (2) or more Apartments so long as the total common interest appurtenant to the newly-created Apartments are equal to the common interest appurtenant to the original Apartment; convert the status of certain portions of an existing Apartment to common element status to facilitate the subdivision so long as the total common interest appurtenant to the newly-created Apartment(s) equal the common interest appurtenant to the original Apartment; and consolidate two (2) or more Apartments which it owns and convert any area between Apartments to Apartment status.

C. **RESERVED RIGHT TO MODIFY PROJECT TO COMPLY WITH LAW.** This right is set forth at Paragraph 23. of the Condominium Declaration, as amended. The Developer will have the right until December 31, 2022 to accomplish all modifications to Apartments and common elements in the Condominium to ensure full compliance by the Condominium, and the Condominium Association with laws which apply to the Condominium, including the Fair Housing Act, as amended, 42 U.S.C. §§3601 *et seq.*, including all rules and regulations adopted under it, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 *et seq.*, including all rules and regulations adopted under it.

D. **RESERVED RIGHT TO REDESIGNATE LIMITED COMMON ELEMENTS AS APPURTENANT TO OTHER APARTMENTS.** This right is set forth at Paragraph 24. of the Condominium Declaration, as amended. The Developer will have, among other things, the right until December 31, 2022, to change or amend the Condominium Declaration to designate all or a portion of certain limited common elements appurtenant to an Apartment owned by the Developer, as appurtenances to another Apartment or Apartments owned by the Developer.

E. **RESERVED RIGHT TO RECHARACTERIZE LIMITED COMMON ELEMENTS.** This right is set forth at Paragraph 22. of the Condominium Declaration, as amended. The Developer will have the right until December 31, 2022, to amend the Condominium Declaration to recharacterize certain limited common elements as may be appurtenant to an apartment owned by the Developer as being common elements of the Project.

F. **RESERVED RIGHT TO CONSOLIDATE AND RESUBDIVIDE THE LAND.** This right is set forth at Paragraph 25. of the Condominium Declaration, as amended. The Developer will have the right until December 31, 2022 to amend the Condominium Declaration, to enter into any agreements and to do all things necessary and convenient to effect the consolidation and resubdivision of land underlying the Condominium.

G. **RECALCULATION OF COMMON INTERESTS.** It may be necessary to recalculate the common interests appurtenant to the Apartments in the Condominium upon the exercise of certain of Developer's reserved rights set forth above. The method by which the common interests will be recalculated are set forth in Paragraph 21. of the Condominium Declaration, as amended.

H. **RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.** This right is set forth in Paragraph 26. of the Condominium Declaration. The Developer will have the right until December 31, 2022 to conduct extensive sales activities at the Project and from any Apartment owned by Developer.

I. **ASSIGNMENT OF RESERVED RIGHTS.** Pursuant to Paragraph 27. of the Condominium Declaration, as amended, the rights reserved by the Developer are fully assignable.

Each and every party acquiring an interest in the Project, by such acquisition, consents to Developer's exercise of its reserved rights and to the execution, delivery and recording (if necessary) of any and all documents necessary to effect these rights, including any amendment or amendments of the Declaration and the Condominium Map; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns such party's attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and do such other things on his behalf, which grant of such power, being coupled with an interest is irrevocable for the term of these reserved rights, and shall not be affected by the disability of such party or parties.

**EXHIBIT "B"**

**SCHEDULE AND DESCRIPTION OF BUILDINGS**

The Project is comprised of five (5) three-story buildings designated as Buildings 1 through 5, all of which are constructed primarily of concrete, steel, wood and glass. There is also an administrative building adjacent to a swimming pool and jacuzzi.

Buildings 1, 2, & 4 contain eighteen (18) Apartments each, Building 3 contains seventeen (17) Apartments and Building 5 contains twenty four (24) Apartments.

## **EXHIBIT "C"**

### **BOUNDARIES OF EACH APARTMENT**

The Apartments consist of spaces within the perimeter and party walls, floors and ceilings of each of the 95 Apartments of the Project. 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, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust or air conditioning running through or otherwise located within such apartment which are utilized for or serve more than one apartment and any mechanical, electrical and air conditioning equipment originally installed and located within such apartment utilized for or serving 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, shutters (if any), panels, doors and door frames along its perimeter; any mechanical, electrical and air conditioning equipment originally installed and located within such apartment utilized for or serving only such apartment; and all of the fixtures and appliances originally installed therein.

**EXHIBIT "D"**

**PERMITTED ALTERATIONS TO APARTMENTS**

A. **GENERAL PROVISIONS.** Except as otherwise expressly provided in the Condominium Declaration to the contrary, restoration or replacement of the Project or any portion thereof or construction of any additional improvement or structural alteration or addition to any improvement, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association or any Owner only pursuant to an amendment of the Condominium Declaration in accordance with Paragraph 21. thereof, duly executed pursuant to the provisions thereof, accompanied by the written consent of the holders of all mortgage liens affecting any of the Apartments involved, and in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such restoration, replacement or construction, the Association or Owner, as the case shall be, shall duly record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

B. **ADDITIONS OR ALTERATIONS SOLELY WITHIN AN APARTMENT OR LIMITED COMMON ELEMENT.** Notwithstanding any other provision in the Condominium Declaration to the contrary, the owner of any apartment may make any alterations or additions within any apartment and the owner of any two or more apartments separated by a common element which is a wall may alter or remove all or portions of the intervening wall, if the structural integrity of the building is not thereby affected and if the finish of the common element then remaining is then restored to a condition substantially comparable to that of the common element prior to such alterations. Such alterations or additions within any apartment or apartments shall require only the written approval thereof, including the apartment owner's plans therefore, by the holders of first mortgage liens affecting such apartments (if the lien holders require such approval), by the appropriate agencies of the State of Hawaii and the County of Hawaii if such agencies so require, by the Board of Directors of the Association (which approval shall not be unreasonably or arbitrarily withheld or delayed), and by all other apartment owners thereby directly affected (as determined in a reasonable manner by the Board of Directors of the Association). Prior to the termination of the common ownership of any such adjacent apartments, if the intervening wall shall have been altered or removed pursuant to the foregoing provisions and any entry to hallways sealed, the owner of such apartments shall be obligated to restore such intervening wall and hallway entries to substantially the same condition in which the same existed prior to such alteration or removal.

C. **APARTMENT OWNERS TO EXECUTE AMENDMENT DOCUMENTS IN CERTAIN CASES.** In the event that any change or alteration of an Apartment pursuant to and in compliance with Paragraph 19. of the Condominium Declaration, as amended, shall alter the depiction of the particular Apartment on the Condominium Map or the description thereof in the Declaration, then the Owner of such Apartment shall amend the Condominium Declaration and/or the Condominium Map to set forth such approved change or alteration, which amendment(s) may be executed by the Owner of the affected Apartment or Apartments and by no other party, and such shall become effective upon the recordation thereof at the Bureau of Conveyances for the State of Hawaii. The provisions of Paragraph 19. of the Condominium Declaration notwithstanding, such amendment shall not require the consent or joinder of the Owner of any other Apartment or any other person or entity, other than any mortgagee of such Apartment or Apartments which are changed or altered. Every Owner and all holders of liens affecting any of the Apartments of the Project and each and every other party acquiring an interest in the Project or any part thereof, by acquiring such Apartment, lien or other interest, consents to and agrees that he shall, if required by law or by any such Owner who shall have changed or altered an Apartment as aforesaid, join in, consent to, execute, deliver and record all instruments and documents necessary or desirable to effect the amendment of the Condominium Declaration and/or the Condominium Map; and appoints such Owner and his assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party.

**EXHIBIT "E"**

**Apartment Descriptions**

There are twenty-one (21) apartment types ("Types"): 1, 2, 2R, 3, 4, 5, 6, 7, 7R, 8, 9, 10, 11, 11R, 12, 13, 14, 15, 16, 16R and 17.

Apartments 1-301, 1-302, 1-303, 1-304, 1-305, 1-306, 2-301, 2-302, 2-303, 2-304, 2-305, 2-306, 3-301, 3-302, 3-303, 3-304, 3-305, 3-306, 4-301, 4-302, 4-303, 4-304, 4-305, 4-306, 5-301, 5-302, 5-303, 5-304, 5-305, 5-306, 5-307 and 5-308 are split-level apartments located on the third floor of each building, each containing a living/dining room, kitchen, bathroom and bedroom, on the first level of the apartment, and a living room or master bedroom and bathroom on the mezzanine level, which is connected to the first level by an internal stairway. Apartment type 3-205 is a two (2) floor plus one (1) split level apartment located on the second floor of building 3, which contains a living/dining room, bathroom and bedroom on the first level of the apartment and a living/dining room, bathroom, bedroom and kitchen on the second level of the apartment and a living room or master bedroom and bathroom on the mezzanine level, which is connected to the first and second levels by an internal stairway.

All remaining apartments are one (1) floor apartments consisting of a living/dining room, kitchen, bathroom and bedroom.

Types 2R, 7R, 11R and 16R are identical to, but reverse layouts of, Types 2, 7, 11 and 16 respectively.

The common interest attributable to each apartment was calculated by dividing the approximate net square footage of each individual apartment by the total net square footage of all apartments within the Project. In order to permit the common interest for all apartments to equal exactly one hundred percent (100%), the common interest attributable to Apartment No. 3-205 was increased by .00013%.

The floor areas set forth below are all approximates.

Apartment Number	Apartment Type	Net Living Area	Net Lanai Area	Total Net Area	Parking	Storage Locker	Common Interest
1-101	3	677	99	776	1-101	1-101	0.9317%
1-102	2R	663	99	762	1-102	1-102	0.9124%
1-103	2	663	99	762	1-103	1-103	0.9124%
1-104	2R	663	99	762	1-104	1-104	0.9124%
1-105	2	663	99	762	1-105	1-105	0.9124%
1-106	1	677	99	776	1-106	1-106	0.9317%
1-201	5	714	104	818	1-201	1-201	0.9826%
1-202	2R	663	99	762	1-202	1-202	0.9124%
1-203	2	663	99	762	1-203	1-203	0.9124%
1-204	2R	663	99	762	1-204	1-204	0.9124%
1-205	2	663	99	762	1-205	1-205	0.9124%
1-206	4	714	103	817	1-206	1-206	0.9826%
1-301	8	964	104	1068	1-301	1-301	1.3267%
1-302	7R	908	99	1007	1-302	1-302	1.2496%
1-303	7	908	99	1007	1-303	1-303	1.2496%
1-304	7R	908	99	1007	1-304	1-304	1.2496%
1-305	7	908	99	1007	1-305	1-305	1.2496%
1-306	6	964	103	1067	1-306	1-306	1.3267%
2-101	3	677	99	776	2-101	2-101	0.9317%
2-102	2R	663	99	762	2-102	2-102	0.9124%
2-103	2	663	99	762	2-103	2-103	0.9124%
2-104	2R	663	99	762	2-104	2-104	0.9124%

Apartment Number	Apartment Type	Net Living Area	Net Lanai Area	Total Net Area	Parking	Storage Locker	Common Interest
2-105	2	663	99	762	2-105	2-105	0.9124%
2-106	1	677	99	776	2-106	2-106	0.9317%
2-201	5	714	104	818	2-201	2-201	0.9826%
2-202	2R	663	99	762	2-202	2-202	0.9124%
2-203	2	663	99	762	2-203	2-203	0.9124%
2-204	2R	663	99	762	2-204	2-204	0.9124%
2-205	2	663	99	762	2-205	2-205	0.9124%
2-206	4	714	103	817	2-206	2-206	0.9826%
2-301	8	964	104	1068	2-301	2-301	1.3267%
2-302	7R	908	99	1007	2-302	2-302	1.2496%
2-303	7	908	99	1007	2-303	2-303	1.2496%
2-304	7R	908	99	1007	2-304	2-304	1.2496%
2-305	7	908	99	1007	2-305	2-305	1.2496%
2-306	6	964	103	1067	2-306	2-306	1.3267%
3-101	3	677	99	776	3-101	3-101	0.9317%
3-102	2R	663	99	762	3-102	3-102	0.9124%
3-103	2	663	99	762	3-103	3-103	0.9124%
3-104	2R	663	99	762	3-104	3-104	0.9124%
3-105	2	663	99	762	3-105	3-105	0.9124%
3-106	1	677	99	776	3-106	3-106	0.9317%
3-201	5	714	104	818	3-201	3-201	0.9826%
3-202	2R	663	99	762	3-202	3-202	0.9124%
3-203	2	663	99	762	3-203	3-203	0.9124%
3-204	2R	663	99	762	3-204	3-204	0.9124%
3-205	9	1540	198	1738	3-205 & 3-205A	3-205 & 3-205A	2.1207%
3-206	4	714	103	817	3-206	3-206	0.9826%
3-301	8	964	104	1068	3-301	3-301	1.3267%
3-302	7R	908	99	1007	3-302	3-302	1.2496%
3-303	7	908	99	1007	3-303	3-303	1.2496%
3-304	7R	908	99	1007	3-304	3-304	1.2496%
3-306	6	964	103	1067	3-306	3-306	1.3267%
4-101	12	677	99	776	4-101	n/a	0.9317%
4-102	11R	663	99	762	4-102	n/a	0.9124%
4-103	11	663	99	762	4-103	n/a	0.9124%
4-104	11R	663	99	762	4-104	n/a	0.9124%
4-105	11	663	99	762	4-105	n/a	0.9124%
4-106	10	677	99	776	4-106	n/a	0.9317%
4-201	14	714	103	817	4-201	n/a	0.9826%
4-202	11R	663	99	762	4-202	n/a	0.9124%
4-203	11	663	99	762	4-203	n/a	0.9124%
4-204	11R	663	99	762	4-204	n/a	0.9124%
4-205	11	663	99	762	4-205	n/a	0.9124%
4-206	13	712	99	811	4-206	n/a	0.9799%
4-301	17	962	99	1061	4-301	n/a	1.3239%
4-302	16R	908	99	1007	4-302	n/a	1.2496%
4-303	16	908	99	1007	4-303	n/a	1.2496%
4-304	16R	908	99	1007	4-304	n/a	1.2496%
4-305	16	908	99	1007	4-305	n/a	1.2496%
4-306	15	964	103	1067	4-306	n/a	1.3267%
5-101	3	677	99	776	5-101	5-101	0.9317%

**EXHIBIT "E"**  
**(Page 2 of 3)**

Apartment Number	Apartment Type	Net Living Area	Net Lanai Area	Total Net Area	Parking	Storage Locker	Common Interest
5-102	2R	663	99	762	5-102	5-102	0.9124%
5-103	2	663	99	762	5-103	5-103	0.9124%
5-104	2R	663	99	762	5-104	5-104	0.9124%
5-105	2	663	99	762	5-105	5-105	0.9124%
5-106	2R	663	99	762	5-106	5-106	0.9124%
5-107	2	663	99	762	5-107	5-107	0.9124%
5-108	1	677	99	776	5-108	5-108	0.9317%
5-201	5	714	104	818	5-201	5-201	0.9826%
5-202	2R	663	99	762	5-202	5-202	0.9124%
5-203	2	663	99	762	5-203	5-203	0.9124%
5-204	2R	663	99	762	5-204	5-204	0.9124%
5-205	2	663	99	762	5-205	5-205	0.9124%
5-206	2R	663	99	762	5-206	5-206	0.9124%
5-207	2	663	99	762	5-207	5-207	0.9124%
5-208	4	714	103	817	5-208	5-208	0.9826%
5-301	8	964	104	1068	5-301	5-301	1.3267%
5-302	7R	908	99	1007	5-302	5-302	1.2496%
5-303	7	908	99	1007	5-303	5-303	1.2496%
5-304	7R	908	99	1007	5-304	5-304	1.2496%
5-305	7	908	99	1007	5-305	5-305	1.2496%
5-306	7R	908	99	1007	5-306	5-306	1.2496%
5-307	7	908	99	1007	5-307	5-307	1.2496%
5-308	6	964	103	1067	5-308	5-308	1.3267%
		72663	9584	82247			100.0000%

**EXHIBIT "E"**  
**(Page 3 of 3)**

**EXHIBIT "F"**

**COMMON ELEMENTS**

A. **COMMON ELEMENTS.** One freehold estate is hereby designated in all remaining portions of the Project, herein called the "Common Elements," including specifically but not limited to:

1. The Land in fee simple;
2. All foundations, columns, girders, beams, floor slabs, supports, unfinished perimeter, party and load-bearing walls and partitions, roofs, stairways, walkways, corridors, ramps, fences (if any), entrances, entry ways and exits of all residential buildings of the Project;
3. All yards, grounds, planting areas, planters, walkways, walkway railings, landscaping, refuse facilities, gardens, the recreation center and swimming pool;
4. All roads, driveways, driveway ramps and parking areas;
5. All ducts, vents, shafts, sewer lines, sewage treatment equipment and facilities (if any), electrical equipment, pipes, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, water, gas (if any), cablevision (if any), air conditioning, sewer, refuse, telephone, and radio and television signal distribution;
6. Any and all apparatus and installations existing for common use, such as tanks, pumps, motors, fans, compressors and, in general, all other installations and apparatus existing for common use;
7. All mechanical, electrical and air conditioning equipment originally installed and located within any apartment or located elsewhere in the Project utilized for or serving more than one apartment;
8. Twenty-three (23) uncovered parking stalls located in the Project, designated by the letter "G" on the Condominium Map, for use by the tenants and guests of all apartment owners, and the resident manager, if any, Managing Agent and other employees of the Association, provided that the Association may impose reasonable rules and regulations with respect to the use of such parking stalls;
9. Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use.

## **EXHIBIT "G"**

### **LIMITED COMMON ELEMENTS**

Certain parts of the Common Elements, herein called the "Limited Common Elements," are hereby designated, 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 as set forth in the Condominium Declaration. The costs and expenses of every description pertaining to the Limited Common Elements, including, but not limited to, the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements, shall be charged to the Owner of the Apartment to which the Limited Common Element shall be appurtenant, and if there is more than one Apartment to which the Limited Common Element shall be appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Apartments, unless a different method is adopted pursuant to the Condominium Declaration. Each Apartment in the Project has appurtenant to it the following Limited Common Elements:

1. Each apartment shall have appurtenant thereto an exclusive right to use the parking stalls or stalls assigned to such apartment as set forth in said Exhibit B.

2. Each apartment shall have appurtenant thereto as a limited common element, an exclusive right to use one storage locker bearing the same number as the apartment and located in the parking area on the ground floor of one of Buildings 1, 2, 3 or 5 as shown on the Condominium Map and Exhibit "B" attached hereto. The apartment to which the storage locker is appurtenant as designated by this Declaration and the Condominium Map shall be the only apartment entitled to use such storage locker. The Developer reserves the right to redesignate at any time up to and including closing of the initial conveyance of an apartment, the storage locker which shall be appurtenant to any apartment. For access purposes, each apartment shall have appurtenant thereto, a non-exclusive right of ingress to, and egress from, the storage locker appurtenant to such apartment over and across the parking stalls located in the area in which the storage locker is situated. The apartments in Building 4 do not have any storage lockers appurtenant thereto as limited common elements.

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

4. Each apartment shall have appurtenant thereto as a limited common element, a lanai, as shown on the Condominium Map.

5. Each apartment shall have appurtenant thereto, the exclusive right to use a mailbox. The Developer reserves the right to redesignate at any time up to and including the closing of the initial conveyance of the apartment, the mailbox which shall be appurtenant to any apartment.

**EXHIBIT "H"**

**ENCUMBRANCES AGAINST TITLE**

1. Real Property Taxes which may be due and owing. Reference is made to the Real Property Tax Office, County of Hawaii.
2. Title to all minerals and metallic mines reserved to the State of Hawaii.
3. --AS TO PARCEL A:-

Grant in favor of the County of Hawaii, dated March 11, 1971, recorded at the Bureau of Conveyances of the State of Hawaii in Book 7472 at Page 382; granting an easement to construct, reconstruct, install, maintain, operate, repair and remove an underground sewer pipe line or pipe lines through, under and across the following described parcel of land:

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant No. 1854 to Ipunui) situate, lying and being at Lanihau 2<sup>nd</sup>, District of North Kona, Island and County of Hawaii, State of Hawaii, being Parcel 8, and thus bounded and described:

"Beginning at the Northeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NORTH MERIDIAN (KAILUA)" being 129.79 feet South and 639.47 feet East, thence running by azimuths measured clockwise from true South:

- |    |      |         |        |  |
|----|------|---------|--------|--|
| 1. | 59°  | 03'     | 16.24  | feet along Lot 3-B of Land Court Application 1787;   |
| 2. | 126° | 30'     | 32.52  | feet along Lot 5, Grant 1854 to Ipunui;  |
| 3. | 100° | 05'     | 238.88 | feet along Lot 5, Grant 1854 to Ipunui;  |
| 4. | 230° | 55' 30" | 19.83  | feet along Grant 1861 to Kahiamoe;   |
| 5. | 280° | 05'     | 229.43 | feet along Lot 5, Grant 1854 to Ipunui;  |
| 6. | 306° | 30'     | 42.27  | feet along Lot 5, Grant 1854 to Ipunui, to the point of beginning and containing an area of 4,073 square feet, more or less or 0.0935 acre, more or less." |

4. --AS TO PARCEL B:-

A perpetual easement in favor of Parcel 6 conveyed to Marguerite Lima, as disclosed in that certain Limited Warranty Deed dated September 20, 2000, recorded at said Bureau as Document No. 2000-133331.

5. Condominium Map No. 849, as amended, filed at said Bureau.
6. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, easements and by laws set forth in that certain Declaration of Horizontal Property Regime dated April 30, 1982, recorded at said Bureau on July 6, 1982 in Book 16448 at Page 248, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the

extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Amended and Restated Declaration of Condominium Property Regime of Kailua Bay Resort dated October 7, 1991, recorded at said Bureau on October 19, 1991 as Document No. 91-138206, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status or national origin unless and to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code, or (b) relates to handicap but does not discriminate against handicapped persons.

First Amendment to Amended and Restated Declaration of Condominium Property Regime of Kailua Bay Resort dated June 28, 2002, recorded at said Bureau as Document No. 2002-131714.

Liens and charges for upkeep and maintenance as provided in the above-mentioned Covenants, Conditions and Restrictions, if any, where no notice thereof appears on record.

For information regarding the current status of said liens and/or assessments

Contact: Association of Apartment Owners of Kailua Bay Resort

7. By-Laws of the Association of Apartment Owners of Kailua Bay Resort dated April 30, 1982, recorded at said Bureau on July 6, 1982 in Book 16448 at Page 277.

Amended and Restated By-Laws of the Association of Apartment Owners of Kailua Bay Resort dated October 7, 1991, recorded at said Bureau on October 10, 1991 as Document No. 91-138207.

First Amendment to Amended and Restated By-Laws of the Association of Apartment Owners of Kailua Bay Resort dated June 28, 2002, recorded at said Bureau as Document No. 2002-131715.

8. Grant in favor of Big Time Development, a registered Hawaii general partnership, dated March 5, 1982 recorded at said Bureau in Book 16562 at Page 512; granting a perpetual, non-exclusive 30-foot wide easement for ingress and egress purposes.
9. Grant in favor of Hawaii Electric Light Company, Inc., dated January 22, 1982 recorded at said Bureau in Book 16587 at Page 247; granting a perpetual, right and easement for utility purposes.
10. Any unrecorded or unfilled leases and any liens, charges or exceptions against any lessees or tenants named therein.
11. Term, provisions and conditions as contained in that certain Apartment Deed and the effect of any failure to comply with such term, provisions and conditions.
12. Any and all easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, as said Declaration may be amended from time to time in accordance with the law and/or in the Apartment Deed, and/or as delineated on said Condominium Map.
13. Mortgage dated January 3, 2002, made by Bay West Kailua Bay, LLC, a Virginia limited liability company, as Mortgagor, and Bank of Hawaii, a Hawaii corporation, as Mortgagee, recorded at said Bureau as Document No. 2002-004677.

Assumption Agreement, Consent and Release by Lender dated July 9, 2002, made by and between Hale 'O Mahi, LLC, a Virginia limited liability company and Bay West Kailua Bay, LLC, a Virginia limited liability company and Bank of Hawaii, a Hawaii corporation, recorded at said Bureau as Document No. 2002-124798.

14. Assignment of Rents dated January 3, 2002, made by and between Bay West Kailua Bay, LLC, a Virginia limited liability company, as Assignor, and Bank of Hawaii, a Hawaii corporation, as Assignee, recorded at said Bureau as Document No. 2002-004678.

Assumption Agreement, Consent and Release by Lender dated July 9, 2002, made by and between Hale 'O Mahi, LLC, a Virginia limited liability company and Bay West Kailua Bay, LLC, a Virginia limited liability company and Bank of Hawaii, a Hawaii corporation, recorded at said Bureau as Document No. 2002-124798.

15. Assignment of Sales Contracts and Sales Proceeds dated January 3, 2002, made by and between Bay West Kailua Bay, LLC, a Virginia limited liability company, as Assignor, and Bank of Hawaii, a Hawaii corporation, as Assignee, recorded at said Bureau as Document No. 2002-004679.

Assumption Agreement, Consent and Release by Lender dated July 9, 2002, made by and between Hale 'O Mahi, LLC, a Virginia limited liability company and Bay West Kailua Bay, LLC, a Virginia limited liability company and Bank of Hawaii, a Hawaii corporation, recorded at said Bureau as Document No. 2002-124798.

16. Financing Statement made by Hale 'O Mahi, LLC, as Debtor, in favor of Bank of Hawaii, as Secured Party, recorded at said Bureau on July 17, 2002 as Document No. 2002-124799.

17. Mortgage made by Hale 'O Mahi, LLC, a Virginia limited liability company, as Mortgagor, in favor of Bay West Kailua Bay, LLC, a Virginia limited liability company, and Old Republic Exchange Facilitator Company, a California corporation, as Mortgagee, recorded at said Bureau on July 17, 2002 as Document No. 2002-124800.

EXHIBIT "I"

C:\Data\Exec Program & Files\2002\Budget\2002\_Budget Report



PROJECT NUMBER 526

MONTHLY BUDGET ANALYSIS FOR: Kailua Bay Resort

Approved budget to be effective on: July

Prepared By: Susan Gregg - GM

		Proposed	Approved
		Budget	Budget
<b>REVENUE:</b>		0.0%	0.0%
40100	FEES, DUES & RECEIPTS	22,609	0
40100	ASSESSMENTS	0	0
40100&40200	TAXABLE INCOME	163	0
<b>TOTAL REVENUES</b>		<b>\$22,772</b>	<b>\$0</b>
<b>EXPENSES:</b>			
<b>OPERATING EXPENSES:</b>			
70100	WAGES AND SALARIES	2,642	0
70200	EMPLOYEE BENEFITS	625	0
70300	ADMINISTRATIVE COSTS	524	0
70320	PETTY CASH REIMBURSEMENTS	0	0
70350	BAD DEBT EXPENSE	0	0
70700	MANAGEMENT SERVICES	0	0
70800	PROPERTY MANAGEMENT	1,350	0
70900	LEGAL	100	0
71100	OTHER PROFESSIONAL	100	0
71200	ELECTRICITY	1,230	0
71300	WATER	2,200	0
71360	SEWER	3,200	0
71400	TELEPHONE	125	0
71500	GAS	0	0
71800	TELEVISION	0	0
71700	EXTERMINATING	175	0
71800	RUBBISH REMOVAL	900	0
71900	SECURITY	0	0
72000	CUSTODIAL	0	0
72100	MAINTENANCE	3,385	0
72120	SUPPLIES	0	0
72150	ELEVATOR	0	0
72200	AMENITIES	276	0
72300	VEHICLE COSTS	30	0
72500	TAXES	25	0
72800	FIXED EXPENSE	0	0
72700	INSURANCE	3,130	0
<b>TOTAL OPERATING EXPENSES:</b>		<b>\$20,216</b>	<b>\$0</b>
<b>NON-OPERATING EXPENSES:</b>			
73000	CAPITAL EXPENSE	1,764	0
78000	DEPRECIATION EXPENSE	0	0
<b>TOTAL NON-OPERATING EXPENSES:</b>		<b>\$1,764</b>	<b>\$0</b>
<b>TOTAL EXPENSES</b>		<b>\$21,980</b>	<b>\$0</b>
<b>NET INCOME</b>		<b>\$792</b>	<b>\$0</b>
<b>RESERVE FUND TRANSFERS:</b>			
37200-400	TRANSFER CLEARING-FROM RESERVES	1,764	0
37200-799	TRANSFER CLEARING-TO RESERVES	2,556	0
<b>NET RESERVE TRANSFERS</b>		<b>(\$792)</b>	<b>\$0</b>
<b>NET INCOME &amp; NET RESERVE TRANSFERS</b>		<b>\$0</b>	<b>\$0</b>

ORIGINAL

NOTE: The budgeted revenues and expenses are based on accrual-basis accounting.



PROJECT NUMBER 526

MAINTENANCE FEE ANALYSIS FOR:

Kailua Bay Resort

Approved budget to be effective on: AOAO Conversion

Prepared By: Susan Gregg - CMI

Approved Date: \_\_\_\_\_

Unit Type	PerCent Common Interest	Number Of Units		Maint Fee Per Unit	Total Maint Fee (Unit Type)	Other Fees Per Unit	Special Assess Per Unit	Total Spc Assess (Unit Type)	Total Amount Per Unit
11R, 11, 2, 2R	0.912400	43	39.23	206.28	8,870.23	-	-	-	206.28
10,3,1,12	0.931700	10	9.32	210.65	2,106.48	-	-	-	210.65
14,5,4	0.982600	9	8.84	222.16	1,999.40	-	-	-	222.16
15,6, 8	1.326700	9	11.94	299.95	2,699.58	-	-	-	299.95
16R, 16, 7R, 7	1.249600	21	26.24	282.52	5,932.96	-	-	-	282.52
9,	2.120700	1	2.12	479.47	479.47	-	-	-	479.47
13,	0.979900	1	0.98	221.55	221.55	-	-	-	221.55
17,	1.323900	1	1.32	299.32	299.32	-	-	-	299.32
				-	-	-	-	-	-
<b>TOTALS</b>	<b>100.0000%</b>	<b>95</b>			<b>22,609.00</b>	-	-	-	

## Kailua Bay Resort

### ANALYSIS DEFINITION REPORT

Analysis3 - 30 years - \$50,000 beg bal

#### Project Information

Project: Kailua Bay Resort  
Address: 75-5669 Kuakini Highway  
City: Kailua-Kona  
State: HI  
Zip: 96740-0000

Project Date: 1/01/1982  
Analysis Date: 1/01/2002  
Number of Phases: 1  
Number of Units: 95  
Number of Models: 1

#### Analysis Parameters

Rate of Inflation: 2.5%  
Rate of Return on Investment: 3%  
Beginning Funds: \$50,000.00  
Loan/Special Assessment: No

Deferred Expenditures: No  
Contingency: 0%  
Contingency Time: None

#### Annual Contribution Factors

		2012:	5%	2022:	5%
2003:	3%	2013:	5%	2023:	5%
2004:	4%	2014:	5%	2024:	5%
2005:	5%	2015:	5%	2025:	5%
2006:	5%	2016:	5%	2026:	5%
2007:	5%	2017:	5%	2027:	5%
2008:	5%	2018:	5%	2028:	5%
2009:	5%	2019:	5%	2029:	5%
2010:	5%	2020:	5%	2030:	5%
2011:	5%	2021:	5%	2031:	5%

#### Additional Analysis Information

\$50,000 Beginning Balance funded by current owner. This analysis is run for a period of 30 years which exceeds the State requirement. A 3% contribution factor is added the in 2003, A 4% contribution factor in 2004 and 5% contribution factors in the subsequent years

## Kailua Bay Resort

### CASHFLOW PERCENT FUNDED SUMMARY PROJECTIONS

Analysis 3 - 30 years - \$50,000 beg bal

Year	Beginning Balance	Contribution	Average/ Unit/Mo	Interest Earned	Expenditures	Ending Balance
2002	50,000.00	30,674.00	26.91	1,661.54	21,169.00	61,166.54
2003	61,166.54	31,594.22	27.71	2,285.94	2,717.00	92,339.70
2004	92,339.70	32,857.99	28.82	3,347.46	0.00	128,545.15
2005	128,545.15	34,500.89	30.26	4,347.88	4,200.00	163,193.92
2006	163,193.92	36,225.93	31.78	5,416.80	4,636.00	200,200.65
2007	200,200.65	38,037.23	33.37	5,957.12	24,855.00	219,340.00
2008	219,340.00	39,939.09	35.03	5,663.18	76,022.00	188,920.27
2009	188,920.27	41,936.04	36.79	1,759.75	153,675.00	78,941.06
2010	78,941.06	44,032.84	38.63	3,123.22	0.00	126,097.12
2011	126,097.12	46,234.48	40.56	0.02	172,324.00	7.62
2012	7.62	48,548.20	42.58	238.64	22,842.00	25,950.46
2013	25,950.46	50,973.51	44.71	1,519.49	3,478.00	74,965.46
2014	74,965.46	53,522.19	46.95	1,297.03	61,180.00	68,604.68
2015	68,604.68	56,198.30	49.30	2,588.93	13,789.00	113,602.91
2016	113,602.91	59,008.22	51.76	4,242.52	5,936.00	170,917.65
2017	170,917.65	61,958.63	54.35	5,318.08	29,480.00	208,714.36
2018	208,714.36	65,056.56	57.07	7,374.53	1,336.00	279,809.45
2019	279,809.45	68,309.39	59.92	9,630.93	0.00	357,749.77
2020	357,749.77	71,724.86	62.92	11,266.10	26,022.00	414,718.73
2021	414,718.73	75,311.10	66.06	5,485.15	276,145.00	219,369.98
2022	219,369.98	79,076.66	69.37	7,364.24	23,442.00	282,368.88

## Kailua Bay Resort

### CASHFLOW PERCENT FUNDED SUMMARY PROJECTIONS

Analysis 3 - 30 years - \$50,000 beg bal

Year	Beginning Balance	Contribution	Average/ Unit/Mo	Interest Earned	Expenditures	Ending Balance
2023	282,368.88	83,030.49	72.83	9,814.79	4,452.00	370,762.16
2024	370,762.16	87,182.01	76.48	12,549.73	5,166.00	465,327.90
2025	465,327.90	91,541.11	80.30	15,238.51	13,682.00	558,425.52
2026	558,425.52	96,118.17	84.31	17,412.15	37,784.00	634,171.84
2027	634,171.84	100,924.08	88.53	19,892.23	34,582.00	720,406.15
2028	720,406.15	105,970.28	92.96	21,501.26	105,620.00	742,257.69
2029	742,257.69	111,268.79	97.60	16,553.47	258,016.00	612,063.95
2030	612,063.95	116,832.23	102.48	20,532.55	0.00	749,428.73
2031	749,428.73	122,673.84	107.61	16,215.68	282,442.00	605,876.25
<b>Totals:</b>		<b>1,981,259.33</b>		<b>239,608.92</b>	<b>1,664,992.00</b>	

EXHIBIT "F"  
(Page 5 of 5)

**EXHIBIT "J"**

**SUMMARY OF PURCHASE AGREEMENT**

The specimen Kailua Bay Resort Purchase Agreement ("Agreement") contains among others, the following terms and conditions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. The Seller (Developer) has engaged Old Republic Title & Escrow Corporation of Hawaii, Inc. ("Escrow") to handle Purchaser's funds and to close the transaction in accordance with the terms of the Agreement. All payments to be made under the Agreement shall be paid by Purchaser to Escrow pursuant to the Escrow Agreement.

B. The Purchaser specifically acknowledges and agrees that the Condominium Declaration contains reservations of certain rights in favor of Seller, the Association and other owners and contains certain other provisions to which the Purchaser consents.

C. The "Closing Date" shall be the date upon which Seller certifies to the Purchaser in writing that the Apartment is ready for occupancy. All payments shall be due and payable in full on the Closing Date, and, if not paid on said date due to Purchaser's failure to act in a diligent manner in order for said payment to be made on said date, then such nonpayment shall result in a default under the Agreement. If Purchaser, after the delivery by Seller of a copy of the Final Public Report for the Project, either personally or by registered or certified mail with return receipt requested, shall fail to execute an acknowledgement of receipt and waiver of Purchaser's right to cancel the Agreement (or shall fail to give his written approval or acceptance to any material change to the Project as requested by Seller pursuant to the provisions of Hawaii Revised Statutes Section 514A-63, as amended) within thirty (30) days of such receipt, Seller may at its option: (i) cancel the Agreement upon ten (10) days' written notice to Purchaser of such cancellation and upon such cancellation Seller shall cause Escrow to refund to Purchaser all payments previously made by Purchaser without interest; or (ii) elect (by its failure to give said written notice of cancellation) to treat such failure as a deemed acceptance ("Deemed Acceptance") of such Public Report and as a waiver of the right to cancel the Agreement (or as a Deemed Acceptance of such material change, as the case may be). In the event that Purchaser shall close the purchase of the Apartment within the thirty-day period (and prior to the time the Purchaser shall have executed a waiver of the right to cancel or approve of material change), such closing shall also constitute a Deemed Acceptance of the Final Public Report and/or material change.

D. The Purchase Price does not include closing costs which include among other things, the escrow fee, cost of a preliminary title report, cost of preparation of the Apartment Deed, real property tax and other prorations, all acknowledgment fees, conveyance taxes, title insurance, if requested by Purchaser, cost of any lender's title insurance, appraisal fees, costs for drafting of any notes and mortgages, all recording costs or fees, loan fees, credit report costs and all other applicable mortgage costs. Purchaser shall pay a start-up fee and the first two (2) months' maintenance fee in advance.

E. Purchaser agrees that it will not assign the Agreement to anyone. Seller may, without any consent of Purchaser, freely assign Seller's interests therein.

F. Purchaser shall not be entitled to possession of the Apartment as the owner thereof until Purchaser has completed all required payments and has executed all documents relating to the purchase, and Purchaser has performed the remaining terms and conditions of the Agreement which are to be performed as of the Closing.

G. Notices to either party may be delivered personally or mailed.

H. The Purchaser acknowledges that Purchaser has entered into the Agreement without any reference or representation by Seller or any sales person that the Seller, or any managing agent of the Project or anyone else affiliated with the Seller will provide, directly or indirectly, any services relating to the rental or sale or management of the Apartment purchased.

I. The laws of the State of Hawaii shall govern all matters with respect to the Agreement.

J. Purchaser has examined and approved the estimate of monthly maintenance charges for the Property as shown in the Public Report. Purchaser is aware that such amounts are only estimates and may change for reasons beyond the control of Seller, and Purchaser hereby specifically accepts and approves any such changes.

K. If Purchaser is purchasing an Apartment that has been designated by the Seller as an owner-occupant apartment pursuant to Part VI of Chapter 514A of the Hawaii Revised Statutes, as amended, pertaining to sales to owner-occupants, Purchaser shall, upon receiving the Final Public Report for the Project, reaffirm Purchaser's intent to be an owner-occupant. Purchaser's failure to execute the reaffirmation shall constitute a default under the Purchase Agreement.

\* \* \* \* \*

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE PURCHASE AGREEMENT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF PURCHASER'S RIGHTS AND OBLIGATIONS UNDER THE PURCHASE AGREEMENT, PURCHASER MUST REFER TO THE PURCHASE AGREEMENT TO DETERMINE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE PURCHASE AGREEMENT, THE PURCHASE AGREEMENT WILL CONTROL.

## EXHIBIT "K"

### SUMMARY OF ESCROW AGREEMENT

The Kailua Bay Resort Escrow Agreement dated June 28, 2002, contains among others, the following terms and conditions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. When Seller (Developer) shall enter into a purchase agreement for the conveyance of an apartment or other interest in the Project ("Purchase Agreement"), it shall require the payments of deposits due thereunder to be promptly made to Escrow, and shall deliver an executed copy of the Purchase Agreement to Escrow together with the address of the Purchaser. Seller shall also promptly pay over to Escrow all monies (including checks) received by Seller from or on behalf of the Purchasers, including those received on any Purchase Agreement, and all payments made on loan commitments from lending institutions on account of any apartment in the Project, other than funds received from interim financing.

B. Escrow shall receive, deposit and hold in separate escrow accounts and disburse as set forth in the Agreement: (a) all payments received by it under Purchase Agreements, (b) such sums received by it under the Agreement from or for the account of Seller, and (c) all sums received by it from any other source with respect to the Project. Escrow shall not at any time commingle or permit the commingling of any Purchaser's funds with funds belonging to or held for the benefit of Seller. All funds and instruments received from Purchasers or prospective Purchasers shall be held by Escrow in accordance with the provisions contained in Chapter 514A of the Hawaii Revised Statutes. All monies received by Escrow hereunder shall be deposited, within a reasonable time of the receipt by Escrow and in reasonably convenient and practical sums, in a trust fund with a bank, savings and loan or trust company authorized to do business in the State of Hawaii under an escrow arrangement, and shall be held in immediately available funds in accordance with the terms the Agreement.

C. Escrow shall make no disbursements of Purchasers' funds or proceeds from the sale of such apartments (including any payments made on loan commitments from lending institutions), except by way of refunds thereof as provided in the Agreement, until Escrow has received a letter from Seller stating that the Purchasers have signed the required Receipt and Notice of Right to Cancel or are deemed to have receipted for the public reports and to have waived their right to cancel, and stating further that no subsequent events have occurred which would give the Purchasers the right to rescind, the Purchase Agreements have "become effective" and "the requirements of Sections 514A-40 and 514A-63" of the Hawaii Revised Statutes have been met, as said phrases are used in Section 514A-65, Hawaii Revised Statutes, and further that the requirements of Section 514A-62 of the Hawaii Revised Statutes have been met. Further, no disbursements of Purchasers' funds shall be made until the affidavit of intent to become an owner-occupant required by Section 514A-104, Hawaii Revised Statutes, as amended, and approved and issued by the Real Estate Commission pursuant to Section 514A-104.5, Hawaii Revised Statutes, as amended, has been reaffirmed by the prospective owner-occupant of the respective residential unit.

D. Each Purchaser shall be entitled to a return of his or her funds, without interest, and Escrow shall pay such funds to such Purchaser, promptly after request for return by the Purchaser if one of the following has occurred:

(1) Escrow receives a written request from Seller to return to the Purchaser the funds of the Purchaser then being held by Escrow;

(2) Seller notifies Escrow in writing of Seller's exercise of the option to rescind the Purchase Agreement pursuant to any right of rescission stated therein or otherwise available to Seller;

(3) The conditions providing for a refund under Section 514A-62 or under Section 514A-63 of the Hawaii Revised Statutes (as amended on the date upon which the Purchase Agreement becomes binding and effective) have been met, and written notice thereof has been provided to Seller;

(4) Seller and Purchaser request said refund in writing and Purchaser has been unable to

obtain adequate financing, or a commitment for adequate financing, for Purchaser's reserved unit within thirty (30) calendar days following the end of the ten (10) calendar day period in which Seller is limited to selling to owner-occupants;

(5) Seller and Purchaser request said refund in writing and Purchaser desires to cancel the contract on account of hardship circumstances; or

(6) Seller and Purchaser request said refund in writing and Purchaser indicates that Purchaser is unable to become an owner-occupant of such apartment.

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

Upon the cancellation of any Purchase Agreement as specified above, Escrow shall be entitled to a fee commensurate with the amount of work performed, but in no event more than the escrow fee described in the Agreement.

E. If the Purchaser fails to make any payment on or before the due date thereof or if the Purchaser does or fails to do any act which would constitute an event of default under the Purchase Agreement, Seller shall promptly give to such Purchaser and to Escrow, written notice of default. If Purchaser has failed to cure the default after the delivery of notice by Escrow and such default continues after the expiration of any grace period, Escrow shall so advise Seller. If Seller shall thereafter certify in writing to Escrow: (1) that Seller has elected to terminate the Purchase Agreement and has notified the Purchaser, or (2) that Purchaser is otherwise in default, then, and in either event, Escrow, subject to the provisions relating to dispute and conflicting demands set forth in paragraph 14 of the Agreement, shall thereafter treat all funds of the Purchaser paid under such Purchase Agreement, less Escrow's cancellation fee, as funds of Seller and not of the Purchaser. Thereafter, such funds shall be held free of the escrow established by the Agreement and shall be held by Escrow for the account of Seller. Upon written request by Seller, Escrow shall pay such funds to Seller or order and shall return to Seller the Purchase Agreement of such Purchaser and any other documents theretofore delivered to Escrow in connection with the purchase of the apartment specified in such Purchase Agreement shall be returned to the person from whom or entity from which such documents were received.

\* \* \* \* \*

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE ESCROW AGREEMENT. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE ESCROW AGREEMENT, PURCHASER MUST REFER TO THE ESCROW AGREEMENT TO DETERMINE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE ESCROW AGREEMENT, THE ESCROW AGREEMENT WILL CONTROL.

**EXHIBIT "L"**

**SUMMARY OF DEED FORM**

The specimen Kailua Bay Resort Apartment Deed, Encumbrances and Reservations of Rights ("Deed" or "Apartment Deed") contains among others, the following provisions (which may be modified or otherwise limited by provisions which are not summarized hereinbelow):

A. The premises conveyed comprises a portion of the Kailua Bay Resort Condominium Property Regime situate at Kailua-Kona, County and State of Hawaii.

B. The Grantor (Developer) is the lawful owner of the fee simple interest in the real property and the rights to be transferred to the Purchaser; that the same are free and clear of and from all encumbrances except as identified in the Deed and except for the lien of real property taxes not yet by law required to be paid; that the Grantor has good right and title to sell and convey said real property in the manner set forth in the Deed; and the Grantor will WARRANT AND DEFEND the same unto the Purchaser forever against the lawful claims and demands of all persons, except as mentioned in the Deed.

C. Purchaser agrees and consents to the exercise by Grantor of any of its reserved rights set forth in the Condominium Declaration, and Purchaser agrees to sign such documents and do such things as may be required to permit Grantor to exercise those reserved rights, including signing, delivery and recording of all documents which may be necessary, and Purchaser appoints Grantor as Purchaser's "attorney-in-fact" which means that Grantor can act for Purchaser or on Purchaser's behalf, with "full power of substitution," which means that someone else may take Grantor's place to sign, deliver and record all documents and to do all things on Purchaser's behalf, which grant of authority, being coupled with an interest, which means that the Grantor has an interest beyond just in the power Purchaser is giving, cannot be revoked by Purchaser for the term of the reserved rights, and will not be affected by Purchaser's disability.

D. Purchaser agrees, for the benefit of all other owners of the other apartments in the Project, to at all times observe, perform, comply with and abide by all of the covenants, agreements, obligations, conditions and other provisions set forth in the Condominium Declaration, the Bylaws and the House Rules as any of the same exist or may hereafter be amended in accordance with law and does accept and approve of the Declaration, Bylaws and House Rules.

\* \* \* \* \*

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE APARTMENT DEED. WHILE A PURCHASER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE APARTMENT DEED, PURCHASER MUST REFER TO THE APARTMENT DEED TO DETERMINE PURCHASER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE APARTMENT DEED, THE APARTMENT DEED WILL CONTROL.

## EXHIBIT "M"

### KAILUA BAY RESORT ELECTRICAL DUE DILIGENCE

#### A. POWER

##### 1. Existing Conditions

- a. The complex is fed electrical service by Hawaii Electric Light Company (HELCO). Primary lines are routed underground to HELCO single-phase pad-mounted transformers, of which there are three.
- b. From each HELCO transformer, each building's main electric room is fed underground.
- c. Each unit is metered separately by HELCO. Each unit's service is rated at 100A, 120/240 volts, single-phase. The individual services feed a loadcenter in each unit.
- d. Common area power is separately HELCO metered. The common area power feeds predominantly lighting. There are only two common area meters, from which all the common area loads are fed.
- e. No emergency power is required.

##### 2. History

Since the original construction in 1981, the electrical distribution has remained intact with no changes.

##### 3. Recommendations

The electrical distribution appears to be in good condition. Electric rooms are clean. No modifications are required nor anticipated.

#### B. LIGHTING

##### 1. Existing Conditions

- a. Building common area lighting consists of wall mounted can downlights located in the common open stairways and at unit entries.
- b. Parking stalls under the building are illuminated with open channel fluorescent strips.
- c. Pathways are illuminated with low-pressure sodium bollards.

- d. Parking lots and driveways are illuminated with high-pressure sodium pole lights.
- e. Unit lighting consists of fluorescent in the kitchen and incandescent luminaires in bathrooms, hallways.

2. History

- a. In 2001, the wall mounted can downlights replaced original luminaires.
- b. Also in 2001, pathway lights were replaced with the current LPS bollards. LPS was required to meet the outdoor lighting ordinances.
- c. All other lighting has remained as was originally installed.

3. Recommendations

The lighting systems throughout are in good condition and provide adequate illumination. No changes are required.

C. FIRE ALARM SYSTEM

1. Existing Conditions

- a. Each building, except for the recreation center, has a stand-alone fire alarm system, manufactured by Gamewell.
- b. The system components include a control panel, located in the electric room and pull stations and bells, located in the common stairways.

2. History

The fire alarm system is the original system and has not been modified.

3. Recommendations

- a. The current system is annually maintained and tested. This practice should be continued.
- b. The system is over 20 years old and is coming to the end of its life expectancy. Availability of parts will increasingly become a problem should the need arises. In the future, the system will require replacement. At the same time, ADA requirements will have to be met. Estimated cost to replace each system is \$10,000 per building.

D. TELECOMMUNICATION

1. Existing Conditions

- a. Each building has voice service from Verizon.
- b. Each building has CATV service from Sun Cablevision, a division of Time Warner.
- c. An enter phone system is located at the front parking gate.

2. History

- a. The voice and CATV systems are original.
- b. The enter phone system is original.

3. Recommendations

- a. The voice and CATV systems are operating satisfactorily and require no changes.
- b. The enter phone system is not operational and has not been for a number of years. The system should be considered for replacement. Estimated cost is \$15,000.

**EXHIBIT "M-1"**

**MECHANICAL SYSTEM OBSERVATION REPORT**

For

**KAILUA BAY RESORT**

**75-5669 KUAKINI HWY 1-101  
KAILUA-KONA, HI, 96440**

For

**BAY WEST REAL ESTATE  
2425 KUHIO AVENUE  
HONOLULU, HAWAII 96815**

**MAY 2002**

Kailua Bay Resort  
Mechanical Systems Report – Due Diligence  
Mechanical Enterprises Inc.  
May 2002

## GENERAL

This report assesses the condition of the existing mechanical systems for the Kailua Bay Resort in Kona based on our field investigations conducted on May 6, 2002. No mechanical plans were available for review. As such, this report is based strictly on site observations and discussions with the facility maintenance crew.

The complex is made up of 5 individual buildings and was originally built in the early 1980's. There are a total of 96 rental units. The scope of this report is limited to the typical mechanical conditions of these 96 units.

Buildings #1, #2, #3, & #4 are essentially identical except that building #4 is the reverse floor plan. The buildings are 3 story wood frame buildings with 6 units per floor. The units on the 1<sup>st</sup> and 2<sup>nd</sup> floors are 1 bedroom/1 bath units. The units on the 3<sup>rd</sup> floor are essentially the same floor plan as the 1<sup>st</sup> and 2<sup>nd</sup> floor units except that there is a additional mezzanine level that adds 1 more bedroom and bathroom. Thus, the 3<sup>rd</sup> floor units are 2 bedroom/2 bath units.

Building #5 is identical to buildings #1, #2, & #3 except that they added 2 more bays thus, each floor has 8 units instead of 6 units.

The property has been undergoing a remodeling project over the past 18 months. Of the 96 units, 80 have already been refurbished with new plumbing fixtures, flooring, etc. The remaining units are being remodeled as tenants vacate. As such, this report focuses on the conditions of the refurbished units as all units will eventually be in this condition in the coming months.

### 1.0 MECHANICAL SYSTEMS

#### 1.1 AIR CONDITIONING & VENTILATION SYSTEM

##### A. General Description:

1. In general, all the units are designed for natural ventilation. Many of the units were equipped with tenant provided and installed window air conditioners. The management company informs the tenants on the required installation guidelines and requires that the tenant return the unit to its original condition upon moving out.
2. Every unit is equipped with a GE model Deluxe 30 residential style, re-circulating two speed range hood with an integral light and aluminum mesh

grease filter. The hoods appeared to be in good condition and were operating satisfactorily.

3. Every unit is equipped with a toilet room exhaust fan which is interlocked with the restroom light switch. The stacked 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> floor units share a common exhaust duct riser which terminates with a spun aluminum, low profile, weather cap at the roof. The toilet exhaust fans appeared to be the original equipment and model information was not available. All the units observed appeared to be operating satisfactorily.
4. The additional mezzanine level bathrooms located in the third floor units were naturally ventilated via operable windows.
5. Every unit is equipped with a 4" diameter dryer duct connection. The stacked 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> floor units share a common dryer exhaust duct riser. The exhaust riser terminates with a spun aluminum, low profile, weather cap at the roof.
6. The pool house consists of a naturally ventilated shop area, a small office area, a men's/women's restroom, a pump room and a utility room. The office area was air conditioned with a small, window air conditioner. The WAC appeared to be in good shape and was operating satisfactorily. The men's/women's restrooms were naturally ventilated with wall louvers. The mop sink/utility room is used to store various chemicals and had no ventilation.

#### B. System Evaluation and Recommendations:

1. Evaluation and recommendation of the ventilation system are as follows:

The range hoods in the units appear to be original equipment and are technically reaching the end of their lifespan (15 to 20 years). However, the units, which were observed, seemed to be in very good shape and were operating satisfactorily. As most of the units have already been refurbished using these units, our recommendation is to clean and refurbish the units, including filter changes as required. Should any of the units require replacement, we recommend that they be replaced with new to match the existing. The estimated cost for replacement of original range hoods with new are approximately \$500 each.

The existing toilet exhaust fans with integral grilles appear to be original equipment and are technically reaching the end of their lifespan (15 to 20 years). However, the units, which were observed, seemed to be in very good shape and were operating satisfactorily. As most of the units have already been refurbished using these units, our recommendation is to clean and refurbish the units as required. Should any of the units require replacement,

we recommend that they be replaced with new to match the existing. The estimated cost to replace the original toilet exhaust fans are approximately \$600 each.

As the project is over 20 years old, we would recommend that all the exhaust ducts and dryer ducts be cleaned if they are not done so on a regular basis.

The utility room at the pool house did not have any mechanical or natural ventilation. Various cleaning chemicals were stored in the room and due to the lack of ventilation, all the metals in the room have been severely corroded including the existing mop sink faucet and the chrome door handle. A corrosion resistant exhaust fan should be installed to provide better ventilation in the room. The estimated cost for the installation of a new exhaust system is \$2000.

## 1.2 PLUMBING SYSTEMS

### A. General Description:

1. The domestic water service for the property is provided by a water meter located at the bottom of the main entry driveway. Based on discussions with Department of Water Supply, the meter number is 0008029332 and the TMK is 7-5-04:021. They also noted that the meter is a 6x3" compound meter and the service is equipped with an approved backflow preventer.
2. The building water distribution is configured so that each bay (the stacked 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> floor units) have their own cold water shut off valve. These valves are located in concrete valve boxes located in the ground level parking area. The domestic water lines are copper and appear to be in good condition.
3. Hot water for each unit is provided by a 30 gallon electric water heater. The heaters are in a closet located in the main bathrooms. The hot water lines are copper and were not insulated. The water heaters are in good condition as new heaters were installed during the refurbishment of the units. The electric water heaters are Reliance Model 530-20RT with a 30 gallon storage capacity and equipped with dual 4500 watt elements (non simultaneous)
4. Sanitary drainage and vent lines at and within the building were ABS plastic. 4" cleanouts to grade were noted around the various buildings.
5. The buildings were equipped with recently installed gutters and pvc down spouts which terminate on grade.
6. Every unit is equipped with a multipurpose dry chemical fire extinguisher located under the kitchen sink. Fire extinguishers were in good conditions and were up to date on testing/certification.

7. Hose bibs with loose key handles were located at the base of each stairwell. The hose bibs were noted to be in good condition.

8. Plumbing Fixtures:

As part of the unit refurbishing, many of the existing plumbing fixtures were replaced with new ultra low flow fixtures. The following is a breakdown of the fixtures which were observed.

The water closets are tank type, vitreous china manufactured by C/W and appear to be the original equipment. The water closets appeared to be in good condition.

The lavatories are American Standard Rondalyn model 0491.019 self rimming, vitreous china, countertop type, with 4" o.c. faucet drillings and 19" round bowls. The lavatory is equipped with an overflow drain and a Masco CL45M two handle faucet with pop-up drain.

The existing original tub/showers were in good condition and equipped with ceramic tile surrounds and a dual handle Price Pfister shower valve/spout and shower head. The shower stalls located in the mezzanine bathrooms of the 3<sup>rd</sup> floor units were equipped with Moen single handle, pressure balance type shower valve and shower head. The shower fixtures in the refurbished units appeared to be in good condition and was operating satisfactorily.

The kitchen sinks are Dayton stainless steel, double compartment sinks with 33"x21" overall dimensions. The sinks are equipped with a Masco single lever, swinging spout, kitchen faucet. The sinks and faucets appeared to be in good condition.

Each unit's kitchen sink is equipped with an under counter garbage disposal. The garbage disposals are ½ HP Badger In-Sink-Erator units and appear to be in good condition and are operating satisfactorily.

All units were equipped with prefabricated plastic washer boxes with a drain connection and hot/cold water connections with angle valves. The washer boxes are located in a closet between the kitchen and main bathroom. It was designed to accommodate a stacked washer dryer. The washer boxes and valves appeared to be in good condition and showed no signs of leakage etc.

The pool house consists of a small shop area, an office area, a men's and women's restroom, the pool equipment room and a utility room. The men's and women's restrooms each contained a Kohler Mayflower, 1.6 gpf, flush tank water closet, a pedestal lavatory with dual handle faucet and a hose bib. These fixtures appeared to be relatively new and were in good condition. The

shower area within each restroom appeared to be abandoned as the shower valves were missing.

The utility room is used to store various cleaning chemicals. There is poor ventilation in this room and as such, the mop sink faucet has been corroded severely and should be replaced.

**B. System Evaluation and Recommendations:**

Evaluations and recommendations of the existing plumbing systems are as follows:

1. The electric water heaters are relatively new and in good condition. Any miscellaneous surface rust, sticking P&T relief drain valves etc should be addressed as required.
2. The existing original water closets were in good condition and appeared to be operating satisfactorily. Any miscellaneous leaking angle stops etc. should be replaced with new as required.
3. The lavatories and faucets were replaced during the refurbishing and are in good condition. Any miscellaneous water mineral buildup etc. should be cleaned/removed as required.
4. The existing original showers and combination tub showers were in good condition. Shower valves and shower heads showed water mineral buildup and should be cleaned/refurbished as required.
5. The kitchen sinks and faucets were replaced during the refurbishing and are in good condition. Any miscellaneous water mineral buildup should be cleaned removed as required.
6. The garbage disposals were replaced during the refurbishing and are in good condition.
7. The existing washer boxes appeared to be in good condition and can be reused. Any leaking shut-off valve should be replaced as required.
8. Existing hose bibs at the exterior stairwells were in fair to good condition. Missing vacuum breakers and broken handle should be repaired/replaced as required.
9. The mop sink faucet at the pool house utility room should be replaced due to severe corrosion. The estimated cost to replace this faucet is \$300.

**APPENDIX**

Kailua Bay Resort Typical Building Fixture Breakdown

Building #1 (Building #2, #3, & #4 similar)

	Quantity	Sanitary		Domestic Water	
		FU/Fix	FU	FU/Fix	FU
Water closet (tank)	24	4	96	3	72
Lavatory	24	1	24	0.6	14.4
Tub/Shower	24	2	48	1.6	38.4
Kitchen Sink	18	2	36	1.6	28.8
Washer	18	2	36	2	36
Hose Bibb	3			1	3

TOTAL: 240 192.6  
63 GPM

Building #5

	Quantity	Sanitary		Domestic Water	
		FU/Fix	FU	FU/Fix	FU
Water closet (tank)	32	4	128	3	96
Lavatory	32	1	32	0.6	19.2
Tub/Shower	32	2	64	1.6	51.2
Kitchen Sink	24	2	48	1.6	38.4
Washer	24	2	48	2	48
Hose Bibb	4			1	4

TOTAL: 320 256.8  
77 GPM

EXHIBIT "M-2"



**KAI HAWAII**  
STRUCTURAL & FORENSIC ENGINEERS

Ken K. Hayashida, P.E.  
Michael P. Hunnemann, P.E.  
Thang T. Pham, P.E.  
Ron E. Iwamoto, P.E.

May 24, 2002

Mr. Jonathan McManus  
2425 Kuhio Avenue  
Honolulu, Hawaii 96815

Dear Mr. McManus:

Re: Structural Due Diligence Study for Kailua Bay Resort Condominiums.

At your request, we had the opportunity on April 26, 2002 to visit the site and briefly review the conditions at the Kailua Bay Resort, located in Kona, on the Island of Hawaii.

The Kailua Bay Resort consists of five three-story residential condominium buildings with partial basement garages under each building, and a one story Administration Building. The project was built in 1981. Although architectural drawings were available for our review, there were no structural drawings available. The architectural drawings indicate the existence of the following building elements:

- The buildings' structural system is of wood construction.
- The foundation floor is a 4-inch concrete slab on grade and a suspended 5.5-inch concrete slab above the garage.
- The foundation system is continuous footings located below bearing walls.
- The perimeter walls at the lower level parking area are masonry bearing/retaining walls.
- The typical floor framing consists of 2"x10" wood joist with 5/8-inch plywood sheathing.
- The roof construction is 4"x8" rafters supporting 2"x6" wood decking.
- Exterior walls consist of 2"x4" studs covered with 1/2-inch gypsum sheathing and 5/8-inch exterior plywood sheathing.
- The lateral resisting system for the structures are shear walls.

**For this project, our scope of work consisted of the following items:**

- **Visual Field Survey of Buildings.** Our survey consisted of nondestructive visual observations of exposed building structural elements at the exterior of the structure from ground and floor level locations. Our survey also included nondestructive visual observations of the interiors of certain selected condominium units. Hidden conditions such as those covered by floor, ceiling or wall panels and coverings were not reviewed during our visit. This survey did not include any physical testing of any building elements. Inspection for termite damage to structural elements was not included. Inspection for the presence of

termite protection measures to meet the recent standard was not performed. Since the structure was built in the early eighties, no structural analysis were performed to determine the adequacy of the existing lateral resisting system to meet the standard provisions of the new building code for Seismic Zone 4.

- ◆ **Structural Assessment of Building.** The building was assessed based upon the visual field survey only. The assessment did not include any quantitative structural analysis of the structural system. Architectural drawings of the buildings were the only drawings available for our review.
- ◆ **Visual Survey of Unit Interiors.** Only a limited number of units were available to us for observation. The following are the units that were inspected:
  - Building #1 – Unit 1-205
  - Building #2 – Unit 2-205
  - Building #3 – Unit 3-202 and Unit 3-203
  - Building #4 – Unit 4-202
  - Building #5 – Unit 5-301

#### **Observations:**

In the observation procedure we started with a walk through of the interiors of the available units followed by an exterior observation of the buildings.

#### **Interior Observations:**

- ◆ Except for Building #3 Unit 3-202, all of the inspected units were recently remodeled. None of the structural wall framing was exposed, walls were newly painted, and floors have new carpets. No distress was observed under these conditions.
- ◆ In Building #3 Unit 3-202 there were water stains in the gypsum ceiling panels at the hallway, bathroom and at the kitchen (see photos # 1023, 1024, 1025, and 1026). Since this may indicate a previous flooding of the unit above, we advise further investigations to determine if this may have caused damage to the floor joists and joist hangers of the unit above.
- ◆ The floors of the inspected units appeared to be level with no notable deflections present.
- ◆ Roof rafters and decking were exposed, no apparent damage was observed.

#### **Exterior Observations:**

- ◆ Exterior walls are covered with gypsum panels and wood siding as noted in the architectural drawings. No apparent cracks or distress were observed.
- ◆ No apparent cracks in the exterior masonry foundation walls, except at Building #2 (see photos #1036 and 1037). We advise further investigation into the cracks at Building #2 since

MAY 24, 2002

the determination of the cause and potential impact of the cracking is beyond the scope of work of this assignment.

- ◆ The structural adequacy of the balcony handrails was not tested.

The main structural elements of the building appear to be in satisfactory condition.

Should there be questions please don't hesitate to call.

Sincerely,

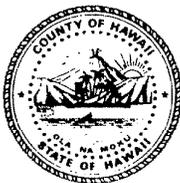


Fatima H. Kempers  
Structural Engineer

Enclosures

EXHIBIT "N"

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

August 1, 2002

Richard T. Asato, Jr., Esq.  
Imanaka, Kudo & Fujimoto  
745 Fort Street Mall, 17<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Dear Mr. Asato:

#### **Condominium Registration**

**Project: Kailua Bay Resort**

**Tax Map Key: (3) 7-5-004:021**

In response to your letter, dated July 18, 2002, we have the following to offer:

1. The subject 2.742-acre parcel is zoned Resort-Hotel (V-1.25) by the County and designated Urban by the State Land Use Commission. The Zoning Codes includes multi-family dwellings among the permitted uses in the V-1.25 district with no less than 1,250 square feet of land area per dwelling unit. Therefore, the ninety-five (95) condominium dwelling units comprising the subject project are allowed on the subject property.
2. Our records show 7 structures situated on the subject parcel. Building permits (BP) were issued for the following:
  - a. BP #812379 was issued on September 24, 1981 to construct a 3-story 18-unit multi-family dwelling structure. This permit was closed due to final inspection recorded on October 18, 1982;
  - b. BP #812380 was issued on September 24, 1981 to construct a 3-story 18-unit multi-family dwelling structure. This permit was closed due to final inspection recorded on October 18, 1982;

- c. BP #812381 was issued on September 24, 1981 to construct a 3-story 17-unit multi-family dwelling structure. This permit was closed due to final inspection recorded on October 18, 1982;
  - d. BP #812382 was issued on September 24, 1981 to construct a 3-story 18-unit multi-family dwelling structure. This permit was closed due to final inspection recorded on October 18, 1982;
  - e. BP #812383 was issued on September 24, 1981 to construct a 3-story 24-unit multi-family dwelling structure. This permit was closed due to final inspection recorded on October 18, 1982;
  - f. BP #812384 was issued on September 24, 1981 to construct a 1-story condominium recreation facility. This permit was closed due to final inspection recorded on October 18, 1982;
  - g. BP #820831 was issued on May 4, 1982 to construct a 256 square foot temporary sales office. This permit was closed due to final inspection recorded on October 28, 1982; and
  - h. BP #820908 was issued on May 14, 1982 to construct a swimming pool and spa facility. This permit was closed due to final inspection recorded on October 28, 1982;
3. Variances were not required to achieve compliance with the zoning and building ordinances and codes.
  4. Our records do not include any reference to non-conforming uses\structures on this property.

Richard T. Asato, Jr., Esq.  
Imanaka, Kudo & Fujimoto  
Page 3  
August 1, 2002

Should you have questions, please do not hesitate to contact this office at (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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xc: Mr. Mike McCall - RPT  
Mr. Milton Pavao, Manager - DWS